EUROPEAN UNION SELECT COMMITTEE
The Role of National Parliaments in the European Union
Oral and Written evidence

Contents
Dr Gavin Barrett, University College Dublin—Written evidence .................................................. 4
Professor Dr iur. Hermann-Josef Blanke, University of Erfurt, Germany—Written evidence. 7
Mr Mladen Cherveniakov, Chairman of the Committee on European Affairs and Oversight of the European Funds, National Assembly of Bulgaria—Written evidence................................. 13
Mr Carlo Casini MEP and Mr Miguel Angel Martinez Martinez MEP, Vice-President, European Parliament—(QQ 125-136) ................................................................................................................... 15
Sonia Piedrafita, Centre for European Policy Studies (CEPS)—Written evidence ............... 16
Charles Grant, Director, Centre for European Reform, and Mats Persson, Director, Open Europe—Oral evidence (QQ 1-17) ..................................................................................................................... 23
Dr iur Patricia Conlan, Member, Institute for the Study of Knowledge in Society, University of Limerick, Ireland—Written evidence........................................................................................................... 41
Dr Ian Cooper, University of Oslo—Written evidence ........................................................................ 56
Dr Richard Corbett, Member of the Cabinet of the President, European Council—Written evidence...................................................................................................................................................... 60
Dr Richard Corbett, Member of the Cabinet of the President, European Council—(QQ 76-88) ................................................................................................................................................................ 63
Ben Crum, Vrije Universiteit Amsterdam and John Erik Fossum, University of Oslo—Written evidence ........................................................................................................................................ 78
Professor Adam Cygan, University of Leicester—Written evidence ........................................ 83
Professor Adam Cygan, University of Leicester, Professor Simon Hix, London School of Economics and Political Science, and Dr Julie Smith, Senior Lecturer, University of Cambridge—(QQ 18-33) ........................................................................................................ 86
Averof Neofytou, Chairman, Committee on Foreign and European Affairs, House of Representatives, Cyprus and Eva Kjer Hansen, Chair, European Affairs Committee, Folketing, Denmark—(QQ 34-50).................................................................................................................. 104
Miroslav Krejča, Chairman of the Committee on European Affairs, The Senát, Parliament of Czech Republic—Written evidence ........................................................................................................ 105
Eva Kjer Hansen, Chair, European Affairs Committee, Folketing, Denmark and Averof Neofytou, Chairman, Committee on Foreign and European Affairs, House of Representatives, Cyprus—(QQ 34-50)....................................................................................................... 107
Mr Andrew Duff MEP—(QQ 100-114) ............................................................................................ 118
Arto Aas, Chair, European Affairs Committee, Riigikogu, Estonia—Written evidence ...... 128
Eduskunta, Parliament of Finland—Written evidence .................................................................... 132
Foreign Affairs Committee and the European Affairs Committee Chairs and Members, Assemblée Nationale of France—Note of formal evidence session .............................................. 138
French Sénat—Written evidence ........................................................................................................ 141
Simon Sutour, President of the European Affairs Committee, André Gattolin, Richard Yung, Éric Bocquet, Catherine Tasca, Joëlle Garriaud-Maylam and Collette Mélot, Members of the European Affairs Committee, Sénat, France—(QQ 142-146) ........................................................................................................ 143
John Erik Fossum, University of Oslo and Ben Crum, Vrije Universiteit Amsterdam— Written evidence ................................................................................................................................ 151
Mr Ashley Fox MEP—(QQ 115-124) ................................................................................................ 152
Katarzyna Granat, European University Institute (EUI), Italy— Written evidence ................ 163
Professor Norbert Lammert, President of the Bundestag, Germany—Written evidence ... 166
Committee on European Affairs, Hellenic Parliament, Greece—Written evidence .......... 167
Oskar Josef Gstrein and Darren Harvey—Written evidence ................................................ 170
Darren Harvey and Oskar Josef Gstrein —Written evidence .................................................... 177
Claudia Hefftler, University of Cologne, Valentin Kreilinger, Jacques Delors Institute, Olivier Rozenberg, Centre d’études européennes, Sciences Po (Paris), and Wolfgang Wessels, University of Cologne—Written evidence ...................................................................................... 178
Professor Simon Hix, London School of Economics and Political Science, Professor Adam Cygan, University of Leicester and Dr Julie Smith, Senior Lecturer, University of Cambridge—(QQ 18-33) ..................................................................................................................... 187
Dr Anna-Lena Högenauer, Maastricht University and Professor Christine Neuhold, on behalf of the OPAL research team Maastricht University—Written evidence ...................................................................................... 188
Julian M. Hörner, London School of Economics and Political Science—Written evidence .. 191
Dr Ariella Huff, University of Cambridge—Written evidence .................................................... 193
Dr Joanne Hunt, Cardiff University —Written evidence ............................................................. 197
Mr Dominic Hannigan TD, Chairman, Committee on European Union Affairs, Houses of the Oireachtas (Irish Parliament), Ireland—(QQ 68-75) ..................................................................................................................... 203
Camera dei Deputati, Italy—Written evidence ................................................................................ 211
Heleen Jalvingh, UCL, School for Public Policy—Written evidence .......................................... 218
Davor Jancic, London School of Economics and Political Science—Written evidence ...... 222
Valentin Kreilinger, Jacques Delors Institute, Claudia Hefftler, University of Cologne, Olivier Rozenberg, Centre d’études européennes, Sciences Po (Paris), and Wolfgang Wessels, University of Cologne—Written evidence ...................................................................................... 228
Valentin Kreilinger, Jacques Delors Institute and Olivier Rozenberg, Centre d’études européennes, Sciences Po (Paris) —Written evidence ...................................................................................... 229
Saeima, Latvia – Written Evidence ..................................................................................................... 233
The Rt. Hon. David Lidington MP, Minister for Europe, Foreign and Commonwealth Office —Written evidence ................................................................................................................................ 236
Rt Hon David Lidington MP, Minister of State for Europe at the Foreign and Commonwealth Office—(QQ 147-157) ..................................................................................................................... 248
The Rt. Hon. David Lidington MP, Minister for Europe, Foreign and Commonwealth Office—Supplementary written evidence ................................................................................................................................ 257
Gediminas Kirkilas, Chair of the EU Affairs Committee, Seimas, Lithuania—Written evidence .................................................................................................................................................................... 259

Professor Stelio Mangiameli, University of Teramo—Written evidence ........................................................................................................................................................................................................ 263

Mr Miguel Angel Martinez Martinez MEP, Vice-President, European Parliament, and Mr Carlo Casini MEP—(QQ 125-136) ........................................................................................................................................................................................................ 271

Mr René Leegte, Deputy Chair of the European Affairs Committee, Tweede Kamer de Staten-General (The Dutch House of Representatives), The Netherlands—(QQ 59-75) ........................................................................................................... 287

Professor Christine Neuhold, on behalf of the OPAL research team, Maastricht University and Dr Anna-Lena Högenauer, Maastricht University—Written evidence ........................................................................................................................................................................................................ 294

Mats Persson, Director, Open Europe and Charles Grant, Director, Centre for European Reform—Oral evidence (QQ 1-17) ........................................................................................................................................................................................................ 295

Dr Eleni Panagiotarea—Written evidence .................................................................................................................................................................................................................. 296

Asteris Pliakos —Written evidence .......................................................................................................................................................................................................................... 299

Mr Andrzej Gałażewski, Vice Chairman of European Union Affairs Committee, Sejm, Poland—(QQ 51-58) ........................................................................................................................................................................................................ 306

Mr Edmund Wittbrodt, Chairman of the European Affairs Committee, Senat, Poland—Written evidence ........................................................................................................................................................................................................ 312

Thierry Repentin, Minister for European Affairs, French Government—(QQ 137-141) ........................................................................................................................................................................................................ 314

Olivier Rozenberg, Centre d’études européennes, Sciences Po (Paris), Claudia Hefftler, University of Cologne, Valentin Kreilinger, Jacques Delors Institute, and Wolfgang Wessels, University of Cologne—Written evidence ........................................................................................................................................................................................................ 319

Olivier Rozenberg, Centre d’études européennes Sciences Po (Paris) and Valentin Kreilinger, Jacques Delors Institute—Written evidence ........................................................................................................................................................................................................ 320

Maroš Šefčovič, Vice President of the European Commission—Written evidence ........................................................................................................................................................................................................ 321

Maroš Šefčovič, Vice-President of the European Commission—(QQ 89-99) ........................................................................................................................................................................................................ 324

National Council of Slovenia—Written evidence .......................................................................................................................................................................................................................... 339

Dr Julie Smith, Senior Lecturer, Cambridge University—Written evidence ........................................................................................................................................................................................................ 340

Dr Julie Smith, Senior Lecturer, University of Cambridge, Professor Adam Cygan, University of Leicester, and Professor Simon Hix, London School of Economics and Political Science—(QQ 18-33) ........................................................................................................................................................................................................ 343

Thomas Larue, Committee Secretary, Committee on the Constitution, Riksdag, Sweden—Written evidence ........................................................................................................................................................................................................ 344

Wolfgang Wessels, University of Cologne, Claudia Hefftler, University of Cologne, Valentin Kreilinger, Jacques Delors Institute, Olivier Rozenberg, Centre d’études européennes, Sciences Po (Paris)—Written evidence ........................................................................................................................................................................................................ 349
In relation to the recent call for evidence by the House of Lords European Union Committee concerning the role of national parliaments in the EU framework, I would like to make the following very brief observations. For further details of my thoughts in relation to the same, I would call the attention of the House to my work *The Evolving Role of a National Parliament in European Affairs*, which was published this year on foot of my research carried out on the basis of an Oireachtas parliamentary research fellowship. The text of this study is far too long to have annexed to this brief submission but is available to be read on the Oireachtas website at the address cited below.  

I would make the following very brief observations in response to the questions posed in the call for evidence

**National parliaments in the EU framework**

In relation to this question, I would respectfully draw the attention of the House to chapter 5 of the above publication which addresses the issue of why national parliaments should have a role in the EU framework and the role should national parliaments play in a) shaping, and b) scrutinising, EU decision making.

There is widespread agreement that national parliaments should have a role in the EU decision-making process. The fact that the empowerment of national parliaments happens to represent the broadest, most politically acceptable choice does not, of course, however, guarantee that it is the optimal arrangement from a systemic perspective. Some have argued that the marginalisation of member state legislatures is an inherent effect of the system of executive federalism that is at the core of European Union governance and that it is therefore essentially an unavoidable phenomenon, however regrettable it might be. Such views are not necessarily correct. The opposite view may also be taken (and is, by most observers) that, given the broad range of issues the European Union now deals with, the politicisation of the European Union’s decision-making process is both inevitable and necessary, and that national parliaments must play a role in this.

Whatever our views, if the role of national parliaments in the European Union policy-making field is to be strengthened, it seems preferable to do so with a clear idea of what precisely is intended to be achieved by doing this. The mere bald assertion that the needs of democratic governance will automatically be advanced by a greater involvement of national parliaments hardly seems sufficient. In the first place, the precise procedural requirements needed to ensure democratic governance are not always clear, especially in a transnational context – even less so in a European Union context, where the democratic claims of national parliaments can be countered at European level with the sometimes competing claims of the European Parliament. Secondly, the meaning of democracy has also changed and evolved over time.  

---


2 For a recent historical analysis, see J. Keane, *The Life and Death of Democracy* (Norton, New York, 2009).
the requirements of democracy leading to unexpected and undesirable results.\textsuperscript{3} Careful reflection on the precise requirements of democracy in the European Union context is therefore needed. As Kiiver has penetratingly observed, “in a debate where the mere mentioning of the word ‘democracy’ buys support, analytical sensitivity is...priceless.”\textsuperscript{4} Such reflection is not always evident.

Regarding access to information, national parliaments now have sufficient information to carry out their work, given both the amount of information provided on the internet, and more particularly, the information rights provided for by the two Protocols agreed at Lisbon. This alone does not guarantee them influence at European level. The task of securing that is a great deal more challenging.

**Formal role of national parliaments**

In relation to this question, I would respectfully draw the attention of the House to chapter 3 of the above publication, which contains a very lengthy examination of the evolving precepts of the European Union regarding the role of national parliaments.

The manner in which the Irish parliament in particular has adjusted to the Lisbon Treaty changes is examined in chapter 4 of the same work.

In particular in relation to the functioning of the yellow and orange card procedures, I would also like to draw the attention of the House to the short article written by me *Monti II: The Subsidiarity Review Process Comes of Age...Or Then Again Maybe It Doesn’t* (2012-13) 19 Maastricht Journal of European and Comparative Law 595 which examines some aspects of the relatively modest impact of the subsidiarity yellow/orange card procedure to date.

**Dialogue and scrutiny of EU policies**

In relation to the level and quality of engagement between EU institutions and national parliaments, and between national parliaments, the impact of the political dialogue process is examined in Chapter 2 of the above-cited work by me, in the specific context of Ireland.

Some brief observations in this regard are that:

i) the impact of the process has been limited, notwithstanding various reforms. Not all of the responsibility for this lies at national level, however. Commission responses to contributions tend to come late, be brief, and give little impression of influence being exerted by national parliaments on the legislative process.

ii) useful engagement between national parliaments and the European Parliament takes place although there is probably an element of mistrust on the part of national parliaments.


iii) the role of COSAC (the Conference of Parliamentary Committees for Union Affairs) in relation to the subsidiarity procedure in particular has receded, something which probably merits review

Capacity of national parliaments

The capacity in particular of the Irish parliament in engaging in European affairs is studied in chapter 2 of the above-cited study. Areas where its role badly needs to be augmented are examined in chapter 6, and the attention of the House is respectfully drawn to these.

Some brief observations are that

i) in Ireland as in other member states, the limited electoral salience of European affairs constitutes a major brake on the effectiveness of parliament in engaging with European affairs

ii) the differing political cycles at national and at European level and the length of the legislative process at European level are also braking factors.

ii) national parliaments are less effective in political dialogue with EU institutions as they are at holding their own governments to account, although it should not be forgotten in this respect that national government ministers are also members of a European institution in the shape of the Council. In this sense holding their own governments to account involves a form of dialogue with a European institution.

Other possible changes

Possible ways in which the role of national parliaments might be enhanced might include a broadening of the artificially narrow grounds of review of legislation provided for under the yellow/orange card procedure so as to include an explicit role in checking for compliance with subsidiarity and with meeting requirements as to compliance with procedural requirements such as the provision of adequate reasoning for European Union laws.

Not all changes involve treaty amendments however. Areas where the author has suggested that the role of the Irish parliament badly needs to be augmented are examined in chapter 6 of the above-cited work.

As regards financial and economic policy, the writer has also authored a report 5 examining the changes which have taken place within the Irish parliament in relation to the economic crisis to which the attention of the House is respectfully drawn.

27 September 2013

---

I. National Parliaments in the EU framework

1. The role of national Parliaments in the European Union is highly controversial, particularly in regard to political and legal aspects of the democratic legitimacy of Union action. The controversy essentially takes on the question of whether the European Parliament is the exclusive or at least primary source of democratic legitimacy for the Union, or whether the democratic legitimacy of the Union is mediated primarily by the national Parliaments. The German Federal Constitutional Court has expressed the latter view in its decision on the Maastricht Treaty and then in more specific terms in its judgment on the Lisbon Treaty. As it is known, in the Maastricht judgment the judges have regarded the European Parliament’s "complementary" function in providing "the basis for democratic support for the policies of the European Union" and thus they have made the national legislative bodies the relevant organs to convey democratic legitimacy in the context of Germany’s participation in the process of European integration.\(^6\) In the Lisbon judgment, the Court has recognised the comprehensive right of individuals to participate in the democratic legitimacy of German public authority – a "right to democracy". At the same time, with regard to German Parliament’s responsibility for integration in matters of the European Union, the Karlsruhe Court has affirmed the need that "the German Bundestag, which represents the people, and the Federal Government sustained by it, retain a formative influence on the political development in Germany". This is the case "if the German Bundestag retains own responsibilities and competences of substantial political importance or if the Federal Government, which is answerable to it politically, is in a position to exert a decisive influence on European decision-making procedures."\(^7\) These conclusions of the highest German court, however, contrast with the Union Treaty of Lisbon. In Article 10.2 TEU, it stipulates that "citizens are directly represented at Union level in the European Parliament". Further, according to the provision of Article 14.1 TEU "the European Parliament shall, jointly with the Council, exercise legislative and budgetary functions." On the other hand, the Lisbon Treaty defines the role of national Parliaments. According to the core provision of Article 12 TEU "national Parliaments contribute actively to the good functioning of the Union". Also, as a consequence of the national judicial interpretations of the future competences and prerogatives of the national Parliaments, on the one hand, and of the European Parliament’s role the in the process of legitimation of the Union (and in the interparliamentary cooperation), on the other hand, parliamentary participation will be structured mainly in a horizontal dimension, that is, among national Parliaments, or in a vertical dimension, between each executive and each Parliament. Solutions for this "multi-level parliamentary field" will depend on whether the enhanced involvement of national Parliaments, deriving from the Treaty of Lisbon, would result in an enrichment of the EU.

---

\(^6\) BVerfG (German Federal Constitutional Court) – 2 BvR 2134/92, 2 BvR 2159/92 (12 October 1993) p. 18 et seq. – http://www.judicialstudies.unr.edu/JS_Summer09/JS_P_Wed_1/German%20ConstituCourt%20Maastricht.pdf

decision-making process or, on the contrary, would lead to a potential new brake in its functionality.  

2. By virtue of Article 12 lit. a TEU and the Protocol on the role of national Parliaments in the European Union (Article 1 and 2) national Parliaments have adequate access to consultation documents, as well as to draft legislative acts. National executives, given their dominance in the process of European integration, reflected by their role in the European Council and the Council, have at least an equal responsibility, at domestic level, to inform national Parliaments on white papers, green papers, communications and on draft legislative acts of the Union, but also on draft international agreements and other arrangements if they supplement, or are otherwise closely related to, the law of the European Union. The (co-)responsibility of national governments in informing the national Parliaments is also the logic of the European Treaties, which provide that national governments are "democratically accountable either to their national Parliaments, or to their citizens" (Article 10.2 TEU). This shall lead to a “parliamentarisation” and to a politicisation of intergovernmental decisions of the Union at the domestic level, as becomes evident with regard to the managing of the economic and sovereign debt crisis of the Member States. The simultaneous “parliamentarisation” at the Union level can be regarded as a response to the original marginalisation of Parliaments (de-parliamentarisation) in the European integration process, and particularly of national legislatures in favour of the executives.

3. The expansion of the number of acts to be submitted to national Parliaments – whether they are draft legislation acts or consultation and planning documents – fosters a greater potential for intervention by national Parliaments. At the same time, this expansion gives rise to the risk of inundating their structures with an enormous amount of documents. Complete and comprehensive information can therefore not always achieve effective parliamentary control of European policies, and could produce an information overload. However, selection and anticipation are possible, as shown by the parliamentary practice, particularly in the Baltic States and the European Scrutiny Committee of the British House of Commons.

4. National Parliaments are legitimate guardians of the subsidiarity principle. Considering the right of the Member States to bring actions before the Court of Justice of the Union for infringement of the principle of subsidiarity by a Union legislative act (Article 12 lit. b TEU, Article 8 of Protocol 2), national Parliaments are necessary partners in the political dialogue with the European Parliament (Article 12 lit. f TEU and Title Two of Protocol 1). Further, due to their competences and responsibility in the field of economic, budgetary and financial policy at domestic level, it is reasonable that the national Parliaments take part in the economic dialogue that has been created through the so-called Six-Pack

---

9 Cf. Section 3 Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union (EUZBBG), originally of 12 March 1993, newly adopted on 4 July 2013 (BGBl. I S. 2170). Paragraph 1, sentences 1 and 2 provide: “The Federal Government shall notify the Bundestag comprehensively, as early as possible and continuously of matters concerning the European Union. This notification shall, in principle, be made in writing through the forwarding of documents or the presentation of the Federal Government’s own reports and, in addition, orally.” Paragraph 3 provides: “The duty of notification shall also encompass the preparation and course of discussions at informal ministerial meetings, at euro summits and at meetings of the Eurogroup and of comparable institutions that are held on the basis of international agreements and other arrangements which complement or are otherwise particularly closely related to the law of the European Union. The same shall also apply to all preparatory bodies and working groups.”
legislation. However, the author of this investigation does not endorse the idea of a third chamber, as this would hinder the European Parliament’s evolution towards a front-ranking body of democratic legitimation of Union decisions; and as this would over-complicate the EU institutional framework, creating overlapping roles and functions, add to the complexity of the EU decision-making process and present a challenge to the activity of the EP. Hence, the directly elected European Parliament should remain the sole representative of the European citizens.

5. As a consequence of the budgetary sovereignty the national Parliaments of the Member States must retain control of fundamental budgetary decisions even in a system of intergovernmental governing. Without a doubt a stronger political role of the EP in the budgetary and fiscal policy of the Member States would mean running the risk of a collectivisation of sovereign debt. Thus, the preponderance of the principle of solidarity is strengthened at the expense of sovereignty and subsidiarity in the European Union. However, such risk-conscious reflections on a transferal to the Union of competences in the field of national economic and fiscal policy – unavoidable at the latest by the end of the crisis – cannot be ignored. The debate on the future of a “real” EMU and its democratic legitimacy are oriented towards Article 13 of the Treaty on Stability, Coordination and Governance, which becomes a primary point of reference. Hence, it is considered possible that not only the governments of the Member States but also Parliaments agree on future European decisions regarding competitiveness and growth. At the Union level, the European Parliament would take over responsibility. Still the budgetary ”conference of representatives of the relevant committees of the European Parliament and representatives of the relevant committees of national Parliaments” reflects the powerlessness of the Union in the field of domestic economic and financial policy.

II. Formal role of national Parliaments

6. The Lisbon Treaty (Article 12 lit. f TEU and Protocol 1) has strengthened the advisory role of national Parliaments in the European integration process. The treaty defines a new structural framework for interparliamentary cooperation as a corollary and parallel activity, which is substantially required whenever a decision is assumed in the EU. By contrast, until 2004 the “traditional” forms of interparliamentary cooperation, besides COSAC, were not legally recognised by the Treaties. Since 2004 new tools of cooperation (Joint parliamentary meetings, Joint committee meetings) and the older ones (Convention method, political monitoring of Europol and evaluation of Eurojust, respect for the principle of subsidiarity) have become more institutionalised and now find their legal basis in Art. 9 of Protocol 1. Yet above all, the Treaty of Lisbon has attributed to the national Parliaments not only a purely advisory role (Article 10 paragraph 4 of Protocol 1), but also the right to comment to the Commission on draft legislation acts throughout the “Early Warning System” and the right to bring an action before the ECJ with regard to the principles of subsidiarity and proportionality (Articles 6 and 8 of Protocol 2). These reforms have promoted the Europeanisation of national Parliaments.

7. National Parliaments are enabled to act collectively and not only individually. In these procedures every parliamentary Assembly is “weighted” with two votes if it is unicameral,

---

and with one vote for each chamber when the Parliament is bicameral (Articles 6 and 7 of Protocol No. 1). According to the so-called “yellow card procedure”, if the opinions on non-compliance of an European act with the principle of subsidiarity represent at least one third of the votes – a quarter when the project concerns the AFSJ – allocated to national Parliaments (19 out of 56 in the EU-28), the draft must be formally reviewed. In the first two years in which the early warning mechanism has been operational, the threshold necessary to activate the yellow card has never been reached. It has been reached for the first time on 24 May 2012, when 12 national Parliaments (7 unicameral and 5 chambers of bicameral Parliaments) have submitted to the Commission reasoned opinions arguing that the draft regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services was infringing the principle of subsidiarity (sub 9). A variation on this procedure is included in Article 7.3 of Protocol No. 2 (“orange card”) that introduces a “heightened” or qualified form of participation of national Parliaments (required by the Government of the Netherlands). The ex ante and political control (which can be compared to the “political safeguards of federalism” known to the US constitutional literature) follows a rather complicated and baroque procedure, in proportion to the results that can be achieved by it. In other words, a reasoned opinion subscribed to by the majority of national Parliaments does not have the force to stop the legislative proposal. Many have noted this paradox that such a situation entails in relation to the democratic principle, which the role of national Parliaments has been structured to foster.  

8. The national understanding of the principle of subsidiarity varies strongly and is different in (pre)federal Member States compared to centralised states of the Union. This is the result of the legally vague concept of ”subsidiarity”, taken from the Catholic social doctrine, later implemented in the theory of federalism and from there to the supranational treaties. Most Member States lack screening systems in the area of the national Parliaments and executives, specifying the criteria to scrutinise the respect of the principle of subsidiarity by the Union legislator. Thus, when applying the provisions of Protocol 2 national Parliaments always run the risk that the result of their subsidiarity review does not stand the review by the ECJ. The same applies to the principle of proportionality, which is not rooted in the legal order of most Member States and has been adopted in the national legal orders only as a consequence of the Court's case law. On the basis of national constitutional experiences the representatives of national Parliaments in the COSAC could develop criteria that might be relevant for scrutinising the Union’s draft legislative acts under the auspices of subsidiarity, or which at least could serve as points of reference. However, the national concepts of what subsidiarity means in a particular case are quite heterogeneous. This is also reflected by the fact that, in 2012, the Swedish Riksdag, the French Sénat and the German Bundesrat have submitted around 50% of the reasoned opinions formulated by the national Parliaments according to Article 6 of Protocol 2.

9. In the case of seven countries (Austria, Belgium, France, Germany, Italy, Spain, United Kingdom) – all of which have a two-chamber Parliament and six of which have regional Parliaments with legislative powers – there is generally a low number of opinions transmitted by the national Parliaments within the “Early Warning System” (Article 6 of Protocol No. 2) on compliance with the subsidiarity principle. In any case, it may be found that among them

---

15 For this comparison (with a synopsis) between these Member States cf. Blanke/Mangiameli, in: Blanke/Mangiameli (eds.), The Treaty on European Union (TEU) – A Commentary, Protocol No. 2 para 79-160.
the Spanish Parliament is the most active one, with 16 opinions sent (in practice only 8 opinions were sent but they are worth twice the number given the procedure followed in that country). We then find the Parliaments of France (11 opinions), the United Kingdom (10), Germany (9), Austria (8), Italy (7) and Belgium (4). At the level of the individual chambers, it could be said that the chamber showing greatest interest in controlling compliance with the subsidiarity principles is the French Senate (10 opinions), followed by the two Spanish chambers (8), by the House of Commons and the German Bundesrat (7) and by the Austrian Bundesrat (6). The data provided confirm what was mentioned in the paragraph on Spain – how it has rationalised oversight on the principle of subsidiarity by conferring on the Mixed Committee for the European Union the competence to present the opinions (and votes) of both Chambers. Indeed, it is likely that most of the opinions sent by the Spanish Parliament were produced thanks to the more streamlined procedure they have set up, and which does not require double procedures in the two branches of Parliament. It goes without saying that this need to streamline procedures does not apply to those countries with a unicameral Parliament. Expanding the perspective to also include further EU Member States, there are other national Parliaments that prove to be more interested in controlling compliance with the principle of subsidiarity. For example, the Swedish Parliament has issued 27 reasoned opinions until November 2012. Further, the Polish Parliament, by adding up the opinions issued by its two chambers, has issued a total of 20 opinions. Especially if their small size is taken into account, the Parliaments of the Netherlands and of Luxembourg can also be considered to be quite active with 14 and 10 opinions issued respectively. Among the draft European laws that have been the subject of many reasoned opinions on failure to comply with the principle of subsidiarity, mention should be made of the proposal concerning the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services. Indeed, this is the first time that the yellow card has been activated. In particular, the legislative proposal has received 12 opinions by the national Parliaments/chambers, corresponding to 19 votes (seven of those Parliaments are unicameral). In relation to the seven States mentioned above, the legislative drafts that received the most complaints from national Parliaments are those on the distribution of food products, with 5 opinions equivalent to 7 votes (French Senate and House of Lords, Danish Parliament, Swedish Parliament, Dutch High Chamber); the General Data Protection Regulation, with 5 opinions equivalent to 6 votes (French Senate, Italian Chamber of Deputies, Belgian Chamber of Representatives, German Bundesrat, Swedish Parliament); seasonal employment, with 7 opinions equivalent to 7 votes (both Austrian chambers, House of Lords, both Czech chambers, Polish Senate, Dutch High Chamber); the establishment of a common European sales law, with 4 opinions equivalent to 4 votes (Austrian Bundesrat, Belgian Senate, German Bundestag, House of Commons); the award of concession contracts, with 4 opinions equivalent to 4 votes (Austrian Bundesrat, German Bundesrat, both Spanish chambers); patents, with 3 opinions equivalent to 3 votes (Italian Chamber of Deputies, both Spanish chambers); consolidated corporate tax base, with 5 opinions equivalent to 7 votes (House of Commons, Polish Sejm, Slovak Parliament, Swedish Parliament, Dutch Lower House).16

III. Dialogue and scrutiny of EU policies

10. A rational application of Articles 9 and 10 of Protocol No. 1 could improve the effectiveness of cooperation between national Parliaments and the European Parliament.

Article 9 provides that the composite framework of forms and tools of interparliamentary cooperation will be systematised and structured according to an intelligible and unitary ratio. To this end, it fixes both procedural and substantial requirements. So far, the basic structure of interparliamentary cooperation in the EU is given by conferences of committees from the EP and national legislatures, dealing with the same subject matter. In this regard the role of COSAC should be strengthened as the centre and promoter of a stable interparliamentary cooperation. With this aim COSAC should distance itself from the role of a “catch-all interparliamentary conference”, looking after only institutional issues (for the implementation of the Treaty of Lisbon and for future Treaty reforms) and acting as a forum for discussing and exchanging views amongst Parliaments, particularly regarding compliance with the principles of subsidiarity and proportionality. This kind of division of labour on the basis of policy, keeping COSAC’s activity concentrated on institutional matters, seems to be the most suitable option, since it allows a combination of specialisation and the aims of Article 9 of the Protocol, according to which the cooperation has to become effective and regular.17 Article 10 and the practice following the first enforcement of the Treaty of Lisbon each require that the role of COSAC be revisited. Article 10 of Protocol 1 fixes some points of reference in this regard. COSAC’s role should be developed into that of a body dealing with the most important constitutional and institutional issues of the Union.18

IV. Capacity of national Parliaments

11. The effectiveness of political deliberation in matters of the European Union within national Parliaments depends largely on the human resources and the organisation of the committee responsible for European affairs. In these terms, the committee of the Lithuanian Parliament, for instance, is well organised. Following the recent decision of the German Federal Constitutional Court – which refers to the delegation of competences of the plenary to a parliamentary committee – the following rule applies: “If the German Bundestag, in order to safeguard other legal interests of constitutional status, transfers to a committee created by itself under its power of self-organisation or to another subsidiary body individual tasks among those it has to fulfil for independent exercise, taking the place of the plenary session, and if there are reasons for this which have the same weight as the requirement of equal rights to participation of all members, the restriction of the status rights of the elected members and the associated unequal treatment may not extend further than is absolutely necessary.”19 Therefore, in its composition, each committee has to reflect the political proportions of the plenary at large.20

24 September 2013

Mr Mladen Cherveniakov, Chairman of the Committee on European Affairs and Oversight of the European Funds, National Assembly of Bulgaria—Written evidence

1. In the National Assembly of the Republic of Bulgaria we have a really widespread agreement among all party groups on the importance of the EU scrutiny process. In this process we pay special attention to the social, economic and fiscal aspects of the proposals. We want to achieve a precise assessment of the risks and benefits in order to give the correct recommendations to our government and to avoid the Council of EU adopting legal acts which are too hard for us to implement or imply the development of “Europe at two speeds”.

2. An important part of the scrutiny process is the subsidiarity check of the European Commission legislative proposals. We pay special attention to the subsidiarity principle in the Commission’s proposals in the area of the national justice system, tax policy and environmental policy.

3. Our internal subsidiarity control mechanism has existed since 2009. The present mechanism is regulated through the Rules of Organization and Procedure of the 42nd National Assembly of the Republic of Bulgaria, adopted in July 2013. The subsidiarity check is exercised on selected EU draft legislative acts included in the Annual Work Programme of the National Assembly on European Union Issues. The procedure has the following steps:

- The Government adopts an explanatory memorandum with its position on the considered EU legislative proposal and submits the memorandum to the National Assembly.

- The President of the National Assembly distributes the EU legislative proposal and the explanatory memorandum of the Government to the Committee on European Affairs and Oversight of the European Funds (CEAOEF) and to other competent permanent committees of the Parliament.

- The draft proposal and the memorandum of the Government are being examined by the relevant sectoral committees of the Parliament which adopt their own reports and submit them to the CEAOEF.

- The EU legislative proposal, together with the explanatory memorandum of the Government and the reports of the relevant permanent parliamentary committees are scrutinized by the CEAOEF which adopts a final report and submits it to the President of the National Assembly. The Report contains also a Statement on the compliance of the draft act with the principles of subsidiarity and proportionality as well as possible comments and recommendations to be sent to the European Institutions within the framework of political dialogue.

- When CEAOEF finds that the proposal of the EU act is in breach with the principle of subsidiarity, the Committee’s Report contains a Reasoned Opinion stating why it considers that the draft in question does not comply with the that principle.
Mr Mladen Cherveniakov, Chairman of the Committee on European Affairs and Oversight of the European Funds, National Assembly of Bulgaria—Written evidence

- Finally, the President of the National Assembly submits the Report of the CEAOEF as a document of the Parliament to the Government and to the relevant EU Institutions.

4. Since 2007 the Bulgarian Parliament, via our CEAOEF, has actively participated in the political dialogue with the European Institutions. So far more than 25 statements have been sent to the European Commission, incl. positions on the MFF 2014-2020, the Cohesion Policy legislative package, the CAP reform, the EU Single Market and its potential for economic growth, the EU Employment package, etc.

5. Another important aspect of our scrutiny activities is the permanent dialogue with the civil society. In January 2008 our Committee established a Council for Public Consultations with the participation of trade unions, employers' organizations, ecological and other NGOs. The Council members discuss in advance the same EU legislative proposals which later are discussed in our Committee and we use the opinion of the Council for Public Consultation in the preparation our Report, including in the matter of the subsidiarity.

6. Regarding the real impact of the existing yellow and orange card procedure on the EU decision making process I would say that in my opinion unfortunately this impact has been quite limited as yet. On the one hand, this is due to the complexity of the procedure. On the other hand, if some chamber really intends to raise the question about the subsidiarity, a much simpler way is to do this through the national government in the EU Council instead of doing it through the present procedure of the Member States parliaments.

7. I think that we need to work much harder to create a common understanding of subsidiarity among the MPs of the different EU Parliaments. It can be achieved not only by intensifying discussions in COSAC, which are undoubtedly very useful, but also by organizing more Joint Committee Meetings and Seminars on EU scrutiny and subsidiarity check topics. We can invite also to our meetings some top specialist on subsidiarity for example from the EU Court of Justice in Luxembourg to give us some advice on this matter.

8. Another opportunity to improve our results in the scrutiny of EU legislative proposals could be to develop a better cooperation in IPEX and the European Centre for Parliamentary Research and Documentation (ECPRD), not only by collecting and exchanging best practices but also by supporting the implementation of training programmes for staff members.

26 September 2013
Sonia Piedrafita, Centre for European Policy Studies (CEPS)—Written evidence

1. National Parliaments in the EU Framework

Political legitimacy is a contentious concept, especially when referring to non-state entities such as the European Union. From a Weberian perspective, a political order can be considered as legitimate when it is viewed as ‘valid’, that is, when actions in accordance with it are considered to be normatively right. Beetham distinguished three standards of legitimacy that apply to liberal democracies: the output legitimacy, that is, their capacity to deliver results and improve citizens’ welfare; the substantial legitimacy, that is, the protection and promotion of collective values and common identity; and the procedural legitimacy, that is, the respect for the democratic principles of representation and checks and balances.21 The EU’s political system largely differs from the system of separation of powers in place in modern democracies. The executive, legislative and judicial powers are not wielded exclusively by any single EU institution, and the checks and balances are understood in a different fashion. The principle of institutional balance – rather than Montesquieu’s principle of separation of powers, which is overseen by the Court of Justice, ensures that EU institutions act within the limits of the powers conferred to them by the treaties. As for the principle of representation, the current distribution of seats of the European Parliament (EP) among member states represents a substantial deviation from equality, with the larger member states being underrepresented and the smaller states being largely overrepresented. The Gini coefficient for the distribution of EP seats is 0.27; a substantial departure from equality.22 The unequal representation, the particular role of the EP in the EU legislative process and the fact that it does not support a government means that EU decisions do not necessarily reflect the ‘will of the majority’; thus amounting to what is sometimes termed ‘a democratic deficit’. In particular, in its ruling of 30 June 2009, the German Constitutional Court stated that, for these reasons, the further development of the competences of the European Parliament can reduce, but not completely fill the gap between the extent of the EU’s decision-making power and citizens’ democratic power.

The reinforcement of the role of national parliaments in EU decision-making could contribute to filling this gap and to reducing the democratic deficit. However, there is no widespread agreement on the matter. Some counter that a stronger role of national parliaments could bring EU decision-making to a halt. It is also difficult for them to see beyond their own national perspectives and engage in a truly European debate.

Nevertheless, it is out of the question that national parliaments could contribute to shaping EU legislation and scrutinising EU decisions to a greater extent – by means of a closer engagement with EU institutions and the national governments in EU affairs – for the purposes of:
- Improving the political accountability of the EU’s political system;
- Holding national governments accountable;
- Bringing EU affairs closer to citizens, and channelling their demands to the EU;
- Ensuring better implementation of EU legislation at a later stage.

22 The Gini coefficient is a statistical index from 0 to 1 to measure inequality.
In order to play this role, the political dialogue with the Commission should be reinforced, the inter-parliamentary cooperation should be based on more effective mechanisms and the capacity of the parliament to scrutinise and influence the government in many member states should be strengthened. It has to be made clearer to MPs that they can have an impact on the process so that they will feel motivated to engage in EU affairs. Additionally, human and economic resources should be assigned so that national parliaments can carry out these tasks.

2. Formal role of national parliaments under the Treaties

In order to improve the parliamentary scrutiny of EU affairs, Declaration 13 of the Maastricht Treaty (1992) foresaw in the non-binding commitment that “the governments of the Member States will ensure that national parliaments receive Commission proposals for legislation in good time for information or possible examination”. The reflection group preparing the 1996 Intergovernmental Conference on institutional reform reaffirmed that the main role of national parliaments in the EU was to check their governments’ actions in the Council and, therefore, recommended the revision of the treaties to guarantee that they received the necessary information in time. A protocol annexed to the Amsterdam Treaty (1997) established that legislative proposals would be included in the agenda of the Council for discussion at least six weeks after being delivered to the member states by the European Commission, “so that the government of each Member State may ensure that its own national parliament receives them as appropriate”. Therefore, the Commission had the duty to guarantee a lapse of time before the discussion of the proposal, but the timely reception of all the legislative drafts by the national parliaments remained the responsibility of their governments.

With the Treaty of Lisbon, which entered into force in December 2009, it was the first time that the national parliaments were included in the body of a treaty. The Treaty of the European Union (TEU) states that national parliaments ensure compliance of the EU with the principle of subsidiarity (Art. 5) and hold their governments accountable for their actions in the Council (Art. 10). They can also contribute to the good functioning of the Union (Art. 12) by taking part in the evaluation mechanisms for the implementation of the Union policies in the area of freedom, security and justice (AFSJ) in accordance with Art. 70 TFEU; in the political monitoring of Europol and the evaluation of Eurojust’s activities in accordance with articles 85 and 88 TFEU; in the revision procedures of the Treaties in accordance with Art. 48 TEU and in the inter-parliamentary cooperation between national parliaments and the EP. They will also be notified of applications for accession to the Union, in accordance with Art. 49 TEU.

The Protocol on National Parliaments (No. 1 in the Lisbon Treaty) broadens the scope of the documents to be forwarded to the legislative assemblies to include all draft legislative acts, consultation documents, the annual legislative programme and any other instrument of legislative planning of the Commission, the Council’s agendas and minutes and the Annual Report of the Court of Auditors. “An eight-week period shall elapse between a draft legislative act being made available (by the EU institutions) to national parliaments in the official languages of the Union and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure”. A new Protocol (No. 2) on the application of the principles of subsidiarity and proportionality establishes the conditions for the application of these principles and sets out a system for monitoring possible breaches of the subsidiarity principle. Within eight weeks any member parliament may submit a reasoned opinion stating why it considers that a draft legislative act
does not comply with the principle of subsidiarity. If the number of opinions that find there is a breach of the subsidiarity principle reaches a threshold, the proposal must be reviewed, although the Commission may decide to maintain it. For acts under the ordinary legislative procedure, if the number of negative opinions represents a simple majority of the votes and the Commission decides to maintain the proposal, the Council and the EP can reject it in the first reading.

Table 1. The early warning mechanism

<table>
<thead>
<tr>
<th></th>
<th>‘Yellow card’ procedure</th>
<th>‘Orange card’ procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Threshold</strong></td>
<td>A number of negative opinions representing at least 1/3 of the total votes (2 votes per MS). *1/4 for legislative acts concerning the area of freedom, security and justice.</td>
<td>A number of negative opinions representing at least a simple majority of the votes allocated to national parliaments.</td>
</tr>
<tr>
<td><strong>Effect</strong></td>
<td>The initiating EU institution (usually the Commission) must review the proposal. It can maintain, amend or withdraw it.</td>
<td>The European Commission (EC) must review the proposal, and it can maintain, amend, or withdraw it. If the EC decides to maintain the proposal, it has to justify its decision, and both the Council and the EP can reject it before the end of the first reading should they find it incompatible with the subsidiarity principle.</td>
</tr>
</tbody>
</table>

3. The application of the Early Warning Mechanism

In 2012, the Commission received a total of 83 (compared to 64 in 2011 and 34 in 2010) reasoned opinions stating a breach of the subsidiarity principle in relation to 34 legislative proposals (out of around 160). Twenty-four legislative chambers from 19 member states sent at least one. The Swedish Riksdag submitted 21, followed by the French Sénat with 7 and the Dutch Eerste Kamer and Tweede Kamer with 6 each. With the exception of the Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services (Monti II), each of the other drafts received fewer than 5 opinions. In the case of the Monti II, 12 national parliaments issued reasoned opinions stating a breach of the subsidiarity principle, which triggered the yellow card procedure for the first time since its establishment by the Lisbon Treaty. Inter-parliamentary cooperation and an effective lobbying campaign by the Danish parliament drew in parliament after parliament in opposition to the proposal. As a result, the threshold for the yellow card was reached at the very last moment, forcing the

---

Commission to initiate a review process. In January 2013, the Commission decided to withdraw the proposal.

Even if the threshold is not reached, national parliaments still have some capacity to influence the draft. The Commission is committed to reply to them and take their views into account. For instance, following (11) reasoned opinions received in relation to the Proposal for a Directive on deposit guarantee schemes [COM (2010)368], the proposal was later modified. However, overall, it is difficult to evaluate to what extent and how the Commission takes into the views of national parliaments. As for the reply letters, some chambers have noted that they are sometimes too general and do not properly address the specific objections raised by them. On certain occasions, the same letter is sent to all the chambers that had submitted a reasoned opinion. On the other hand, national parliaments tend to make a broad interpretation of the concept of subsidiarity and many reasoned opinions go beyond the requirements of Protocol 2 and Article 5, TEU. Most of the chambers consider proportionality criteria as part of the subsidiarity checks and many of them find it difficult to separate the two concepts. It might also be the case that they send a reasoned opinion largely because the government opposes the legislative proposal, even though a breach of the subsidiarity principle is hard to justify.

During the eight-week period, talks in the working groups of the Council – and even negotiations with the EP – might start upon the original draft of the Commission, which will only start dealing with the reasoned opinions submitted by the national parliaments at a later stage. It would be reasonable that the subsidiarity check preceded the negotiation process, and, ultimately, that at least the European Commission provided national parliaments with a follow-up report explaining how their views were taken into account. As for the parliaments, it would be advisable that reasoned opinions on the breach of the subsidiarity principle focused strictly on this issue according to Protocol 2 – everything else should fall within the context of the political dialogue. Guidelines with specific common criteria to carry out the subsidiarity checks could be developed, following a thorough revision of the concept of subsidiarity. The proportionality principle should be included in the criteria, given that both principles are intrinsically connected and it is in the spirit of the Lisbon Treaty that the national parliaments also ensure compliance of legislative proposals with this principle. Finally, there is the risk that scrutiny of EU legislation becomes quite legal in some national parliaments and confined to the control of the subsidiarity principle. Appropriate measures should be taken to avoid a situation whereby the volume of documents, the lack of resources and the timing constraints discourages MPs from carrying out a proper political scrutiny of the proposals.

4. Engagement in the political dialogue with the Commission

Political dialogue with national parliaments, launched in 2006 by the Barroso Commission, encourages national parliaments to submit their opinions on any aspects (not only questions of subsidiarity) of the legislative proposals and consultation documents, with the commitment of the European Commission to reply to them and take their views into

---


account.26 The number of reasoned opinions sent by national parliaments to the Commission in the framework of this political dialogue increased by 55% in 2010 and 60% in 2011. In 2012, the increase was slightly below 7%, which might be a sign for little variation in the future to come, especially if we take into account that all legislative chambers have finally been engaged in the process this year. Half of the 663 opinions were submitted by 6 of the 41 legislative chambers: the Portuguese Assembleia, the Italian Senato, the Czech Senate, the German Bundesrat, the Swedish Riksdag and the Romanian Camera Deputatilor.

Table 2. Opinions in the framework of the Political Dialogue with the Commission

<table>
<thead>
<tr>
<th></th>
<th>Total submissions</th>
<th>Reasoned Opinions</th>
<th>Political Dialogue</th>
<th>Variation %</th>
<th>Chambers not participating</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>387</td>
<td>34</td>
<td>353</td>
<td>55</td>
<td>10</td>
</tr>
<tr>
<td>2011</td>
<td>622</td>
<td>64</td>
<td>558</td>
<td>61</td>
<td>4</td>
</tr>
<tr>
<td>2012</td>
<td>663</td>
<td>83</td>
<td>580</td>
<td>7</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: European Commission, Annual Reports on Subsidiarity and Proportionality.

National parliaments’ policy regarding their participation in the political dialogue with the Commission varies across member states. Portugal, for instance, sends an opinion for every legislative proposal received from the EU institutions, although most of the time it is just to confirm compliance with the subsidiarity and proportionality principles. At the other extreme, countries such as Finland or Spain only send a reasoned opinion if they find there is a breach of the principle of subsidiarity under the legal basis of Protocol 2. A common approach on the matter would be beneficial for all, and something worth including in any future guidelines. Also, it is essential that the European Commission provides national parliaments with an appropriate follow-up explaining how their views were taken into account. The annual report of the Commission in 2012 gives scant detail of the opinions received in the framework of the political dialogue.

National parliaments also receive the Commission Work Programme for the year to come and have access to the annual roadmaps for all the initiatives. Early scrutiny of these documents in the most relevant committee (or on the Floor, if appropriate) would pave the way for earlier and better engagement of the national legislative chambers in the EU policy-making process. However, many parliaments do not discuss these documents in advance and most of them do not carry out the necessary follow-up. It would be very helpful if each member of the College of Commissioners presented the work programme and participated in a question-and-answer session in a national parliament on an annual basis.

5. Inter-parliamentary cooperation

Joint committee and parliamentary meetings organised by the EP and the parliament of the member state holding the rotating presidency of the Council have gradually given way to Inter-Parliamentary Committee meetings and Presidency meetings. The Inter-parliamentary Committee meetings are organised by a committee of the EP to discuss a specific legislative proposal with the members of the respective select committees at national level. Forty-five of these meetings were held during the term of the 7th European Parliament and some have

proved effective tools to engage MPs in discussions on EU legislation with a twofold objective: to glean their views and expertise, and to improve the implementation at a later stage. The national parliament of the country holding the rotating presidency also hosts a number of chairpersons' meetings of specific committees (Presidency meetings) during the six-month presidency, as well as a plenary meeting of the Conference of Parliamentary Committees for Union Affairs (COSAC). In addition to this, the Presidency Parliament – in cooperation with the EP – has organised, since its creation in 2012, the Inter-Parliamentary Conference for the Common Foreign and Security Policy and the Common Security and Defence Policy, which provides a framework for the exchange of information and best practices in this policy area and may issue non-binding conclusions. In all cases, measures should be adopted to guarantee the effective participation of MPs and the visibility of their impact.

The Lithuanian Presidency has, for the first time, convened the Inter-parliamentary Conference on Economic and Financial Governance of the European Union (16-18 October 2013) envisaged in the Article 13 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. The aim is to engage representatives of the relevant committees of the European Parliament and the national parliaments to discuss budgetary policies and other issues covered by the treaty. The mission, objectives and procedures of the conference – still to be adopted – will have to balance democratic legitimacy and efficiency issues, and take into account differentiated integration among member states.

During the European Parliamentary Week (late January-early February), members of the relevant committees of the EP and the national parliaments meet in Brussels to discuss the European Semester for economic policy coordination. It is also essential that this macro-conference is enhanced in such a way that constitutes an effective tool for the national parliaments to develop and express their views on the Annual Growth Strategy and the subsequent country-specific recommendations.

6. The way forward

In order to improve the democratic legitimacy of the EU it is essential to enhance the role of the national parliaments in shaping EU legislation and scrutinising EU decision-making. In relation to the Early Warning Mechanism, the European Commission should provide national parliaments with an adequate follow-up on how their views on the breach of the subsidiarity principle in a legislative proposal were taken into account, and, ideally, the subsidiarity check should precede the negotiation process. Guidelines with specific common criteria to carry out the subsidiarity checks could be developed, including a reference to the proportionality principle. Measures should be taken to avoid the risk that legal scrutiny replaces political scrutiny. Indeed, the capacity of the parliament to scrutinise and influence the government in many member states should be strengthened.

A common approach by national parliaments and better reporting from the Commission are also advisable in the framework of the more general Political Dialogue with the Commission. In particular, the discussion of the Commission work programme and the roadmaps of the legislative initiatives could contribute to the earlier, better engagement of national parliaments in the EU policy-making process. The members of the College of Commissioners could play an active role in the debates.
Inter-parliamentary cooperation, especially in financial and economic policy, should be fostered. The rules of procedure of the new Inter-parliamentary Conference on Economic and Financial Governance of the European Union to be decided under the auspices of the Lithuanian Presidency should take into account considerations of democratic legitimacy, efficiency and differentiated integration at the same time. The European Parliamentary Week should also be enhanced to ensure a more effective participation of national parliaments in the Euro Semester. In all other types of inter-parliamentary cooperation, measures should be adopted to guarantee the effective participation of MPs and the visibility of their impact.

These are all measures aiming to strengthen the role of national parliaments in shaping EU legislation and scrutinising EU decisions by means of a closer engagement with EU institutions and the national governments. They can be adopted in the framework of the current treaties and will bring benefits both in terms of legitimacy and efficiency.

27 September 2013
TUESDAY 8 OCTOBER 2013

Members present

Lord Boswell of Aynho (Chairman)
Lord Bowness
Lord Cameron of Dillington
Lord Carter of Coles
Baroness Corston
Lord Dear
Baroness Eccles of Moulton
Lord Foulkes of Cumnock
Lord Hannay of Chiswick
Lord Harrison
Lord Maclennan of Rogart
Lord Marlesford
Baroness Parminter
Baroness Scott of Needham
Lord Tomlinson
Lord Tugendhat

Examination of Witnesses

Charles Grant, Director, Centre for European Reform, and Mats Persson, Director, Open Europe

Q1 The Chairman: On behalf of the whole Committee, a warm welcome to our two witnesses this afternoon: Charles Grant, Centre for European Reform, and Mats Persson, Director, Open Europe. Yours is the honour—or perhaps the dubious honour—of kicking off our public evidence sessions on the role of national Parliaments in the EU. I suspect you will be known to many Members of this Committee and, equally, you will be aware of the procedure. This is a public session and it will be televised. We will take a transcript and send you a copy, which will give you the opportunity to make minor corrections of fact or clarity, but we will publish it online uncorrected before then.

If either of you or both wish to make a brief opening statement, please do. We have some questions for you. I think the nature of this subject will flow fairly freely, but at the end we
Charles Grant, Director, Centre for European Reform, and Mats Persson, Director, Open Europe—Oral evidence (QQ 1-17)

might have a to-do list of anything you have undertaken to do for us or remains outstanding. Charles, do you have anything you would like to say to kick off?

**Charles Grant:** Just a very general statement before we get into the specifics. Whether we are pro or anti-EU or somewhere in the middle, I think many of us would agree that it does suffer from a problem of legitimacy. It is not greatly loved and it is not very respected in many parts of Europe by many people. One of the many reasons for this—and there are, of course, many reasons—is that the European Parliament has failed to emerge as a body that speaks for the peoples of Europe. It often appears to be out of touch because it is very much in favour of a strongly integrated Europe.

I am the first to acknowledge, without question, that the European Parliament does good work on specific dossiers some of the time, but I think it has failed to add to the legitimacy of the EU. For a while I have felt that we need to look for ways of involving national Parliaments to try and improve the accountability of decision-making through a greater role for national Parliaments, and the question is: how do you do that? Obviously the Lisbon treaty has this so-called yellow card procedure, which is a small step in that direction. That is promising and interesting and could be developed in various ways. There are other ways that one could also involve national Parliaments, but that is just my opening viewpoint.

**Mats Persson:** Just to add to that. I think this legitimacy problem that the EU suffers from is getting worse, partly driven by the European crisis but also by other phenomena.

There are two recent developments or trends around the European Parliament that I think are quite interesting to take into account. The first is that the European Parliament has gained powers in virtually every single EU treaty since the 1979 elections, and that has been matched only by a drop in voter turnout. I think the average voter turnout in the EU in 1979 was around 60%. I think that has since dropped to 42% in the last elections in 2009. That would suggest that the European Parliament is not necessarily the answer to that infamous democratic deficit that Charles was talking about.

The second trend is that, in national capitals, the appetite for more European Parliament action has been limited and has been tempered quite a bit. It is interesting that going to Berlin now—in particular Berlin but also other national capitals—you hear very few people identifying the European Parliament as the solution to the legitimacy problems. In terms of voter turnout, but also in terms of the political mood in national capitals, it is moving away from the European Parliament being the solution to the realisation that if we are ever going to close the democratic deficit and give the EU more legitimacy we have to give national Parliaments a stronger role.

**The Chairman:** Thank you. We may want to explore your vision a little bit more as to how the two levels—the European Parliament and national Parliaments—should interact or what is appropriate for them. Before we do that, if we stick formally to the question we have asked ourselves, I am going to ask Lord Hannay to come in with the first question on national Parliaments.

**Q2 Lord Hannay of Chiswick:** I should begin by declaring an interest as a member of Charles Grant’s advisory board. Could both of you give the Committee your views as to how the role of national Parliaments has developed in the EU framework in recent years, particularly, but not exclusively, since the treaty of Lisbon? In doing so, could you differentiate a little bit between the role they play in holding their own Governments to account through scrutiny processes such as the Folketing committee, the Finnish Parliament and so on, and the way in which they have exerted or exercised the not very extensive but
nevertheless real powers given to them for the first time under the Lisbon treaty? I think it is best to keep those two things a bit separate and look at each in turn.

**Charles Grant:** Perhaps I should start off. I am not an expert on the various national scrutiny systems, but in recent years there has evidently been increasing interest in a number of national Parliaments to improve their methods of scrutiny. For many years the Nordic Parliaments have been taken as a good example to follow in the way they talk to Ministers before they go off to the Council of Ministers and then talk to them when they come back, in a way that does not happen in the UK. Last year the Italian Parliament adopted new procedures. Initially it was going to be the Italian Prime Minister but that did not quite work out. As of last year, the Italian Minister for Europe has frequently gone to a committee of the Parliament before attending meetings of the EU Council of Ministers, and again he has reported back. It has always puzzled me as to why the British have never been interested in that model. I do not know, but you are parliamentarians so perhaps you have a better view on that. It seems to me rather a good idea to have a discussion with Ministers before they plan what to do, not necessarily to mandate them because a rigid mandating system would perhaps make them rather ineffective in the Council of Ministers, but at least to set guidelines for them. Then, if the Ministers end up doing something completely different, they can come back and explain why. I do not know why there has never been much interest in the UK in that. Of course, our own scrutiny of the EU has been more focused on legislation and looking at texts rather than on how Ministers perform in the council.

There is a second point to make, which is that there are a number of joint bodies now that bring together MPs and MEPs. This is a growing phenomenon. There has, of course, been COSAC, the Committee on European Scrutiny. Is it 20 years that has been going for? I forget how long. It was Maastricht that set it up. It was sometime around then. Some people who have been on that committee, such as Bill Cash, have told me that it is rather useful and they get to know their opposite numbers. Of course it does not have any formal role in the EU system, and in my view it has not done very much to bridge the gap between national Parliaments and the European Parliament. However, in individual areas such as foreign policy, justice and home affairs, there are joint committees where the relevant committees of the European Parliament and national Parliaments come together. I think there is one now for budget and finance committees. I am sure these serve a general purpose of educating people on both sides of the divide on how the other lot think, but nobody knows they exist. The public have not heard of them. Probably only a few people in think tanks have heard of them and those taking part themselves. So I do not think this bridges the gulf between national political systems and European systems.

Finally, Lord Hannay asked about the Lisbon treaty. I would say the yellow card procedure is potentially an important and interesting innovation. It does require national Parliaments to be organised enough to communicate with each other so they can work together. If a third of them, as the procedure requires, can produce a reasoned opinion that a proposed law breaches subsidiarity, they can flag up a yellow card. I gather that many of the national Parliaments now have offices in Brussels in the European Parliament to help them talk to each other. I do not have the hands-on practical knowledge of the extent to which the communication between them is getting better. I am not sure whether eight weeks is long enough, which is the time they have to produce this collection of reasoned opinions.

Although the yellow card has only been used once formally to block a proposal to enhance trade union rights—known as Monti II—I gather on other occasions a number of national Parliaments have got together informally and let the Commission know that they were unhappy about a particular aspect of a draft proposal, and the Commission has bowed to
those wishes without the yellow card having been raised. Perhaps the Commission realised that a yellow card might be raised.

That is my very general assessment of how it is going at the moment. Perhaps we can talk later about how it might develop in the future.

Q3 Lord Tugendhat: I was very struck by what Mats Persson said at the beginning about how nobody sees the European Parliament as a solution, and I agree with the points you have just made. The European Parliament has always been what might be termed an ultra-European institution. It has always tended to be at the federalist end of arguments. Obviously one cannot foresee the future, but if, as seems very likely in the forthcoming European elections, there will be a great many people from rather more nationalistic parties elected—the National Front in France and UKIP here, and perhaps the Alternative für Deutschland in Germany and so forth—do you think that this might change the degree to which the European Parliament is linked to public opinion within the member states? Paradoxically, they might go from being at one extreme to the other extreme in the European argument.

The Chairman: Mats Persson can perhaps respond first because he is a question behind, and then perhaps Charles can come in.

Mats Persson: I would say possibly, but I do think there is also another risk in that you can have the worst of both worlds. You have a federalist unit on the one hand and then you have a very nationalist unit on the other, and neither is particularly accountable to voters because of the way the European Parliament elections work. You can have a lot of nationalists showing a particular interest in being there in the first place, which you already see. That could be a big problem. Particularly from a reformist pro-competitor’s point of view that is an absolute nightmare. Unfortunately, we may not see that potential positive spill-over effect—if there is such a thing—from that nationalisation of the European Parliament.

On the question about what differences we have seen since the entry into force of the Lisbon treaty, part of this trend is driven by the Lisbon treaty and part of it is driven by other developments that I think are far more important than the Lisbon treaty, including the eurozone crisis. Because the eurozone crisis has moved European integration into the domain of taxation and spending, in a way that we have not seen before, naturally national Parliaments have made a comeback. You have seen a more assertive role for national Parliaments in places like the Netherlands, Germany and Finland, in particular, but also perhaps in some of the Mediterranean countries. I think that is primarily driven by the eurozone crisis.

In Germany of course it is driven by the Grundgesetz where the Bundesverfassungsgericht, the German constitutional court, has taken a very active role in reasserting the Bundestag’s role in scrutinising EU legislation, but again that is the eurozone crisis.

In terms of the wider scrutiny, I would say that on unilateral scrutiny on the national level—you were separating that from the EU level action—to be honest, I have not seen that much development from national Parliaments in becoming better at scrutinising EU legislation. I think it is pretty much status quo. Some Parliaments, like the Swedish Parliament or the Danish Parliament, not only have a mandate-based system, which I favour, but make much better use of individual select committees. I think that is absolutely vital to strengthening the role of national Parliaments. With all due respect, instead of having one single EU committee scrutinising all legislation you start to outsource it to the individual committees. That is one
thing that has happened since the entry into force of the Lisbon treaty, which is a positive that I can point to concretely.

In terms of EU-level stuff and use of the yellow card—I do not know if you want to return to that—as Charles pointed out, Monti II is the only concrete, tangible example where this mechanism has been used. To some extent, it has encouraged national Parliaments to be more active: to engage more with the institutions in terms of submitting stuff. Gender quotas are an example of where the yellow card was not triggered, but I think there was enough political pressure from national Parliaments that the European Commission was in effect forced to reconsider. That is an example of where you have a more tangible indirect impact, but in general I would say that since the Lisbon treaty came into force, the impact has not been enough.

Q4 Lord Hannay of Chiswick: Could I just follow up one point you made, Mats, about the eurozone crisis and the handling of the probable greater degree of integration among eurozone members than among the non-members and the parliamentary aspects of that? There have been a lot of ideas around, the first of which is that the European Parliament itself should constitute itself in a way that excluded the non-eurozone members to operate oversight of this—that is an idea that I think Mr Schultz has championed at some stage. But there are also ideas, I think. In the view of the French Government, the national Parliaments of eurozone members should somehow come together in some way that excluded the non-eurozone members. To be frank with you, I think those are both pretty pernicious ideas from the point of view of this country. I wonder whether either of you could give your opinion on how you think this the involvement of national Parliaments will evolve in the field of the single-market European economic integration and so on.

Charles Grant: The French have a particular penchant for eurozone-specific institutions, not just parliamentary institutions but full-time Presidents of the European Council, eurozone secretariats and eurozone budgets and so on. They have always felt that much more than the Germans have. I think the Germans want to keep most of the EU decision-making at the level of 28. The French have proposed such a parliamentary body, consisting of national parliamentarians, several times for the eurozone. It comes up every now and then. In the negotiations of the fiscal compact treaty, which was negotiated after the December 2011 summit, there were specific French proposals for that. They were watered down and shot down, so that the final version of that treaty has established a powerless assembly bringing together MEPs and MPs.

In the long run, my own personal view is that some sort of body in Brussels representing national parliamentarians is desirable. It may or may not happen, but the more the credibility of the European Parliament is damaged by it being perceived as being much more integrationist than national political systems, the more people will talk about it.

My own suggestion is for a body in Brussels that would not compete with the European Parliament. It would do things that the European Parliament does not do. It would meet only for a day or two a month so that national parliamentarians would have time to attend. It would supervise, monitor or check the intergovernmental side of EU policy-making. It would perhaps write reports on and ask questions of the European Council when that body acts in an intergovernmental mode, when it is thinking about foreign policy, defence policy, counterterrorism, police co-operation and so on; so it would not get involved in legislation and it would not duplicate what the European Parliament does.

In such circumstances, it does seem logical to me that there should be a subdivision of this National Parliamentary Assembly for the eurozone countries to think about eurozone
matters, because at the moment, when eurozone leaders decide on the bailout of a country and the conditions that apply to that bailout, there is absolutely no accountability anywhere at all in the EU, absolutely none at all. Is the Cypriot bailout a wise bailout or not? Are the conditions attached to it sensible or not? There is no discussion in the EU about it. The European Parliament, rightly, does not discuss it because EU budget money is not involved in the bailouts, and having some body at EU level that does discuss these things is desirable, but that is for the eurozone. For the broader EU as a whole—therefore, relevant to Britain—I would favour a body meeting to monitor the intergovernmental side of the EU. You could start off without any formal powers, without changing the treaties and then, if it turned out to be useful, next time the treaties are re-opened this body could be given some powers. If it turns out to be a waste of time and sends everybody to sleep, you can just forget about it and they can go home.

Lord Hannay of Chiswick: Mr Persson, do you want to gloss on that?

Mats Persson: I do not have much to add. The only thing I would say, Lord Hannay, in terms of reconciling this need to anchor whatever path they choose in national democracy, is that the eurozone has a very long way ahead of it, because you constantly see that clash on national democracies coming to the fore again and again. How they will solve that will be very interesting to see indeed.

The Chairman: Thank you. I have two supplementaries. Perhaps we can group the two and then you can both respond together. Lord Harrison first.

Q5 Lord Harrison: You have answered Lord Hannay’s question, which I was going to ask, but just to broaden it, our sub-committee interviewed Dr Constâncio, Mario Draghi’s deputy, when we did the banking union report. We travelled to Frankfurt in November to meet him again to talk about a genuine economic and monetary union. In one sense, that is an odd thing for a national Parliament to do because not all 28 have the facilities to do it. Nevertheless, do you welcome that and do you see that kind of inquiry and engagement fitting into any system? Charles, you proposed one. Mats, perhaps you have one in mind.

Lord Marlesford: I am under Lord Harrison’s chairmanship on Sub-Committee A. One of our witnesses gave us the view that, in the development of GEMU, there is going to be an increasing tendency to attempt to micromanage economies of the members. That obviously has considerable implications for the accountability, as well, of national Governments to national Parliaments. I wonder whether you would like to comment on that.

Mats Persson: Lord Harrison, you know we greatly welcome that kind of activity and we think that is something that has been missing. First of all, national parliamentarians do not speak to each other enough. That is the first point, but they also do not engage with the various levels involved in the decision-making either. That is a great example. Another example, which I would like to flag up, is what is happening now with some members, primarily from the House of Commons, but not only, going around Europe to talk about how to reform the European Union and meeting their counterparts from other Parliaments. It is a great way to get around some of these misunderstandings that are floating around out there about what certain countries want and do not want in Europe. That kind of engagement is hugely welcome and strongly encouraged.

On the question about micromanaging the economic affairs of member states, first of all, who will do the micromanaging? That question has not been settled yet.
Lord Marlesford: GEMU is trying to work out how to do it, not how to micromanage it but how to manage it. Under the development of GEMU they are seeking ways of making it work.

Mats Persson: Genuine economic and monetary union.

Lord Marlesford: We were warned that that is likely to lead to a considerable degree of micromanagement of national economies.

Charles Grant: On that last point, there is increasing micromanagement of national economies, but does anybody really believe that if the French want to set a budget of 3.8% when the Commission tells them to set a budget of 3.0%, somebody is going to send the police force to arrest Mr Moscovici, the French Finance Minister? The Germans know that nothing agreed so far has taken away the sovereignty of national Governments to set their own budgets. The new procedure starting this autumn—and we will see this with great interest with the so-called semester procedure—is that the French Government must submit their budget to vetting by the European Commission. The Commission does not have the power to rewrite the budget. After many years, if the French continue to borrow excessively, in theory the other member states can criticise them, punish them and impose fines on them, but nobody believes that will happen. I do not think we should exaggerate the degree to which fiscal sovereignty has been given up to EU institutions. The Germans know that very well, which is why they want more fiscal tightening. They want more rules. They want treaty changes before they would agree to anything like Eurobonds. My line would be there is a trend towards greater EU supervision of national budgets of the eurozone countries, but we should not exaggerate how much has happened. I am personally very sceptical that a lot more will happen. I think in one area, in particular, there will be more integration. That is the banking union. We do not know how that is going to pan out with the negotiations starting as soon as the new German Government are formed. Apart from the banking union and the issue of the resolution regime, I personally do not expect a great deal more economic integration of the eurozone countries.

The Chairman: Let us move on from those questions to other wider questions about the role of national Parliaments.

Q6 Lord Dear: This has partly been addressed. I was going to ask you your view on the effectiveness of national Parliaments in shaping decisions and influencing them. As an addendum to that, I was going to pose something that has surfaced a couple of times already: the difference between the nationalistic aspects and the federal aspects. I also wonder whether there is anything else you wanted to add to that. To explain roughly where I am coming from, although I need not flog the horse to death, we all know that to a greater or lesser extent countries are ruled by their history, their economics, their religion, culture and so on, their aspirations and their fears. Of course, that has to play into something like the EU, set against what has already been mentioned: the federal aspirations of many. I wonder if you want to refine your views on that aspect in rather more detail and if you could give a view on where we might be in five or 10 years’ time, bearing in mind those conflicting aspects.

Mats Persson: This is a question about a more intergovernmental approach versus a more federalist approach?

Lord Dear: The question is: can and do national Parliaments shape and influence decisions for the whole of the EU? I know it occurs to a number of us—it has surfaced already—that
whichever way one goes forward, you will tend to play to one end of the scale or the other. In my experience, very rarely would countries get into the middle ground, and in fact the middle ground is probably a bit of a blur. It is really trying to tease out, like a seesaw, which end goes down and which end goes up.

Mats Persson: I will have a go at it. In one sense, it is quite an abstract question but a very important one, obviously. I alluded to it earlier, and it links to something that Charles said just now. I think it has been so incredibly difficult for the eurozone to take that quantum leap towards more eurozone integration—a lot of people in this country want to see that, ironically—precisely because national democracy is so strong. It is such a strong force that you cannot just magically wish it away overnight. We must also ask ourselves: do we want that to happen? That is precisely why my opening statement was about the role of the European Parliament versus national Parliaments, because I think that is what the question is about, ultimately.

Having said that, I do think that the more the European Union centres around the big question about the economy, the greater the role you will have to see for national Parliaments. You see that already. The big decisions at the EU level over the last few years have not been about regulation. Some of them have been because of the banking crisis and so forth, but they have been about the bailout and so forth where national Parliaments have had an absolutely defining role. The eurozone leaders spent a year and a half talking about what collateral the Greeks should put up in return for the bailout, because the Finnish Parliament realised, at two minutes to 12, that this bailout did not quite look as secure and solid as one had hoped for, and I think that will probably continue. So on the question about where we will be in five years to 10 years’ time, I think, again, that we will have a strengthening of the role of national Parliaments.

Lord Dear: A strengthening?

Mats Persson: A de facto strengthening of the role of national Parliaments, because I think we will move towards more intergovernmentalism in the European Union, in turn driven by the eurozone crisis.

Charles Grant: I would agree with that. Certainly we are seeing a greater role for national Parliaments in eurozone countries. On the famous Cypriot bailout, which involved the closure of Cyprus’s banks, there had to be a vote in the Bundestag to make the money available for the bailout, and there had to be another vote in the Cypriot Parliament to approve the closure of Cyprus’s banks. That just shows how national Parliaments are getting involved now. The Commission will tell you that even for the semester procedure, in fact they claim that it gives national Parliaments a bigger role. I am not quite sure how that works, but they say it does.

On countries that are not in the euro, I am not sure I see a great expansion of the role of those countries. Like Mats I would like to see that happening. I agree with Mats that the trend is for a more intergovernmental EU, because the Commission has lost the respect and trust of many member states for a lot of reasons, one of which is that it is perceived to be very close to the European Parliament and under its control and so member states just do not trust the Commission as much as they used to. Angela Merkel made her famous speech at Bruges about three or four years ago when she said, “Let us abandon the community method and have the union method instead”, and she defined that as the European Council taking the key decisions and the Commission becoming a body that implemented them. A lot of smaller countries are horrified by that, so there is a limit to how far the Germans can go...
in pushing this intergovernmental vision of the future, but I think that is the trend at the moment.

You also mentioned federalism as a force in the EU. I think that federalism is rather a weak force at the moment and very few Governments subscribe to the federalist ideology, the old-fashioned ideology, that the Commission should become an executive Government responsible to the European Parliament and that the Council of Ministers should become a senate. In Belgium, among some Italian politicians, a few politicians in Germany, and of course in the Commission and the European Parliament, you hear those views, but it is not the view of most member states and it is not the view of Mrs Merkel.

**Q7 The Chairman:** Can I interpose something that has been troubling me in this? You have said, and I think many of us would agree, that there is a problem of legitimacy and accountability. It seems to me that historically the other area that could be criticised is some stasis in decision-making. Purely as an example, you might look at, say, difficulties over establishing a viable carbon tax. It could be anything. I do not want to probe on that particular issue. Is there a danger, if you beef up national Parliaments or they take more interest or become more stroppy, that what is already a very difficult process of reaching decisions of any kind may become an impossible one?

**Mats Persson:** There is always a danger. Of course, there are dangers involved in change, but I think the net effect will be vastly positive. I think that you can save time by involving national Parliaments. Again, I will take the eurozone crisis as an example. If you have full democratic legitimacy for a certain decision, it will stand the test of time. If it does not have full democratic buy-in, it can easily be challenged. We see that time and again in the European Union.

Again, one of the reasons why the bailouts have been so incredibly complicated is because EU leaders have agreed something and we thought we knew what they had agreed. Then they go back to the national Parliaments explaining what they thought they had agreed and the national Parliaments have complicated and uncomfortable questions, at which point EU leaders have to go back and agree what they agreed on. That takes a lot of time. In the case of the eurozone crisis, it is quite worrying because it rattles markets. The same thing is true for EU regulation. In terms of the eurozone crisis, I think that by anchoring with national Parliaments beforehand you would have saved time, which is an interesting case.

In terms of regulation, there are three levels of EU rule or EU law. You have the agreement, you have the implementation and then you have the enforcement. Often countries that are very good at agreeing something are not always as good at implementing and then certainly not particularly in enforcing it.

Again, if you have democratic buy-in it is much easier for you to get all three of those elements into place quickly. For example, when it comes to single-market legislation where some countries are dragging their feet, it will take a bit of time to sell it to national politicians, but once you have sold it you save time. The net effect is that you can save time.

**The Chairman:** Thank you. Charles, what is your view?

**Charles Grant:** I would agree with Mats. There may be some cost to the speed of the decision-making, but it is worth it if it helps to make people think that national political systems have some purchase over what goes on in the EU. I think we should take forward the existing yellow card procedure. If and when the treaties are re-opened, I hope it becomes a red card procedure. I believe this is an idea supported by both William Hague and Douglas Alexander. But in a yellow card procedure if, say, half the national Parliaments
Charles Grant, Director, Centre for European Reform, and Mats Persson, Director, Open Europe—Oral evidence (QQ 1-17)

are unhappy with a proposal on grounds of subsidiarity, the Commission should just have to stop. Why not extend it also from subsidiarity to proportionality? I would go further and say that if these national Parliaments think that there is an existing rule or directive that is silly, because it is against subsidiarity or proportionality, let them demand that the Commission propose to repeal it. I would encourage these national Parliaments to work together as much as possible. The more they start to do it, the more the habit will become ingrained and I think we will see many more uses of card procedures.

The Chairman: Thank you. We are going to have to motor on. Lord Maclennan next.

Q8 Lord Maclennan of Rogart: I wonder if decision-making at an EU level should not be largely confined to what is in the interest of the EU as a whole, and that if there was better communication on the objectives of such potential decision-making from the European Union institutions, the national Parliaments could not focus more particularly on their own particular problems but get it into the scale of the wider decision-making. I may not have been very clear about that, but it does seem to me that part of the problem that national Parliaments have to come into is their lack of awareness of precisely what is going on and why it is motivated. If they understood better what the motives were then the national influences could be sharper.

Charles Grant: Could I start on that one?

Mats Persson: Yes, go for it.

Charles Grant: I think Lord Maclennan is right. This is a chicken-and-egg situation. If you talk to some MEPs about ideas and giving a bigger role to national Parliaments, they say, “You cannot do that. They do not know anything. They are not interested. They would not know what to say on EU matters. They are concerned with housing policy”, to which my answer is that you have to start off by giving the national Parliaments a bigger role and, I would say, socialising them into the way the EU works. As I have said, in the long run that is ideally through some sort of parliamentary forum, or at least in the short-term through getting the Parliaments to work together through the reasoned-opinion yellow and red card procedures. That will then get MPs to think more European.

I think the European Council is an interesting analogy, invented by Giscard d’Estaing in the 1970s. Prime ministers think that they are there to represent their countries. Of course they are but, when they start attending meetings of the European Council, after a while they do start to think a bit European as well because they understand the issues. They do not just represent their countries. That is why, on a good day, the European Council is quite an effective and useful body. If national MPs spent some of their time working on EU issues, possibly in an EU body, they would become socialised into the way the EU worked and they would understand the issues that Lord Maclennan says they should understand better. They would become educated.

Mats Persson: Yes, I agree with that. Just to paraphrase a very famous British politician, I think the greatest arguments against giving national Parliaments a greater role over EU decision-making is a five-minute conversation with your average national parliamentarian about EU policy. It is not always the most uplifting experience for us EU geeks, but I think that is the nature of it. I agree with Charles that you basically need to get them out there and socialise them.

Incidentally, I think you need to make more use of the committees within the parliamentary structures so that MPs who think that they do not have anything to do with the EU realise that they have a lot to do with the EU: the transport committee, finance committee,
Charles Grant, Director, Centre for European Reform, and Mats Persson, Director, Open Europe—Oral evidence (QQ 1-17)

agriculture committee, even your Committee here. It is very difficult to avoid EU measures. Therefore, they are almost forced to take the EU into account by putting measures in front of them and, in turn, making them interested and engaging them.

**Q9 Lord Bowness:** Both our witnesses, Lord Chairman, were talking about foreseeing a time when national Parliaments have a greater influence and greater involvement in the whole process. The question is: how will that relate to qualified majority voting? You are not suggesting, presumably, that a small number of national Parliaments can in effect veto the decisions that have been taken by qualified majority voting, or perhaps you are, but it seems to me that there is potentially a conflict there. How are you going to resolve it?

Perhaps while I am speaking, Lord Chairman, let me just ask this. We keep speaking about other countries whose approach to this, I think, is slightly different from our own. Certainly sitting around this table in this House I suspect we take a rather elevated view of things and that Parliament is going to take a detached, objective view of matters. The Government talk about the greater involvement of Parliament being something they support. That usually means Parliament voting for what the Government have decided. We have a situation where, let us face it, foreign affairs—European matters are still foreign affairs and the FCO is still the lead department—are dealt with by the Executive under the royal prerogative. Are we not in a very different position from many of these other countries in that regard when talking about our own influence on the decision-making process?

**Charles Grant:** Yes. I think that is a very fair point. On your first point about QMV, I do not think either Mats or I are proposing that a small number of national Parliaments should be able to block a piece of legislation. A third of national Parliaments cannot block a law under the existing yellow card procedure. I would argue that if, say, half or more of national Parliaments are very unhappy, they perhaps should be able to block, but that is half rather than a small number.

On your more general point, yes, the Danish model of scrutiny is often held up as the best. Of course, there is a particular wrinkle in Denmark, which is that the Governments there are always a minority Government. They are always a coalition Government and the party that is leading the Government does not control the Parliament. The Parliament is always bolshie and difficult and independent, and so the Executive does not tell parliamentary committees what to say, what to think and how to vote. I am sure that does not happen too much in this House either. Therefore, it is very easy for the Danes to give their Ministers a hard time because the Minister does not control what the committee says and what it can instruct in. In systems where the Executive has a very firm control over the way Parliaments operate, a lot of our discussion is a bit redundant, I suppose, because the Parliament would like the independence of thinking to say anything other than what their own Government would tell it to say.

**Mats Persson:** I will answer that question slightly differently. It is true that you have a minority Government in Denmark—as is the case in Sweden, for example—but it is also true that you have proportional representation, which means that party discipline is much easier for you. If you had some of the Back Benches let loose in a mandate-based system, trust me, I think the Government would have a hard time. I think a mandate-based system for Parliament here would totally work. I am absolutely 100% in favour of that, but obviously you have a good point about the minority systems. Do pay attention also to the type of electoral system, because that also impacts on the dynamics and the acceptance in Parliament.
Just briefly on the QMV point, I do not think there is a risk. I hear what you say but I think the risk is minimal. What you suggest, as Charles said, is a mechanism at the beginning of the process, before you get to the QMV. Also you can add to that, potentially, and have a mechanism once the law has been accepted—some sort of retroactive red card, for example—but this would be quite high threshold. As we know, it is not easy for national Parliaments to agree. It will be in exceptional circumstances, but even if it is not triggered I think the beauty of more parliamentarian involvement is the fact that it is there and will also make the European Commission and the European Parliament more sensitive to subsidiarity concerns. Even if it is not triggered, the fact that it is there will definitely focus minds.

I do not know whether you are going to look at how to take this further and want specific ideas for how to bolster the role of national Parliaments or whether I should go into that now just to illustrate. It will not necessarily add flesh.

The Chairman: I think Baroness Parminter may come in on exactly that point.

Q10 Baroness Parminter: Gentlemen, you have both said that there is already, and we are moving towards, a greater de facto strengthening of national Parliaments. I think Charles argues that some of it is by circumstance with the eurozone crisis but it is also of course by design. I wonder which national Parliaments you would cite as good examples for us of development of that role.

Mats Persson: I always flag up the Swedes in whatever discussion I have with people, so I guess I will do that this time as well. I think the Swedish Parliament is good not necessarily only because of the mandate-based system but because of the increasing use of select committees, which is a point I have mentioned before. The Danish system is good, particularly on transparency points. I think the Bundestag is getting there, most definitely. They have been forced to get their act together and they do not see scrutinising and sometimes questioning European measures as being somewhat anti-European. They are slowly getting over that. The Finnish Parliament has been forced to have a very steep learning curve, because it was thrown into the eurozone crisis in a way, even by its own admission. I have this report here on how many times national Parliaments have issued opinions and recent opinions from the European Commission for 2012, and it is absolutely fascinating reading. I encourage everyone to read that because you have some surprising findings. For example, that Eurosceptic hotbed, the Belgian Lower House, has issued more complaints, more recent opinions, against EU law than the House of Commons. It is quite an interesting one. We have a mechanism in place. Of course, the House of Lords is up there at the top end of the table, but certainly there are plenty of parliaments that are not making use of the yellow card in the ultimate way. The Swedish Parliament has issued 20 recent opinions. They basically objected to Commission proposals on subsidiarity grounds 20 times. Again, the House of Commons did so once. If the House of Commons is so incredibly Eurosceptic, is there only one Commission report in 2012 that has breached subsidiarity? One? This country has a lot to learn.

Charles Grant: I would say that the French Parliament is quite weak on EU scrutiny, but I would not disagree with the points Mats made.

Q11 Lord Tomlinson: What is your assessment of both the level and the quality of engagement between EU institutions? We have spoken a lot about the European Parliament and a little bit about the Commission, but European institutions generally with national Parliaments.
Charles Grant, Director, Centre for European Reform, and Mats Persson, Director, Open Europe—Oral evidence (QQ 1-17)

**Charles Grant:** That is a very interesting question. I think you are talking about the Commission mainly.

**Lord Tomlinson:** Mainly the Commission.

**Charles Grant:** It would be highly desirable for commissioners to spend a lot of their time in national Parliaments. Some of them do, but of course there are very few commissioners compared to the number of national Parliaments and their diaries are quite busy. I had a conversation with an officer in the office of Mr Šefčovič who, I think, is the commissioner responsible for institutions. He explained to me that, for the new eurozone governance procedures, the so-called semester procedure, he or Olli Rehn was trying to visit every national Parliament involved, sharing them between the two of them. There has been a valid and valuable effort by the Commission to do this. I am sure there are some very important areas for eurozone governance where that probably happens and other areas where it does not happen. Some national Parliaments, such as your own Committee, do invite commissioners or very senior Commission officials to give evidence. One very senior Commission official, Philip Lowe, the current director-general for energy, told me that he is visiting dozens of national Parliaments—he gave me the list—because he is a very good, very responsible, hard-working official who thinks his job is to explain what is going on to national Parliaments. I am sure there are some directors-general who do not make that effort. Perhaps one could make it a bit more systematic so that, on certain subjects in certain areas, there should be a visit from a senior Commission official or sometimes a commissioner. My guess is that it is quite haphazard, depending on the personality of the commissioners and officials concerned. Perhaps a more systematic system is required.

**The Chairman:** There is no obligation.

**Charles Grant:** Yes.

**The Chairman:** Mats, do you want to come in?

**Mats Persson:** No. I have nothing to add. I think the responsibility goes two ways. MPs also have to be much, much better at seeking out the institutions, and I think the institutions would then play ball.

I do have a clarification on my previous point. The House of Commons has issued three recent opinions. The House of Lords has issued one. You can draw your own conclusions.

**The Chairman:** We have done more than that now. In 2012, that is correct?

**Mats Persson:** In 2012, yes.

**The Chairman:** Did you want to come back on that, Lord Maclennan?

**Q12 Lord Maclennan of Rogart:** I would like to focus in my question on the relationship between the European Parliament and the national Parliaments, not just on the Commission. It does seem to me that the national Parliaments and the European Parliament have somewhat different concerns, but if they understood each other’s concerns they might find it easier to reach consensus. That is partly what I referred to before as a problem of communication. It is also partly that the encounters that we have in this Parliament with the European parliamentarians is very infrequent and can be dominated by one or two who are not necessarily representing the view of the European Parliament as a whole. I wonder whether it could be part of the function of the European Parliament to have members of particular committees explaining where they are coming from to national Parliaments, so that there is greater comprehension in the nations of what it is that is going on. My view is
that the media are utterly hopeless in covering what is going on and only focus on huge rows or catastrophes. The positive initiatives that are being taken are almost glossed over.

**Charles Grant**: Speaking as a former journalist, I would agree that the media are often not very good at reporting on the EU. I have to say that I also blame the European Parliament itself. With all respect to former MEP John Tomlinson, they are really, really bad at getting across the message of what they are doing. As I said before, the Parliament does do good work sometimes. For example, on some of the financial services regulations or directives, I think it has improved their quality. But it makes almost no effort to go out and explain to the wider world what it is doing when it does good work. Journalists should do a better job, but so should both the Parliament, and indeed the Commission, in explaining what they do.

On your general point I absolutely agree that the more links the better between MPs and MEPs. It may not still be the case, but at one point I was told that MEPs were not allowed access to this building. That is still the case, is it?

**Mats Persson**: It is still the case.

**Charles Grant**: They need special permission to come. They cannot just walk in.

**Lord Tomlinson**: They can at this end. In the House of Commons they cannot.

**Charles Grant**: I am glad they can at this end. Perhaps you should tell your friends in the Commons that it is rather a good idea.

As I said before, there are these joint committees that have been established that, although nobody knows what they do, probably help to deal with some of the mutual mistrust and misunderstanding between the two sides. I am sure they are desirable, but the more the two bodies can come together and talk, of course, then that is the better, really.

**The Chairman**: It may assist the Committee if I say I have four names now and I think we will probably want to wrap up after them. In no particular order I will call Lord Tugendhat, Lord Marlesford, Baroness Scott and Bill Cameron. So we will ask Lord Tugendhat to go next.

**Q13 Lord Tugendhat**: I think it was Mats Persson who said earlier that he thought that the eurozone issues, which are decided above all at the European Council level, would be a driver for more involvement by national Parliaments, and I agree with that. Where does that leave the European Central Bank? An essential element in the working of an independent central bank, as we have seen in the United States with the relationship between the Federal Reserve and Congress, as we saw in Germany before the euro, with the Bundesbank and the Bundestag, is that the non-elected officials who run the central bank have one end of a see-saw and there are the elected legislators at the other end of the see-saw. That is an essential element in the legitimisation of the very considerable powers that the central banks exercise. In the case of the eurozone of course, the central bank relates to the European Parliament. It is before those committees that it appears. As has been made clear in answers to earlier questions, the European Parliament is somewhat remote from European public opinion, so as far as public opinion in many member states is concerned the European Central Bank floats free. It does not have the essential anchorage in the electoral process that the Federal Reserve has in the States and that the old Bundesbank had in the Federal Republic. I wonder whether you could comment on that.

**Mats Persson**: I love that question. It is a great question, really really good. I think you have put your finger on one of the most complicated tensions in the eurozone crisis. It is more complicated, I think, than even you managed to convey in your eloquent manner, in that the
European Central Bank is now charged with setting interest rates and bank supervision. While the Germans in particular were happy to accept a democratic deficit in interest rates—that is what they love, they want that—what happens now when they move into the domain of bank supervision, and potentially bank restructuring down the line? It is going to be very interesting to see how they solve that. My best bet is that eventually you will need some sort of Chinese wall between supervision and monetary policy at the ECB. The supervision part might migrate outside the ECB structure, so you have that separately, and that will be primarily accountable to national Parliaments. I think the European Parliament will struggle to get a central role in scrutinising the ECB, precisely because again this links to such fundamental issues of the economy where, quite frankly, the EP has zero legitimacy to be more.

Charles Grant: I agree with that. I would be slightly more nuanced. The former head of the ECB, Trichet, said he thought the scrutiny he got from the European Parliament’s Monetary and Economic Committee was very good. There were intelligent questions, probing questions, so he felt he was being scrutinised. I think the Parliament was very happy with him coming on a regular basis, and I presume Draghi is also going to the Parliament on a similarly regular basis. Of course, you may say that this is one federalist body scrutinising another federalist body, neither of which is particularly close to what is going on in national political systems. To repeat what I said earlier, I would welcome the creation of a body in Brussels representing national Parliaments, and I would hope that Mr Draghi would go along to such a body and hear views on some of the problems created by ECB policies or other eurozone policies. I do think that whatever this body in Brussels I would like to see got up to, by definition it would be less federalist than the European Parliament.

By the way, to answer an earlier question, the European elections will not change the fundamental federalist bias of the European Parliament. You will have 130, 140, 150 populist anti-EU people in the Parliament, but that means the overwhelming majority of MEPs would still be EPP, socialist, liberal, green, committed to a federal Europe, and they will get together and exclude the extremists from decision-making. I do not expect the role of the EP in decision-making to be particularly different after the elections from how it is today. It might be a more colourful place, though.

Lord Marlesford: I am a farmer and I receive money from the European common agricultural policy. This is relevant to the question I want to ask, in the sense that in my view the agricultural interest is extremely well represented. As a member of the Finance and Economic Committee, having been a Member of the Home Affairs Committee, I think one of the biggest lacks, speaking for the British Parliament, is the fact that the interest groups in the UK very often fail to express to Parliament their concerns on proposals that are coming out of Brussels, which would help the whole process of scrutiny by Parliament and reinforce those concerns where appropriate.

Charles Grant: I do not have anything to say on that. I agree with your point. I think it is a very good point indeed, but I do not have anything to add.

Mats Persson: I agree, particularly with the point that the agricultural interest is very well represented. I think that is unmistakeable.

The Chairman: It is not absent in this Committee.

Q14 Baroness Scott of Needham Market: Mr Persson, when you were talking earlier you gave us some very interesting figures about the extent to which national Parliaments have used yellow cards in recent opinions. As chair of a Committee I try and keep an eye on
what others are saying about the dossier in which I have an interest, and I noticed that there is a very wide range of attitudes to what constitutes subsidiarity. Many of the reasoned opinions are on the basis that we do not like it very much, whereas I think we take a more legalistic view about the way that the Lisbon treaty sets out the circumstances in which we can issue these reasoned opinions. I wonder whether you would both like to comment on whether or not this current very legalistic approach to subsidiarity has very much meaning, if what you are talking about is creating Parliaments that are speaking out more for their national interests, or do you think that we do need to change the way we regard this and bring these wider issues more into play?

The second part of the question is that, I think at different times by both of you, the assertion has been made that national Parliaments need to get out and need to do more. We have received evidence that the Commission takes an average of six months to respond to reasoned opinions from national Parliaments, and that reports to the European Parliament might mention reasoned opinions but do not give any details about what Parliaments are objecting to. I wonder whether that sounds to you like a set of institutions that are taking our view seriously, and whether they are up to this strengthened role for member states.

**Charles Grant:** On this question of subsidiarity, I have always seen it as a political concept, not a legal concept. I think that like beauty it is in the eye of the beholder. It is still a very useful concept, and I expect that at some point—perhaps it happens already—ECJ judges or British judges will have to rule on whether something breaches it or not. They will have to take a legal view on it, but it is such a subjective concept. Take a couple of examples. This year the Commission came up with a proposal to ban restaurants from serving olive oil in re-useable bottles. It came up with a proposal to ban the sale of menthol cigarettes, and it came up with a proposal to legislate for the number of women on corporate boards. In my view all those three breach subsidiarity. Only one of them is becoming law. That is the menthol cigarette ban. Other people could take a different view. It is very subjective. I still think subsidiarity is a very useful concept to help us make sure the EU does not do too much. That is why I would welcome the greater role for national Parliaments in policing subsidiarity, and I am delighted that in the UK there is I think cross-party support for that.

**The Chairman:** Mats, any comment?

**Mats Persson:** Yes. I would strongly encourage you not to try to take a legally fundamentalist approach to subsidiarity, partly because of the reason which Charles mentioned—that it is a very political concept—but also partly because what does the treaty say about subsidiarity? Do we have a robust legally defined subsidiarity test at the moment? I do not think we have. It is quite absent from the treaty, so if you try to find the legally correct way to object to Commission proposals on subsidiarity grounds, I think you will probably not object to many of them because there is none. The Swedes have objected 20 times. I suspect that all of them were basically illegitimate, so you can do it equally well. That is why I would welcome the greater role for national Parliaments in policing subsidiarity, and I am delighted that in the UK there is I think cross-party support for that.

On the Commission and the European Parliament, no, I do not think that they take this seriously enough. I think they take it seriously but not seriously enough. As is the case with evidence collection when it comes to their impact assessments, there needs to be a clear process where you can see what the Commission actually considers legitimate evidence, if you know what I mean, so that you have a transparency around potential selection bias. That is what you need to have around this process as well. It needs to be perfectly transparent. The Commission needs to fully justify why it does not take into account certain polls and why.

**The Chairman:** Lord Cameron will ask the nuts and bolts question.
Q15 Lord Cameron of Dillington: I too have to declare an interest as a farmer in receipt of EU payments, although I thoroughly disapprove of the fact that the EU dishes out dosh to a particular industry such as agriculture. That is irrelevant. My question is about cooperation between national Parliaments. You both seem to have indicated that you approve of greater co-operation, but perhaps you could put a bit of flesh on those discussions. In doing so, I would like to draw your attention to the fact that in several pieces of written evidence that we have received, various people have mentioned the whole question of capacity in Parliaments. The indication is that Parliaments are running around trying to run their own national affairs and, indeed, sending their members to relate to EU institutions themselves. The evidence is hinting at the fact that the very best become Ministers and run their national affairs and that their not-so-best deal with some of the relations between Europe, so who would be left? The not-so-very-best might be left to deal with the interparliamentary relations. It is a question capacity. Various of these witness statements seem to indicate this might be a problem. I thought you might like to bear that in mind in your answers.

Mats Persson: On capacity, I think that 50% of business regulation at least is now, in one way or another, decided in Brussels, and that goes to show that it clearly should be a priority in resourcing. It is just another prioritisation. I do think that in a Parliament like the UK’s there are enough clever and engaging politicians, but also assistants, researchers and the rest of it, who can take a leading role in this. You see some cases of that already, of some very, very good MPs now going around Europe, which I mentioned previously.

On your point about co-operation between national Parliaments, just very briefly to reinforce what has been said previously about forcing the Commission and the European Parliament to take this seriously, all this will come with increased powers, and with additional powers if you have a red card, which again I support. It is interesting to see that there is almost a national consensus developing behind a red card for national Parliaments. It is interesting, because whenever you have a British consensus on a European issue, it tends to become policy. Enlargement is seeing a market, so if you have a national consensus on the red card, then keep it. It may not happen. That will certainly help to incentivise parliamentarians to talk to each other.

Another proposal that I just want to float and mention briefly, which will also help this process and add real bite to the role of national Parliaments, is this idea of a retroactive red card. For example, one idea is if you have a qualified majority of national Parliaments you can overturn an EU law that has been agreed. I think that stuff like that could be interesting to start to float and see how that goes down in the rest of Europe. Again I guarantee that if those two measures are in place, a red card and an interactive red card, then the national parliamentarians will start to talk.

Charles Grant: I have nothing to add. I agree with that.

Mats Persson: Thank you, Charles.

The Chairman: Lord Hannay, if you can be very brief, please.

Q16 Lord Hannay of Chiswick: Yes. I want to go back to this early warning system mechanism. First of all, in the treaty there is of course a provision that enables Governments to go to the court on subsidiarity. It has never been used but it exists. The British Government have agreed that if there were a request by either House of Parliament to take up an issue of subsidiarity in the court, they would take it. There has not been so far. That is clearly one instrument that has not yet been utilised.
Charles Grant, Director, Centre for European Reform, and Mats Persson, Director, Open Europe—Oral evidence (QQ 1-17)

To go back to the red card, I am afraid that I part company from you two in thinking that this is a particularly good idea. I cannot see how you could get the red card agreed, other than through a treaty revision process of a very general kind, which would cover everything. You would allow all the federalists out of the box if you started down this road. What puzzles me is why nobody seems to have realised that if the European Council could—perhaps coerce is the wrong word—persuade the European Commission to say that it would always withdraw a proposal for which a yellow card had been properly invoked, you have your red card without changing the treaty. Why should that not be a more realisable objective? After all, there is about to be a new Commission appointed this time next year. Why should the European Council not say that in the light of developments they would like the new Commission to undertake that, faced with a properly constituted yellow card procedure, they would simply honour it? You would not have to change the treaty.

Charles Grant: I think that is quite right. The Centre for European Reform is publishing a major report, either tomorrow or Thursday, called *How to Build a Modern EU*, and we echo Lord Hannay’s words exactly. We “List the reforms you can achieve without treaty change, one of which is asking the European Council to bully the Commission into treating the yellow card as a red card”. In the long run, if and when the treaties are changed, you can also put this into the treaties. But you could start doing it next year without a treaty, I totally agree.

Mats Persson: Yes. Absolutely. It is something that should be put on the table as part of the next deal, for the next portfolio, for the European Commission. If they can honour that, great, let us do it without a treaty change, but if the Commission does its own thing, then perhaps a treaty change will be necessary. We should not confuse the policy output that we want, the institutional change that we want, with the difficulty of getting it. Put something on the table first and then form opinion around that and hopefully it will happen, but certainly you make a very valid point.

The Chairman: Mats Persson, Charles Grant, thank you very much for your attendance this afternoon, for the clarity and challenging nature of the discussion, which I thought really began to fire up. I would just say in concluding, apart from thanking you and reminding you of the rules of engagement that I indicated at the beginning, that if there is anything left untied from this Committee we may be in touch with you and would ask you to do a written submission. Equally, if either of you feels they want to share further thoughts or feel we have not perhaps touched on matters that are of concern to you, we would be very, very pleased to hear from you in writing, and of course we will take everything you have said into account. We are immensely grateful to you for kicking this off. Thank you very much.

Q17

---

27 Question number unallocated.
THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION

SUMMARY

1. National parliaments in the EU framework:

1.1 From the review of the scrutiny process since pre-accession time, up to the present, the constant theme has been that the Oireachtas should have a scrutiny function. This has been articulated in varying degrees of ‘control ranging from a power to annul a European measure, to having an informed debate on the measure, to knowing what is happening.

1.2 There is considerable information flow, generated domestically and at EU level. However, there are mixed assessments of the actual efficacy of the scrutiny process. Volume and complexity of content inhibit the process. The lack of plenary debate has been a constant criticism. The need for a well-resourced committee was recognised from the earliest times.

1.3 Criticism of the democratic deficit has frequently manifested itself as a concern, not least in the period running up to the (rejection of the) first Nice Referendum.

1.4 It is arguable that the democratic deficit complained of, would more accurately be addressed to the national, rather than (mainly) the European, level.

1.5 The majority of EU measures are not subject to (detailed) scrutiny.

1.6 COSAC XLVII lists a range of material which is received by the Houses of the Oireachtas at the same time as the documents are forwarded to the European Parliament, the Council (of Ministers) and Governments; in addition, the European Union (Scrutiny) Act, 2002, as amended, provides for the provision of material.

1.7 It is difficult to suggest the existence of any particular ‘requisite influence at EU level’, other than the response of the relevant Minister to the 2002 Act, section 2(2).

2. Formal role of parliaments

2.1 The Oireachtas is one of the parliaments which see subsidiarity and proportionality as different. The Oireachtas bases its interpretation of the subsidiarity check on the wording of Protocol 2 of the Lisbon Treaty.

3. Dialogue and scrutiny of EU policies:

3.1 From the earliest times, the importance of keeping the European Parliament informed on Irish views (via national MEPs) was acknowledged.

3.2 The Oireachtas considers that the political dialogue conducted between the European Institutions and national parliaments needs to be strengthened.

---

28 Some observations on the Houses of the Oireachtas and its role in the EU -1972-2013
3.3 Presentation of specific proposals by the European Commission in national parliaments (upon request) could be considered. According to the Oireachtas, the European Commission has presented specific proposals in the Oireachtas infrequently

4. Capacity of national parliaments:

4.1 The Oireachtas would be in favour of closer cooperation between national parliaments to discuss proposals that are of particular concern – and offers several ways in which this could be done.

4.2 The most useful source (of information) is seen as interaction with the Brussels based national parliament representatives.

4.3 COSAC and bi-lateral contacts are seen more in an ad hoc light (as sources of information).

4.4 The lack of debate on EU matters in the plenary has been a regular complaint since accession.

4.5 Membership of Joint Committees is decided by the Whips. Expertise does not seem to be a deciding factor. This is despite the recognition of the relevance of members with specialist knowledge of the relevant sector being able to apply their knowledge and expertise to scrutiny of EU legislative proposals relating to that sector.

4.6 Timetable clashes (inter alia, plenary duties, competing Committee membership) can impact on attendance at Committees, thus impacting on contributions/understanding of developments at particular meetings).

4.7 General view that the Dáil cannot not hold the Government to account – for various reasons.

4.8 The volume of material and complexity of content present a challenge.

4.9 IPEX is a reliable source of information.

4.10 The national parliaments' representatives are particularly helpful in the provision of information.

5. Other possible changes:

5.1 Involving a dedicated, specialised well resourced 'committee' (possibly part of a reformed Seanad –drawing on its vocational orientation), unencumbered by daily parliamentary tasks – in the scrutiny process.

5.2 Ensuring regular (six monthly) plenary debates on the issues in the previous/forthcoming European issues – thus attracting general media coverage.

28 October 2013
A major benefit which can flow from national parliaments having a role in the EU framework is that such a role can serve to address the often heard criticism of the democratic deficit as regards the EU legislative process, in particular. The rejection by the Irish electorate of the first Nice Referendum has been identified as being, in part, caused by the (perceived) democratic deficit. The criticism tends to be directed at the European level, but in practice the democratic deficit can perhaps more correctly be directed at the national level. It is at the national level that practical issues arise which can either facilitate or frustrate effective national parliamentary scrutiny of European affairs (to use the broadest term).

The scrutiny process in Ireland has evolved considerably since accession in 1973. The most recent amendments date from the change of Government in 2011. The new Government took the decision to mainstream scrutiny of European legislative proposals and to devolve detailed consideration of EU draft legislative acts, other proposals and policy documents including programmes and guidelines and related matters to the Sectoral Joint Committees. The rationale behind this development was to allow members with specialist knowledge of the relevant sector to apply their knowledge and expertise to scrutiny of EU legislative proposals relating to that sector. This approach is certainly to be welcomed; however, practice, may not reflect the stated rationale. One of the reasons for this may relate to the procedure for allocating membership of Joint Committees - as will be addressed below.

The Joint Committee on European Affairs now has a more targeted role, including reporting annually (to the Oireachtas) on the overall situation. This reporting procedure should lead to greater awareness about European developments amongst members of the Oireachtas. This was certainly the view from the earliest days, even pre-accession. However, while the Reports provide useful information, including on the scrutiny process, there is probably considerable room for improvement as regards actual, informed debates on the issues covered. The lack of debate on EU matters in the plenary has been a regular complaint since accession. At the same time it has to be acknowledged that Reports on European Scrutiny

---


30 Some examples will be offered below.


A constant thread running through debates in the Oireachtas on the European legislative framework, since the pre-accession period, has been the concern to ensure domestic scrutiny (of European legislation). When the Minister for Foreign Affairs was speaking in the Seanad, on the Second Reading of the European Communities Bill, 1972, he stated that ‘The Government believe that the Houses of the Oireachtas should be associated with Community decision-making, although it must, of course, be recognised that any such role will have to take account of the transfer of power which must take place from national to Community level.’

He then went on to talk about establishing a committee, and the role of such a committee. According to the Minister, ‘if such a committee could make sure that Members of the Houses of the Oireachtas were informed about draft legislation, it would be very useful.

Opposition Deputies were unhappy about the proposed method of adopting European measures (Directives) by means of devolved legislation (statutory instruments, although the term used in the European Communities Act, 1972 is ‘regulations’). The concern of the Opposition centred on the general procedure regarding devolved legislation, namely the ‘laying of’ the measure for a specified period, after which it enters into force. The procedure omits parliamentary scrutiny (and public comment in the various media). In fact, this method has been the major choice for transposing European Directives. The reason given is the sheer volume of European measures, and the fact that many are ‘technical’ in nature. This latter point can be seen in two ways; some measures are ‘tidying up’ in nature, others, it could be argued, are technical in the sense of requiring specialist scrutiny. A more contemporary view of the operation of the current scrutiny process, including the challenge of scrutinising more technical material, was offered by Minister Alex White, T.D – as we shall see below.

As we have seen, the perceived democratic deficit of the EU legislative process was seen as one of the factors in the rejection of the Nice Treaty. It is worth noting in this context the criticisms expressed about the perceived national democratic deficit in relation to Ireland’s (Government/Oireachtas) accession preparations.

During the (resumed) Committee Stage on the European Communities Bill, 1972, members of the Dáil expressed their concerns regarding the reception of European legislation into the domestic legal system, and the need for oversight. While one Opposition Deputy proposed the establishment of a well-resourced committee to carry out this task, a Party colleague expressed a strong preference for such a role to be carried out by the full Dáil. What is particularly interesting about the committee proposal is that it encompasses what might be regarded as the ideal, but has still to be realised (in terms of adequate resourcing.)

34 See, inter alia, The report on European Scrutiny, No. 21, Provision of Food Information to Consumers, presented to the Seanad by the Minister of State (Trevor Sargent, T.D.) at the Department of Agriculture, Fisheries and Food, Seanad Debates Vol.193, No. 9, Col. 574-591, 3 February 2009 - available at http://oireachtasdebates.oireachtas.ie/debates.
35 Seanad Debates Vol. 73, No. 11, Col. 837-838, 22 November 1972.
36 Seanad Debates, Vol. 73, No. 11, Col. 859-861 (in the main), 22 November 1972.
37 Seanad Debates, 20 August 2013.
38 Sinnott, op. cit.
40 Dáil Debates Vol. 263, No. 6, Col. 1037-1051, 8 November 1972 – available at http://www.oireachtasdebates/oireachtas.ie
41 See op. cit. Col. 1051-1058.
Dr iur Patricia Conlan, Member, Institute for the Study of Knowledge in Society, University of Limerick, Ireland—Written evidence

As has been mentioned above, when the Minister was speaking on the Second Reading of the 1972 Bill, in the Seanad, he also made reference to ‘a committee’.42

The early legislative approach to membership of the European Communities could allow the interference to be drawn that there was incomplete understanding of the nature of the obligations undertaken (as regards national competence to transpose or not to transpose). This can be inferred, inter alia, from some of the comments of the Minister43. It can also be seen in the original iteration of the European Communities Act, 1972 and the amending and confirmation statutes of 197344. The reason for the original formulation chosen in section 4 of the European Communities Act, 1972 (subsequently amended) has been attributed to the concerns expressed by members of the Oireachtas regarding domestic scrutiny.45 More recently, the rejection of the Nice Treaty accelerated the national response to the scrutiny process, not least by putting parliamentary scrutiny of European affairs on a statutory basis in 2002 (European Union (Scrutiny) Act, 2002) after the first referendum on the Treaty of Nice.46

The Sectoral Joint Committees’ current scrutiny process involves the drawing up of A and B lists of items. The A list represents those items requiring further scrutiny, and the B list those not requiring further scrutiny. A brief review of recent lists indicates that the majority of proposals are held not to need further scrutiny.47 Reviewing the most recent Annual Report(s) on the Operation of the European Union (Scrutiny) Act, 2002 (9th and 10th) – covering the period in office of the current Government, and the final weeks of the previous Government – it is clear that the majority of measures were deemed not to require further scrutiny.48 The 9th Report refers to those proposals in the period February to December 2011 as representing 8 per cent requiring further action or detailed scrutiny, 37 per cent as having been adopted pre-meeting (delay in establishing the committee system being a factor), and 55 per cent requiring no further scrutiny. Of the 534 proposals considered and reported on in the 10th Report, 19 per cent had been adopted prior to meeting, 64 per cent required no further or detailed scrutiny, 5 per cent required no further scrutiny but further action, and the remaining 12 per cent were identified as requiring further scrutiny.49 This process is not without its (external) critics.50 However, as we shall see, it is not without its

42 Seanad Debates, Vol. 73, No. 11, Col. 859-861 (in the main), 22 November 1972.
43 ‘The powers conferred on Ministers in this Bill to make regulations are necessary if we are to be in a position expeditiously to give effect to Community legislation so as to fulfil our obligations and to enable the benefits of membership to become available to us without delay. At the same time, the Government were anxious in drafting the Bill and in discussing it in the Dáil that there should be adequate safeguards and an effective mechanism for involving Dáil Éireann and Seanad Éireann in dealing with delegated legislation under the Bill’, Seanad Debates Vol. 73, No. 11, Col. 835-836, 22 November 1972.
44 ‘For this reason the Government provided the safeguard in section 4 that regulations made under the proposed Act shall lapse unless they are confirmed by the Oireachtas. During the debate in the Dáil it was agreed to shorten the period within which this must be done and under the section as now proposed a confirmation Act must be passed within six months after the regulation is made.’ Ibid. See European Communities Act, 1972, section 4 (original version); European Communities (Amendment) Act, 1973, section 1; European Communities (Confirmation of Regulations) Act, 1973, section 1.
45 See; inter alia, Conlan (2007), p. 182.
46 Sinnott op. cit.
49 10th Report, p. 10.
50 See, inter alia, Noel Whelan, Oversight of EU legislation should be overhauled quickly, in The Irish Times, 24 August 2013, where the commentator on public affairs and member of the Irish Bar, is strongly critical of what he designates ‘rubber-stamping’, and supports this view. He is highly critical of the lack of an up-to-date list of Statutory Instruments on the
internal critics either and, defenders. It should be borne in mind that 2011 was an atypical year, because of the General Election, and the delayed establishment of the committee system. However, it is noticeable that many Sectoral Joint Committees did not ‘lay’ EU scrutiny reports during 2012.

An example of concern by members of the Oireachtas regarding the making of a statutory instrument (S.I. No. 325 of 2012) without parliamentary scrutiny of the European measure in question (Directive 2010/53/EU). led to the recalling of the Seanad during the recent summer adjournment. The sitting took place on foot of a request received by the Cathaoirleach (Chair) from twenty Senators in accordance with Seanad Éireann Standing Order 22(3A) and in accordance with Section 4(2)(b) of the European Communities Act, 1972, as amended. The motion to be debated was ‘That Seanad Éireann resolves that Statutory Instrument Number 325 of 2012 - European Union (Quality and Safety of Human Organs Intended for Transplantation) Regulations 2012 be annulled’. It was defeated on the casting vote of the Cathaoirleach. However, in fact, the draft Directive had been presented for scrutiny in January 2009. The Joint Committee on European Scrutiny had agreed that it did not require further scrutiny, but that it be forwarded to the Sectoral Joint Committee for information. This is a useful example of the practicalities of the scrutiny process (at that time).

During the debate on the motion (to annul S.I. Number 325 of 2012) the Minister of State, Alex White, T.D., did point out that

‘Although it might sound odd, it is nevertheless true that for the scrutiny committee to decide not to pursue a debate or examination of a particular legislative provision is in fact a decision of the committee.’

This was to counter the criticism that the statutory instrument had been made by the Minister for Health, without parliamentary scrutiny – hence the recall of the Seanad, relying on the Standing Orders and statutory basis, as indicated above. For our purposes, this episode serves to underline several aspects (some weaknesses, and some ‘wish list’) of the Oireachtas website. He notes that 44 statutory instruments had been signed into law in the first 5 and half months of 2013, but could find no debate in any sectoral Joint Committee on these measures, and only, what he described as a cursory reference to them, by the Joint Committee on European Affairs. A rejection of this criticism (of lack of oversight of legislation) can be seen in the response by Deputy David Stanton, EU legislation is never merely rubber-stamped, in The Irish Times, 6 September, 2013. Examples are cited, and reference made to three sectoral Joint Committees which made political contributions, inter alia, to CAP, fisheries policy and sugar reform; European fund for the most deprived; transport roadworthiness package.

Oireachtas website. He notes that 44 statutory instruments had been signed into law in the first 5 and half months of 2013, but could find no debate in any sectoral Joint Committee on these measures, and only, what he described as a cursory reference to them, by the Joint Committee on European Affairs. A rejection of this criticism (of lack of oversight of legislation) can be seen in the response by Deputy David Stanton, EU legislation is never merely rubber-stamped, in The Irish Times, 6 September, 2013. Examples are cited, and reference made to three sectoral Joint Committees which made political contributions, inter alia, to CAP, fisheries policy and sugar reform; European fund for the most deprived; transport roadworthiness package.

51 Seanad Debates, 20 August 2013.
52 By coincidence the draft Directive had been the subject of a COSAC coordinated subsidiarity check – see COSAC XLI – p. 22 for the report of the Joint Committee on European Scrutiny. The Reasoned Opinion of the Joint Committee was posted on its website. No breach of the principle of subsidiarity was found. There were criticisms of the overall procedure, however. At the same time, it was confirmed that no other Committee was involved in the scrutiny process.
53 The European Communities (Amendment) Act, 1973 had amended s. 4 of the 1972 Act.
54 Another, earlier example of a contentious measure not having been referred for (prior) scrutiny related to a Council Decision dealing with guidelines for funding human embryonic research. This was highlighted as a result of a very vigilant Chairman of the Joint Committee. See; inter alia, Conlan (2007), pp 187-188. An informed Chairman is vital for an effective scrutiny mechanism.
55 This had been the centralised scrutiny procedure then in operation; now amended with Sectoral Joint Committees being involved from the beginning (so-called mainstreaming).
Dr iur Patricia Conlan, Member, Institute for the Study of Knowledge in Society, University of Limerick, Ireland—Written evidence

scrutiny process; volume of measures, complexity of content, need for specialist input into the scrutiny process and the importance of the role/choice of the Chairman.

The contribution of the Minister of State is particularly helpful when reflecting on the effectiveness of the scrutiny process as it operates. He is frank in his contribution:

‘Members referred to the issue of parliamentary reform, with particular reference to EU legislation. I agree with Senator Averil Power and others that we have serious deficiencies in our parliamentary system in regard to the scrutiny of EU proposals. I have no difficulty in conceding that this is manifestly the case. However, even if we had the very best system anyone could possibly conceive, there is no prospect in the wide earthly world that every draft legislative provision, directive or measure coming from the EU could be scrutinised as a matter of plenary debate in a committee. There simply are not enough days in the year or hours in the day. It could not and will not happen. I very much hope we will have a better scrutiny system in place in due course. Whether that is on the basis of one well functioning Chamber or two less well functioning Chambers, as we have at the moment, will be a matter for the people to decide. Whatever the situation, we must have a proper system of scrutiny of EU legislation. I can agree with that much. However, it does not mean we will be scrutinising everything that comes from the EU, because that is not a realistic prospect.’

As has been pointed out already many of the measures on the B lists are of a technical nature, both in terms of complexity and in terms of ‘tidying-up’ measures. If the former they can present a challenge to the non-specialist members of a Joint Committee; if the latter, then detailed scrutiny is not particularly productive. Minister White offered some pertinent examples:

‘the third last one is the European Union (Conservation of Wild Birds (Horn Head to Fanad Head Special Protection Area 004194)) Regulations 2013. Will we spend time on that, even if we have a first-class scrutiny system? That has to be open to some question. Will we spend time in a properly functioning scrutiny system on the European Communities (Notification of Small Hive Beetle and Tropilaelaps Mite) (Amendment) Regulations 2013? From looking at the title it seems unlikely that we will but that is not to say we would not want to spend a good deal of time on many of the regulations, directives and proposals that come from the European Union such as this one, which manifestly merits discussion and consideration in a parliament.

We have to seriously examine the way we go about our business. Senator Barrett said there should be debate but we have to be selective in the measures we decide to debate and scrutinise.’

The suggestion has been made within, and without, the Seanad – and is repeated in the debate under consideration here (on S.I. No. 325 of 2012)- that the Upper House should have a leading role in scrutinising European measures. One reason is that the members of the Seanad are not required to ‘service’ their constituents to the possible detriment of their parliamentary tasks. After the rejection by the electorate of the referendum question regarding abolition of the Seanad (held on 4 October), it remains to be seen whether this suggestion is acted on.

---

57 Seanad Debates, 20 August 2013.
58 Seanad Debates – 20 August 2013.
In summary: in terms of the role national parliaments should play in the EU legislative framework, as we have seen from the review of the scrutiny process since pre-accession time, up to the present, the constant theme has been that the Oireachtas should have a scrutiny function. This has been articulated in varying degrees of ‘control ranging from a power to annul a European measure to having an informed debate on the measure, to knowing what is happening.

Turning to the question of access to information in order to be able to scrutinise effectively and thereby, inter alia, to exert influence (at an EU or other level), it should be noted that relevant information to assist the process, comes (or should come) from different sources. At the European level (and as required under the provisions of the relevant Protocols) documents from the Commission are transmitted to the Oireachtas, and, in practice, used as background information for staff. COSAC XLVII lists a range of material which is received by the Houses of the Oireachtas at the same time as the documents are forwarded to the European Parliament, the Council (of Ministers) and Governments.

At the national level, more than 500 EU public documents (SEC, COM) and approximately the same number of background, and similar, documents produced by the Government, are transmitted annually by the Government to the Oireachtas. Included in these are briefing documents and ‘instructions’ for Government attachés in Brussels. The European Union (Scrutiny) Act, 2002 (as amended), section 2(1), provides the legal basis for the individual Ministers to lay a copy of a proposed measure by the Commission, together with a note on the implication for Ireland, before the Houses of the Oireachtas; in practice this is the responsibility of the Lead Department.

Finally, and of practical importance, the Library and Research Service preserve, manage and promote these documents and make the composite and weekly reports electronically available, with a link to the documents themselves, via the intranet. Arising from this, members of the Oireachtas have access to a wide range of material to allow them to fulfil their scrutiny function.

In summary: there are formal (Protocol, statutory basis) and administrative (guidelines) provisions to ensure the timely provision of a range of information (from the Institutions, and Government) to allow Joint Committees to carry out their scrutiny role. It is difficult to suggest the existence of any particular ‘requisite influence at EU level’. However, at the national level, it should be noted that the European Union (Scrutiny) Act, 2002 (as amended) section 2(2), provides that ‘The Minister shall have regard to any recommendations made to him or her from time to time by either or both Houses of the Oireachtas or by a committee of either or both such Houses in relation to a proposed measure’.

2. Formal role of national parliaments

---

59 COSAC XLVII, p. 199.
60 COSAC XLVII, p. 262 including draft legislation, consultation documents, programmes, planning, initiatives of the European Council under TEU article 48(7), agendas and outcomes of Council meetings, and annual report of Court of Auditors.
61 COSAC XLVII pp. 199-200. Interestingly, the question as to whether these are sent automatically, or have to be requested, is not answered.
62 In 2012, there were 505 Information Notices submitted to the Sectoral Joint Committees as required by the European Union (Scrutiny) Act, 2002 (as amended), s. 2(2), 10th Report, p. 8. See 9th Report, p.19 for relevant period.
2.1 The obligation to provide relevant documentation to the Oireachtas has been addressed above. This arises from Treaties’ developments and from the European Union (Scrutiny) Act, 2002 (as amended).

2.2 The 9th Report, para 2(2) confirmed that no cases of non-compliance with the principle of subsidiarity had been found in the period 1 January – 1 February 2011 (pre-General Election). According to the 9th Report, the first time the Oireachtas exercised its powers under the Protocol in relation to the application of the principle of subsidiarity, and issued a Reasoned Opinion, was in the early days of the subsequent, and current, Government, and before the establishment of the committee system. In assessing the question of compliance the Interim Standing Order 103 Select Committee of the Dáil, referred to the House of Lords Note, Subsidiarity: Assessing an EU proposal (November 2009) when scrutinising the draft Directive on the Common Consolidated Corporate Tax Base. The debate in the Dáil demonstrated consensus on the decision reached by the Select Committee, namely that the measure infringed the principle of subsidiarity. It is interesting to note that the Lead Department, the Department of Finance, in its preliminary view to the Select Committee, suggested that it was arguable that the proposal did not infringe subsidiarity.

2.3 COSAC Reports are helpful in reviewing responses by the Oireachtas to questionnaires relating to the subject matter of this contribution. For example, in relation to ‘subsidiarity’, the Oireachtas expressed the view that given the difficulty (it saw) in defining subsidiarity, the best way to approach a shared understanding of the principle, would be to share ‘best practice’. Strict guidelines it was felt, could impinge on the autonomy of national parliaments. The Oireachtas has agreed with the view that reasoned opinions submitted by national parliaments are often based on a broader interpretation of the subsidiarity check than the wording of Protocol 2 of the Lisbon Treaty. However, the Oireachtas bases its interpretation of the subsidiarity check on the wording of Protocol 2 of the Lisbon Treaty. The Oireachtas feels it is not for individual parliaments to have their own interpretation of the subsidiarity check criteria. At the same time, it has to be noted that the Oireachtas expressed the view that there is no need for further clarification of the subsidiarity.

2.4 The Oireachtas is one of the parliaments which see subsidiarity and proportionality as different. In addition, the Oireachtas was one of six Parliaments (or Chambers) which expressed a preference for a longer period (twelve, rather than the current 8 weeks) to carry out the internal subsidiarity scrutiny.

2.5 In relation to the principle of proportionality the Oireachtas is of the view that proportionality and subsidiarity are different. At the same time, the Oireachtas is of the opinion that while the issue of proportionality does not have the same standing, it should arguably be assessed as part of a subsidiarity check. In the experience of the Oireachtas, subsidiarity checks performed by the Oireachtas often (approximately three quarters of the time) take proportionality into consideration. The Oireachtas does not consider

---

63 See 9th Report, para 3(1) for the genesis of this Select Committee.
67 Examples drawn from COSAC XL VII-XL IX – some specific sources indicated.
68 Examples are drawn from COSAC XL VII-XL IX.
69 COSAC XLVII, p. 5.
70 See, inter alia, COSAC XLVII p. 216 ; (examples drawn from COSAC XL VII-XL IX)
proportionality as an inextricable component of the principle of subsidiarity, but as two separate principles. At the same time, it has to be noted that the Oireachtas does not consider subsidiarity control effective enough without including a proportionality check. It is not effective enough to check only for subsidiarity as proportionality may also need to be looked at. Reflecting on these views, the inference could be drawn that there is still room for greater appreciation of the relationship/difference between the two principles.

3. Dialogue and scrutiny of EU policies

3.1 As we have noted, when the Minister for Foreign Affairs was speaking in the Seanad on the Second Reading of the European Communities Bill, 1972, he confirmed his agreement with the Opposition proposal that a committee be established to ‘examine draft Community legislation’. He was also interested that such a committee (comprising the existing ten MEPs -this was the time of the dual mandates,) plus another ten members of the Houses of the Oireachtas would have as (among its ) ‘ later on, that is the briefing of members of the European Parliament about Ireland’s position in relation to various pieces of legislation.'71 This was an early acknowledgement of the importance of keeping the European Parliament informed.

3.2 Taking a general overview, examples of political dialogue between the Oireachtas and EU Institutions fall into several categories. There are the written exchanges – written opinions sent to the EU institutions, including reasoned opinions and other contributions. There are bilateral visits to and from the Institutions, presidential pre-planning meetings (and post-presidential meetings). The role of the Permanent Representative in Brussels should also be borne in mind. However, the Oireachtas considers that the political dialogue conducted between the European Institutions and national parliaments needs to be strengthened. COSAC questionnaires are helpful in this regard in identifying general and particular concerns (and suggestions to deal with these).

3.3 Looking at the adequacy of dialogue between the Commission and (the Oireachtas) the views are rather mixed. The Oireachtas considers visits between the European Commission and national parliaments to discuss Commission strategic proposals /initiatives, as an effective tool within the political dialogue and should be strengthened. This could be done by systematic annual presentation of CWP in national parliaments. The Oireachtas would like to see equality of engagement by Commissioners during presentation of CWP. National parliaments should decide the appropriate format for the presentation of proposals by the European Commission in their parliaments. Presentation of specific proposals by the European Commission in national parliaments (upon request) could be considered. According to the Oireachtas, the European Commission has presented specific proposals in the Oireachtas infrequently. 72

3.4 The Oireachtas would be in favour of closer cooperation with the Commission to discuss proposals that are of particular concern to national parliaments and for which a large number of reasoned opinions were received by the Commission, even though the threshold set out under the Lisbon Treaty for reconsideration on the part of the Commission was not met. One way would be for the return communication from the Commission, following the

71 Seanad Debates Vol. 73, No. 11, Col. 838-839, 22 November 1972.
72 COSAC XLVII p. 11.
Dr iur Patricia Conlan, Member, Institute for the Study of Knowledge in Society, University of Limerick, Ireland—Written evidence

submission of opinions or contributions to be strengthened, and to contain more considered and substantive responses, and in practical terms, to be more prompt.\textsuperscript{73}

3.5 Contact with the Institutions could (also) take the form of bringing the issues (raised) to the attention of the College of Commissioners; informal dialogue with national parliament’s representatives in Brussels, or holding discussions in COSAC meetings. The benefits of access to technology should also be exploited, for example by making use of video conferencing with Commissioners.\textsuperscript{74};

3.6 As regards inter-national parliamentary cooperation, the Oireachtas would be in favour of closer cooperation between national parliaments to discuss proposals that are of particular concern and for which a large number of reasoned opinions were issued, even though the threshold set out under the Lisbon Treaty for reconsideration on the part of the Commission was not met. This could take the form of Letters between Chairmen of relevant committees outlining opinions to other national Parliaments.

3.7 Discussions between national parliaments’ representatives in Brussels could be held, there could be discussions in the forum of COSAC, and discussions could also take place during appropriate sectoral committee meetings of each presidency.

3.8 IPEX\textsuperscript{75} is regarded as a reliable tool as a source of information, and a majority of parliaments confirmed referring to it to read existing reasoned opinions, and to help in drafting reasoned opinions.\textsuperscript{76} Specifically, it is helpful in drafting reasoned opinions (containing, as it does, existing reasoned opinions and summaries of important decisions - including in relation to subsidiarity).\textsuperscript{77} Information is sourced from several networks on inter-parliamentary cooperation. The combination represents a powerful reservoir of information to allow the parliamentarians to fulfil their duties. It is worth noting, that while Oireachtas parliamentary staff access IPEX on a daily basis, parliamentarians themselves access it rarely.\textsuperscript{78} Subscription profiles to IPEX is not confined to the IPEX correspondent, and there are links both on the website and on the intranet. In procedural terms, if either House of the Oireachtas adopts a motion tabled by the Chairman of the relevant Committee, the relevant Minister is informed. The Oireachtas publishes reasoned opinions and opinions in relation to the political dialogue as soon as they are adopted and signed, that is, on the same day. The EU Co-ordination Unit transmits the subsidiarity objection to the presidents of the EU institutions.

3.9 While IPEX is a valuable source of information on the ‘testing’ of the principle of subsidiarity and for political dialogue, the most useful source is seen as interaction with the Brussels based national parliament representatives. It is worth noting that the Houses of the Oireachtas have said that the vast majority of information exchanged between parliamentary administrations (in relation to the Monti II proposal) flowed via national parliament representatives in Brussels.\textsuperscript{79} The importance of the national parliaments’ Brussels

\textsuperscript{73} COSAC XLVII p. 12.

\textsuperscript{74} Examples drawn from COSAC XL VII-XL IX.

\textsuperscript{75} \url{http://www.ipex.eu/IPEXL-WEB/parliaments/institution/iesea.do} accessed 3 October 2013.

\textsuperscript{76} COSAC XLIX p.29

\textsuperscript{77} COSAC XLIX p.29

\textsuperscript{78} COSAC XLVII p. 203.

\textsuperscript{79} COSAC XLIX p.31.
representatives is a recurring theme and suggests that the importance of this role should be acknowledged and strengthened (even in difficult financial times).

3.10 COSAC and bi-lateral contacts are seen more in an ad hoc light (as sources of information).

4. Capacity of national parliaments

4.1 The key concepts posed in this question are threefold: engaged, detailed, effective. Members of the Oireachtas are aware of the importance of European affairs, and are exposed to a range of European issues, not least as members of Joint Committees with a EU scrutiny function, conferred by the Orders of Reference.80 As has been noted already, Joint Committees are provided with ‘Information Notes’ (on the measures to be scrutinised) from relevant Government Departments. In addition to the Committees’ advisors, the Committees have external input through planned presentations by experts and stakeholders. This applies both in relation to Sectoral Joint Committees and to the Joint Committee on European Affairs.81 The websites of the various Committees – and notices in national newspapers - frequently invite submissions (from the public as well as experts) on specific topics. This broad range of potential contributors allows for very wide ranging input into the Committees’ deliberations. However, the individual members have to be in a position to benefit from the exposure to wide ranging information, much of which can be of a very technical nature, and even challenging for the non-specialist.

4.2 In terms of the Oireachtas (or Committees) being as ‘effective at political dialogue with EU institutions as with holding the government to account’, there are several aspects to be borne in mind. As we noted already, there have been only ‘infrequent’ presentations on specific proposals to Oireachtas Committees by members of the Commission.82 Formal political dialogue with EU institutions is limited – but it should be noted that advantage is taken of opportunities as they arise. As we have seen, the importance of keeping MEPs informed of national concerns was confirmed at a very early stage.83 The Orders of Reference of each Joint Committee provide that MEPs from the island of Ireland may attend meetings of Joint Committees and take part in proceedings, but without the right to vote. MEPs from other Member States may be invited to attend, by the Committee. This allows for MEPs – national and from other Member States – to be informed of concerns and developments, and to disseminate these on their return to the European Parliament. In practical terms, the distances to be travelled, the timetables of both parliaments, and the competing demands on the parliamentarians are not helpful.

4.3 There is merit in the argument put forward by Schäfer and Schulz regarding the strengthening of the inter-parliamentary co-operation at European level, not least given the

---

80 A typical example of Orders of Reference for the Joint Oireachtas Committees is that available at - http://www.oireachtas.ie/parliament/media/committees/agriculturefoodandthemerine/Orders-of-Reference.pdf. Contrast with the Orders of Reference for the Joint Committee on European Affairs available at: http://www.oireachtas.ie/parliament/media/committees/euaffairs/Orders-of-Reference-June-2011. Both accessed on 1 October 2013. These functions of these Committees reflect the current state of the scrutiny process in Ireland, which, as stated above, has evolved since accession – see, inter alia, Conlan (2007) and Joint Committee on European Affairs 9th Report.


82 COSAC XLVII p. 11.

83 Seanad Debates Vol. 73, No. 11, Col. 838-839, 22 November 1972.
increasing inter-governmentalism. They offer a view as to what could be achieved as opposed to what they see as the ineffective outcome of formal meetings of COSAC and Chairmen of European Committees.\(^84\) Essentially they propose open debate, goals to be achieved and wide involvement (including Opposition politicians).\(^85\) At the same time, the provisions of the European Union (Scrutiny) Act 2002 (section 2(2) - that ‘the Minister shall have regard to any recommendation of the Committee or the Houses on a proposed measure’ should be borne in mind.

4.4 As has been mentioned already,\(^86\) membership of Joint Committees is a matter for the whips, and individual expertise or preferences are not necessarily criteria taken into account when members are appointed to Committees.\(^87\) It is not unusual for Committee members to express a lack of technical and other knowledge required to scrutinise an EU measure,\(^88\) or to benefit from experts’ presentations (allowing the members to pose a relevant question)\(^89\). There are several other factors which intrude into the scrutiny process. For example, dual Committee membership is not uncommon; therefore there can be meetings’ timetable clashes. Members may move between Committees, thereby leaving early/arriving late, and missing part of the exchanges. Records of Committee debates show that this is not unusual.\(^90\) A vote in the plenum may be called during a Committee meeting, which breaks the rhythm of the debate. It may be that a member present before the break for the vote does not return to the Committee – for whatever reason, even if s/he had asked a question of the experts.\(^91\) All of these factors impact on the contributions of the members, and on the ability of the Committee to be effective.

4.4 In evaluating the effectiveness of the scrutiny process, it may be helpful to note the views of some members of the Oireachtas who have served on Joint Committees, and who have personal experience of the scrutiny process. There are those who are of the view that it is a rubber-stamping exercise,\(^92\) and those who reject any such analysis.\(^93\)

---

84 Something of an echo can be found between Schäfer and Schulz and COSAC XLIX, P. 18, using existing structures, but
86 See response to question XXX
87 This should not be understood as implying that the members of sectoral, or the European Affairs, Joint Committees do not have expertise in sectoral or European affairs. The membership of the Committees changes and at times some members can have considerable relevant expertise; however, in the main, this is fortuitous.
88 See, inter alia, the Joint Committee on Justice, Equality, Defence and Women’s Rights debate on Directive 2004/38/EC – right of free movement for citizens of the Union and their families, available at http://debates.oireachtas.ie/[UJ]2005/12/08 - accessed 16 September 2013. Coincidentally, the transposition of this Directive was subsequently the subject of a preliminary ruling to the CJEU - Case C-127/08 Metock and Others v Minister for Justice, Equality and Law Reform, ECR [2008] I-6241. Arising from this, the original statutory instrument had to be amended to reflect the judgment.
89 See; inter alia,
90 It would be invidious to give specific examples, but a perusal of Committees’ debates will bear this out.
91 See; inter alia,
92 See, inter alia, Senator Denis Donovan (member of Opposition), ‘Since joining the EEC in 1973, successive Governments, including those of which my party was a member, have rubber-stamped willy nilly thousands of EU directives and regulation without any debate. A strong majority of the people gave consent in 1973 to join the EEC but it was never intended that directives and regulations, which currently account for 75% of all laws in the State, should be rubber-stamped. Many people say in the House and other public fora that there is a great deal of scrutiny of EU legislation but that is a load of rubbish. I have been a member of many joint committees and at one stage, as a Member of the Dáil, I served on four committees. When meetings commenced with a discussion of EU legislation, a question was put and agreed without debate. Let us be honest about it. Such legislation was rubber-stamped and it is no wonder the public have rejected various treaties
4.5 There is considerable consensus among observers and commentators that the Dáil is not able to hold the Government to account. This arises from a combination of factors, inter alia., the concentration of power in the Cabinet (as per the Constitution, 15 out of 166 members). This is a major factor in the actual imbalance between the Government and Parliament. As part of the ‘management’ of the current economic crisis, the Economic Management Council (EMC) has been formed, thus reducing the cohesion of the Cabinet in terms of information flow and decision-making, while Cabinet collective decision-making remains.

4.6 Other factors include the strong whip system; the multi-seat constituencies (pitting party colleagues against each other). Voting against a party position results in the loss of the party whip, with obvious consequences including loss of membership of Oireachtas committees.

4.7 One example of the inability to hold the Government to account, is the lack of power of either the Oireachtas Committees or the Dáil to change or amend the Government’s budgetary proposals, as noted by the European Parliament Budget Committee. Added to this, there has been an increase in the use of the guillotine.

4.8 That said, it is worth noting that in 2012 11 Sectoral Joint Committees had 28 pre-Council meetings with 10 Ministers and three Ministers of State.

Given the actual situation as outlined, it seems reasonable to suggest that the efficacy of political dialogue between the Houses of the Oireachtas and EU institutions has to depend because they have not been consulted. Their public representatives in both Houses do not debate directives and regulations in the way they should. Senator Daly is again correct in what he is trying to achieve in this regard.’ Seanad Debates, 20 August 2013 – available at http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2013082000028/opendocument – last accessed 21 October 2013.

93 David Staunton, T.D., member of one of the coalition parties and chairman of the Oireachtas Committee on Justice, Defence and Equality and chairman of the group of committee chairs, offered a contrary view, EU legislation is never merely rubber-stamped, The Irish Times, 6 September 2013. The Reports on European Scrutiny (now in their 9th iteration) also provide an assessment of the scrutiny process - available on http://www.oireachtas.ie

94 It is interesting to note that the website of the Joint Committee on European Affairs describes itself as playing ‘a key role in informing debate on the European Union in Ireland by fully considering important EU developments and initiatives affecting Ireland and in holding the Government to account in Ireland’s relations with Europe’ – available on http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/eu-affairs/role/ – accessed 2 October 2013.


98 10th Report, pp 12-13 – although it should be noted that ‘the Minister shall have regard to the recommendations....’
on taking advantage of opportunities as they arise. These opportunities are both formal\(^99\) and informal.\(^{100}\)

One example to note is the European Parliamentary Week which the Houses of the Oireachtas described as informative and increased the level of awareness of the European-level debate. It was, however, perceived as a ‘stand-alone event and did not translate into greater involvement’.\(^{101}\) At the same time, it is clearly an opportunity to interact with colleagues from other parliaments. Despite the positive potential (for interacting with colleagues), it was not without criticism – mainly regarding planning, too many set pieces (speeches) and using it for photo opportunities. These criticisms echo the comments of Schäfer and Schulz when commenting on the wider aspects of potential interaction.\(^{102}\)

Other possible changes

5.1 One change that could be considered could be the setting up of a dedicated forum (Committee) to deal solely with scrutiny of European developments. To be effective such a Committee would need to have what the Minister of the day, in 1972, referred to as ‘adequate’ resources.

---


\(^{100}\) For example, attendance at meetings of Joint Committees by MEPs from the island of Ireland is provided for in the Orders of Reference; other MEPs may be invited by Joint Committees to attend the meetings. This facilitates interaction between national and European parliamentarians, and has the potential to broaden the discussion (and influence).

\(^{101}\) COSAC XLIX p. 17.

Lessons of the First Yellow Card: How National Parliaments Can Wield More Influence in the EU

Summary
This submission addresses one aspect of the role of national parliaments in the EU – their use of the “yellow card” mechanism to influence the EU’s legislative process. This is a new power which national parliaments have used only once. However, in that case, in May 2012, they successfully forced the Commission to review a legislative proposal, which was subsequently withdrawn. The evidence presented here is drawn from my own research, based on interviews with direct participants; it is to my knowledge the only in-depth study of the process that led to the first yellow card. It is an episode that yields numerous insights and practical lessons as to how national parliaments can use this power to wield greater influence in EU politics. The most important finding is this: the yellow card was not a coincidence resulting from numerous parliaments deciding in isolation to object to the proposal. The yellow card happened because national parliaments coordinated with one another to an unprecedented degree.

Background
The Treaty of Lisbon created an “early warning mechanism” that empowered national parliaments to raise objections (in the form of “reasoned opinions”) to new EU legislative proposals which they believe violate the principle of subsidiarity. These reasoned opinions count as “votes” against the proposal if they are submitted in the first eight weeks after it is proposed; (each national parliament is allotted two votes – two for a unicameral parliament, one vote for each chamber in bicameral systems). If the equivalent of one third of national parliaments raise objections (a “yellow card”), the Commission must review the measure, and if a majority do so (an “orange card”) this triggers an immediate vote in the Council and the European Parliament, either of which may reject the measure. The first yellow card occurred in May 2012, after twelve parliamentary chambers from across the EU – seven unicameral parliaments and five single chambers from bicameral systems – passed reasoned opinions in response to the proposed Monti II regulation regarding the right to strike, amassing a total of 19 votes and surpassing the threshold for a yellow card, which was then 18 votes. (It is now 19 votes, after the accession of Croatia.) Table 1 details which parliaments passed reasoned opinions, the value of their votes, the dates on which each made the political decision to adopt a reasoned opinion, the dates of formal adoption, and the total number of reasoned opinions adopted by each chamber up to the end of 2012.

Table 1. Parliamentary Chambers that adopted Reasoned Opinions on Monti II (2012)

<table>
<thead>
<tr>
<th>Parliament/Chamber</th>
<th>Number of Votes</th>
<th>Date of Decision to Draft/Adopt Reasoned Opinion</th>
<th>Date of Formal Adoption of Reasoned Opinion</th>
<th>Total Reasoned Opinions 2010-2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td>2</td>
<td>20 April</td>
<td>3 May</td>
<td>6</td>
</tr>
<tr>
<td>French Senate</td>
<td>1</td>
<td>25 April</td>
<td>22 May</td>
<td>11</td>
</tr>
<tr>
<td>Sweden</td>
<td>2</td>
<td>26 April</td>
<td>11 May</td>
<td>34</td>
</tr>
<tr>
<td>Polish Lower House</td>
<td>1</td>
<td>27 April</td>
<td>11 May</td>
<td>10</td>
</tr>
<tr>
<td>UK House of Commons</td>
<td>1</td>
<td>9 May</td>
<td>22 May</td>
<td>9</td>
</tr>
</tbody>
</table>
A number of lessons may be drawn from the experience of the first use of the yellow card:

1. An unpopular EU proposal can provoke significant opposition. The proposed Monti II regulation attempted to reconcile the right to strike with the EU’s economic freedoms in light of the decisions of the European Court of Justice (e.g. the Laval case). However it was widely disliked on the left because it was seen as placing limits on the right to strike, and more generally as interfering in member states’ powers to organize their own labour markets.

2. Concerns about whether a proposal violates the principle subsidiarity can overlap with broader concerns about its legal basis, proportionality, or policy effectiveness. As required by the treaty, national parliaments objected to Monti II on subsidiarity grounds, but these were often directly connected to concerns that its legal basis was flawed (in particular the alleged misuse of Art. 235, the “flexibility clause”) or that its policy content was confusing and would not achieve its intended purpose of clarifying EU law in this field.

3. The eight-week deadline is not an insurmountable obstacle. The Commission formally proposed the Monti II regulation on March 27, 2012, commencing the eight-week review period. This set May 22 as the deadline within which national parliaments needed to accumulate the necessary 18 votes in order to achieve a yellow card. As Table 1 shows, this threshold was not surpassed until the very last day, with the passage of reasoned opinions in the lower house of the Belgian and Netherlands parliaments.

4. One parliament can play a significant leadership role. In this case, it was the Danish parliament. The members of the Danish European Affairs Committee were unanimous in their opposition to Monti II, and so decided early not only that they would pass a reasoned opinion themselves, but that they would encourage other national parliaments to do the same, with the deliberate goal of attaining a yellow card. They were the first chamber to draft a reasoned opinion (on April 20), which was quickly translated into English and unofficially circulated to other national parliaments’ delegations at a COSAC interparliamentary conference which took place in Copenhagen on April 22-24, in the middle of the review period.

5. Face-to-face meetings and personal contacts between members of different national parliaments can facilitate cooperation. COSAC is a twice-yearly conference which brings together members of the European Affairs Committees of the national parliaments of the EU, plus the European Parliament. The COSAC meeting that took place in Copenhagen during the review period for Monti II allowed many parliamentarians to discuss it on a personal, face-to-face basis on the margins of the conference. This was the case even though
neither the Monti II proposal nor more general issues of subsidiarity scrutiny of EU legislation were on the official agenda of the meeting.

6. Opposition to a proposal can build momentum towards the end of the eight-week review period. A closer look at Table 1 shows a pattern in the timing and sequence of the reasoned opinions. After Denmark, in the period from late April to mid-May, reasoned opinions were produced by five of the parliamentary chambers that most frequently do so: the French Senate, the Swedish parliament, the Polish Lower House, the UK House of Commons, and the Luxembourg parliament. Then in the final week before the deadline, there was a sudden rush of six additional reasoned opinions, five of which emerged from parliamentary chambers that seldom produce them – those of Finland, Portugal, Latvia, Malta, and the Belgian Lower House. (The last chamber, the Netherlands lower house, deviates from the pattern.) What this suggests is that there was a “bandwagoning” effect: the later chambers took action in the knowledge that a yellow card was likely, as they could see that the vote count was approaching the threshold even as the deadline was looming.

7. The National Parliament Representatives in Brussels played an indispensable role by sharing with one another real-time information about the state of play regarding the scrutiny of Monti II in their respective parliaments. Only with this network of representatives in place was it possible to compile an accurate and up-to-date picture of the likelihood of a reasoned opinion from each chamber, and thus a rough “vote count” as the process unfolded. and thus the knowledge that a yellow card was within reach. The representatives shared this information with their home parliaments, whose decision whether to act was influenced by the knowledge that the yellow card was within reach.

8. IPEX did not have timely information for all parliaments during the process. While the IPEX (Inter-Parliamentary Exchange) website is a crucial tool for the exchange of information between parliaments and its dissemination to the public, it is not always up to date. This is due to the fact that many parliaments do not report a reasoned opinion until it has been formally adopted, even if the effective decision was made days or weeks earlier (see Table 1); in addition, sometimes the parliaments do not transmit their reasoned opinions to IPEX in a timely fashion. The crucial conduit of information between parliaments during the yellow card process was not IPEX but rather the network of national parliament representatives in Brussels. The general public was unaware that a yellow card was imminent.

9. Parliaments from small member states have disproportionate weight in the process. It is notable that the early warning mechanism treats all parliaments equally, regardless of the population size of the member states. The votes of the unicameral parliaments of some of the smallest states in the EU (Luxembourg, Latvia, Malta) counted for twice as much as the UK House of Commons.

10. The Yellow Card is not a veto, but it sends a very strong message. Under the rules, a yellow card only obliges the Commission to review the proposal, after which it has three options: it may maintain, amend or withdraw. In the event, the Commission decided to withdraw, but claimed that it was doing so not because of the subsidiarity objections of national parliaments, but due to opposition in the Council and the European Parliament. Indeed, considering that the proposal would have required unanimity in the Council (as it was based on Art. 235, the “flexibility clause”) it seems quite unlikely that it would have ever been passed. Even so, the yellow card arguably forced the hand of the Commission by
requiring it to formally review the measure and make a positive decision about its fate; it might otherwise have been quietly shelved rather than formally withdrawn.

11. The yellow card can have an impact even if the Commission does not agree with national parliaments’ interpretation of subsidiarity. The Commission rejected national parliaments’ arguments that the Monti II regulation violated the principle of subsidiarity, maintaining that the EU legislation was indeed necessary in this case. This is unsurprising, given that the Commission wishes to maintain its freedom of action in future cases. However, the logic of the early warning mechanism is that the Commission does not have a monopoly of wisdom when it comes to interpreting the subsidiarity principle; rather, its arguments must be tested in a political process involving national parliaments, which may well take a different view. In this case, the Commission’s arguments were tried and found wanting.

September 2013
Reforms over the last two decades, culminating in the Treaty of Lisbon, have established a dual accountability, as the basic mode of EU accountability. It requires that proposals are:

- approved by a large majority (QMV = 74% of the votes) in the Council, composed of national ministers accountable to national parliaments
- not rejected by the European Parliament, composed of directly elected MEPs

This applies notably in the EU's ordinary legislative procedure, budget procedure and for the approval of significant international agreements entered into by the Union. There are exceptions, in which the European Parliament has a lesser role and/or where unanimity is required in the Council, but in all cases, ministerial approval in the Council is required. It is therefore natural that a national parliament's main opportunity to shape or reject European legislation rests with its ability to determine its minister's position and hold him or her to account.

The Lisbon treaty brought in reforms intended to facilitate such national parliamentary scrutiny. National parliaments must now receive all legislative and budgetary proposals eight weeks in advance of Council deliberation on the matter, giving them more time to examine proposals (and possibly discuss them with their minister), shaping the position that their country will adopt in Council.

Shaping their minister's position is actually more important than the new right to formally object to a proposal if they consider that it violates the principle of subsidiarity (the "yellow card" and "orange card procedures"), which has received so much attention. These days, EU legislation is increasingly about modifying existing EU legislation, not about extending the EU's remit into new fields. The argument about whether the EU should deal with the subject was settled long ago. That is why there has only been one "yellow card" procedure so far, (which resulted in the Commission withdrawing its proposal) and the "orange card" has never been deployed.

In any case, given the high level of support needed in the Council to accept proposals, a de facto "red card" can be deployed there - by a minority of ministers if there is doubt about subsidiarity, or indeed about proportionality or the substance of a proposal.

But the procedures, methods and traditions for holding ministers to account and shaping their mandate vary considerably -- and they are evolving. More parliaments are beginning to follow the Nordic model of ministers appearing before the appropriate parliamentary committee, before they catch the plane to Brussels, to explain, justify (and sometimes even receive approval) for the line they intend to take. For instance, the Irish parliament changed its procedures in this direction last year.

---

103 An exception is where Council has delegated powers to the Commission, though even here it usually retains a power to intervene
104 This also applies to "intergovernmental" activities, and to the European Council.
105 An exception might be some of the current proposals for financial sector regulations.
Some national parliaments, however, do very little, and arguably this is where there is a democratic deficit to be found: some governments (admittedly, elected governments) can act at European level with very little parliamentary scrutiny. The UK is a country where there is surely room for improvement, perhaps, like Ireland, drawing on the Nordic experience.

National parliaments together at EU level

Less promising, but often suggested, is the route of creating some sort of new parliamentary body at European level composed of representatives of national parliaments. There are already such bodies: COSAC, Joint Conference on CFSP & CSDP, Joint Committee Meetings on the European Semester, on Europol, and others, as well as the new "Conference" under Art 13 of the Fiscal Stability Treaty.106

These Inter-parliamentary bodies are used as forums, and as venues to hear reports, ask questions, and hold debates. They are useful for networking and for those most involved in these issues in each parliament to get to know each other and understand each other better. However, none of them have a decision-taking role on legislation, budgets, appointments or dismissals, for good reasons:

- Several national parliaments take the view that they mandate their ministers to take decisions in the Council and they would have a procedural/constitutional problem with simultaneously mandating some of their own members to take a decision in another EU body, acting separately from their government.

- Indeed, mandated MPs and Ministers, if taking decisions, would presumably vote the same way (duplication). If they didn’t, then there would be a domestic political disagreement between parliament and government being played out on the European stage instead of being solved domestically.

- It would be unwieldy: experience with the pre-1979 EP, which was composed of delegations from national parliaments, showed that on particular days entire national delegations would be absent due to important events in their national parliament, thereby making deliberations unrepresentative and majorities haphazard.

- It would make the EU’s institutional system, that is already difficult for the public to understand, even more complex, creating a new decision taking body alongside the Council, whose members are already accountable to national parliaments, and the directly elected EP.

Nonetheless, stronger reporting requirements to the appropriate inter-parliamentary body with questioning and debates, could be provided for. They should be seen as complementing, not replacing, national parliamentary scrutiny of European affairs. They can deepen the understanding and increase the amount of information available to national parliamentarians. But the final decisions to be taken are for each parliament separatel

Deepening EMU

106 The Lithuanian Parliament is set to host an initial meeting of the Art 13 Conference, during its government’s EU Council-presidency, in Vilnius in October. The Speakers/Presidents of all 43 chambers of the national parliaments agreed at their meeting in April in Nicosia that the Art 13 Conference should involve the Parliaments of all MS (not just signatories of the Fiscal Stability Treaty)
Dr Richard Corbett, Member of the Cabinet of the President, European Council—Written evidence

Does the deepening of EMU change all this? Is it qualitatively different? True, we are dealing with decisions that are not necessarily legislative (banking supervision, macroeconomic coordination, etc) and also with subjects that are key national responsibilities, set in a European context. As President Van Rompuy (himself a former Speaker of a national parliament) said:

"Of course, as a general rule, accountability for national decisions is via national parliaments, and that of European decisions is ensured jointly by the European Parliament and the Council, whose ministers are accountable to national parliaments—a double safeguard, but a dual complexity. And when a decision involves both national and European competences, it becomes even more complicated. And that's exactly what's happening these days." 107

But the key is still to ensure that, whether they are scrutinising a national decision by their government, or their government’s participation in a European decision, national parliaments are able to ensure accountability and have the tools to do so. The key tool-- the ability to scrutinise their national minister -- is for each Member State to organise in respect of its own constitution and parliamentary tradition. It does not require a European rule to do so.

20 September 2013

---

107 Speech at the Brussels Think Tank Dialogue on 22 April 2013
Dr Richard Corbett, Member of the Cabinet of the President, European Council—(QQ 76-88)

Dr Richard Corbett, Member of the Cabinet of the President, European Council—(QQ 76-88)

Evidence Session No. 5  Heard in Public  Questions 76 - 88

TUESDAY 3 DECEMBER 2013

Members present

Lord Boswell (Chairman)
Lord Bowness
Lord Carter of Coles
Lord Dear
Lord Foulkes of Cumnock
Lord Hannay of Chiswick
Lord Harrison
Lord Maclellan of Rogart
Lord Marlesford
Baroness O’Cathain
Baroness Parminter
Earl of Sandwich
Lord Tomlinson
Lord Tugendhat
Lord Wilson of Tillyorn

Examination of Witness

Dr Richard Corbett, Member of the Cabinet of the President, European Council

Q76 The Chairman: Dr Richard Corbett, Member of the Cabinet of President Van Rompuy, very well-known to myself and many Members of this Committee, and you have been very helpful in your contributions in the past. We have your written submission before us and some of us had an opportunity of looking at your previous evidence to this Committee in 2001. One could ask the question, has it all changed or is it the same? But I will not start on that note, although you may like to comment en route.

Dr Corbett: I just hope it is not contradictory.
The Chairman: We will check. As you know, we are looking into the role of national parliaments and I think you will well understand what I might call the rules of engagement about this. It is a public evidence session. It will be recorded, it will be podcast, a transcript will be prepared and it will be submitted to you, but it will be on the web before that as an informal. Subject to that basis, I wonder whether you would like to say anything general, either supplementary to your evidence or otherwise.

Dr Corbett: Thank you, my Lord Chairman. The general thrust of my views should be clear from my written evidence, which is that I think the most propitious route for national parliaments to go down to seek to influence EU decision-taking is through influencing their own governments and the Minister that will represent their country in the Council. I think the route of multinational inter-parliamentary bodies is less propitious, and the yellow card, while it is valuable as a safeguard, is in practice not likely to be the main vehicle for asserting national parliamentary viewpoints. That is, in a sense, summing it up in a nutshell.

The Chairman: Yes, thank you. That is very helpful. What we will do is we will go around Committee Members who have expressed an interest in particular areas. I myself, through my own experience, want later to ask you about COSAC, because that is the international face of this particular issue. I am going to start with Lord Hannay.

Q77 Lord Hannay of Chiswick: Yes. Picking up on your introductory statement if I could, do you not think that it is not in fact an either/or, it is a both/and? That is to say, you are absolutely right in putting strong emphasis on parliamentary assemblies’ control over their own executives, but that does not mean to say that elements of shaping and trying to influence the European institutions, national parliaments doing it, cannot also be part of it. But if I could follow up on the first part with a question: you made clear on your evidence how much importance you attach to this action by national parliaments on their own executives. Do you think that that is best achieved by trying to produce a kind of single template? You sometimes hear people say, “If we all had Folketing committees that would be tremendous”. Do you not think that the diversity of national constitutional history and so on means that we have to all up our game, but each of us probably is going to be upping their game in a slightly different way, and that a single template is therefore not a very useful direction to follow?

Dr Corbett: On your first question, I agree absolutely, it is not either/or. That is why I used the words “most propitious” and “less propitious”.

On the second question, there is no single template, you are absolutely right, but one of the beneficial spin-offs of COSAC and other inter-parliamentary contacts is that national parliaments are learning from each other. They are looking at best practice, they are looking at what works and what does not work and sometimes you see something in another country that you think is a jolly good idea, but it would not work in your country, whereas other things would. I think there is an evolution. The Irish Parliament, for instance, revised its procedures just over a year ago, maybe longer now. I personally think that more national parliaments will be looking at what I would call the Nordic model—you referred to the Danish Folketing—whereby any Minister going next week to a Council meeting in Brussels goes this week before the relevant parliamentary body, which will vary according to national systems, and says, “Look, this is what is on the agenda. This is the position I intend to take” and there is a discussion and a debate on it and the national parliament can shape the Minister’s position before he or she goes off to Brussels rather than hear about it afterwards. That practice was initially just with the Folketing. When Sweden and Finland joined, they operated similar models; the Baltic countries now do likewise. The Irish
Parliament has moved in that direction. I think others will do the same. It does not necessarily undermine (another case of not either/or) documentary-based scrutiny, but I think it can be a useful complement.

Lord Hannay of Chiswick: But the Folketing example is of course a bit special because they mandate the government, which would seem to work only in a coalition government situation, and other ones that have a followed a little bit their practice do not go quite that far. But that is very useful. I thought that COSAC might conceivably operate a kind of panel which would try to spread best practice around a bit more, might interview each chamber and find out whether they could give them advice—not direct them, give them advice—on how better to do it.

Dr Corbett: The Danish model is special. It arose during a very lengthy period of minority government in Denmark, where it was essential for the Government to ensure that it was not going to be, shall we say, tripped up afterwards on what it had agreed to in the Council. It needed to make sure it had clearance beforehand. That tradition, which you could call mandating, has lingered on, and it is true that other parliaments do not necessarily go quite that far. It all hinges a little bit on your definition of “mandating”, what exactly it means.

The Chairman: If I could pick up that point myself, Dr Corbett, in the spirit of you resisting the temptation to say either national route or collaborative route for this dilemma, would you also accept that there is something of a spectrum between what you have described as a documents-based system in terms of formal scrutiny and a hearing system, where one could have—and indeed, this Committee and its sub-committees does from time to time—in effect public dialogues through open letters, for example? Lord Harrison’s sub-committee looking at the euro crisis has been in virtually constant contact with Ministers here on the record and receiving responses from them. It is not quite absolutely that we all have to do it through a public hearings procedure. It could be nuanced or could be varied according even to the circumstances of the particular case. Would you recognise that world, as it were?

Dr Corbett: Yes, I agree it is spectrum and it is a question of getting the balance that suits each individual national parliament in accordance with its constitution and its traditions, but I think that balance could in some countries be shifted more towards the Nordic model.

Q78 Lord Tomlinson: You have made it quite clear that you believe that the most effective mechanism is the mechanism of national parliaments getting their Ministers and their governments to understand clearly the views of the parliament. Based on your experience, how heavily, if at all, do you see the views of national parliaments featuring in the discussion between heads of state, either at formal meetings or at the informal meetings? Do they show any realisation, any commitment to the views of national parliaments as they have developed?

Dr Corbett: Yes, it is a not infrequent occurrence for a Prime Minister or indeed a President to say, “This will not wash with my national parliament. Such and such a proposal would not be acceptable, nor could I persuade my national parliament”. Sometimes they have a high confidence in their ability to persuade their national parliament, but it is not at all unknown for Prime Ministers to say, “No. Even if I had sympathy with this proposal, it would not be acceptable to my national parliament”.

The Chairman: That is not merely a tactical device, it can be reflecting previous exchanges. Is it not a bluff exercise or it may be?

Dr Corbett: Let me say it is not unknown for it to be bluff.
Lord Wilson of Tillyorn: I am going down a notch, but broadening out a bit. It would be very useful if you could tell us how often in Ministerial councils the views of national parliaments are discussed, apart from a Minister talking about the views of his own parliament. How often does that happen and how often are those views discussed either in council or in the margins of that sort of a council meeting?

Dr Corbett: It is normally the Minister talking about his or her own national parliament, rather than a cross-cutting discussion about different parliaments. It is up to each Minister to say, “This is the view of my parliament” rather than saying, “I agree with the view of the French Parliament, which is different from what you, French Minister, said”. That would be a no-no.

Lord Wilson of Tillyorn: You do not get somebody putting forward the views of their own parliament and saying, “By the way, this, that and that parliament also take the same view”. In other words, are they aware of what the other parliaments are doing?

Dr Corbett: I daresay it could be the case when a yellow card is waved, but it is not at the level of the European Council that they would have that discussion, and maybe not even at the level of the Council if the Commission has already withdrawn its proposal.

Lord Foulkes of Cumnock: What about relations between the European Parliament and national parliaments, both as institutions and also the MEPs and MPs individually and collectively, either through groups or non-party activity? What do you think the ideals should be?

Dr Corbett: I see the two parliamentary levels as complementary. The national parliaments are obviously focused on the Minister representing their country in the Council; the European Parliament is having to interact with the Council as a whole, and indeed scrutinise the European Commission. There are a number of instances now where the two come together.

You mentioned, Lord Chairman, COSAC. There are now at least two other bodies and we might come back to their role and whether these are useful or not. I have always found that the most useful contacts are the informal ones, often through political parties. Members of the European Parliament from party X are usually in close contact with MPs from party X and meet in all kinds of frameworks; useful exchanges, informal. There are also hearings organised by national parliaments involving MEPs and there are open invitations, I think, to a number of European parliamentary committees for national parliaments to send representatives. All this is good in terms of contact and understanding. I do not know whether you want me to go on now to the role of COSAC and why I think—

Lord Foulkes of Cumnock: I have just a couple of supplementaries. Did the tripartite meetings between British MEPs and the House of Commons and the House of Lords exist when you were an MEP and did you find them useful?

Dr Corbett: They existed then. I found them quite useful. I do not know how they have evolved since.

Lord Foulkes of Cumnock: Not much, I think. We have just had one postponed. It may sound trivial, but you rightly said “informal contact”. We have had a difficult time in trying to get MEPs access into the Palace of Westminster and MPs into the European Parliament. Even something like that would help to get more informal contact, so we meet each other on a more regular informal basis.
Dr Richard Corbett, Member of the Cabinet of the President, European Council—(QQ 76-88)

Dr Corbett: Yes. MEPs used to have badges to come into the Palace of Westminster and that is now much more difficult. I think the other way around is not a problem, MPs and Lords into the European Parliament. I do not think that is a problem.

Q79 The Chairman: I should declare an interest as a badge-holder for the European Parliament. Can I ask on this whether you can give us a view on the interaction between the national parliament representatives, who are of course officials of our respective parliaments, and the political groups in Brussels? My impression is that there is one member state that is well-resourced and has a quite strong representation for its political groups in Brussels as well, and presumably they are linking the national parliament with the MEPs who come from that country. But I am interested in whether the terms of trade for a sensible discussion should be or may be shared between what goes on at the official level, as it were, the official meeting that takes place every week of national parliament representatives and their informal contacts and/or at the political level. Do you see these as being complementary processes?

Dr Corbett: I would see them as being complementary, but it has large resource implications, as you pointed out.

The Chairman: I think the inference of what I have set out is that, while one or two countries might do it, it is not a realistic runner for most of the member states.

Dr Corbett: Yes. I think only one does it properly, that is Germany, where at their office in Brussels, the parties, the groups in the German Bundestag, are also represented and they will each have their own networks of contacts with the corresponding political groups in the European Parliament. I am not familiar with how that works in detail, but I should imagine it is useful complementary political networking. To be able to have an office in Brussels large enough to have staff as well from each of the party groups—I do not know whose budget line they are employed on—has significant resource implications.

Most parliaments just have one or two officials, and you would know better than I whether that is useful, but I occasionally meet them before—

The Chairman: It is very useful.

Dr Corbett:—European Council meetings and brief them as to what is on the agenda and what is likely to happen. I presume that is useful for members from all parties when it is fed back.

The Chairman: Thank you. After those preliminary thoughts on how we might influence national parliaments, can we turn to the multinational side of this and talk a bit, at least initially, about reasoned opinions? I will ask Baroness O’Cathain to come in on that.

Q80 Baroness O’Cathain: Thank you. Good afternoon, Dr Corbett. We have had a not very successful relationship with the Commission on the basis of views and opinions and yellow cards, and the fact is that we feel—I wonder how you would interpret this—that there is a deliberate sort of blocking, “Oh, those pesky people. Let them get away”. On the basis that some 300 yellow cards have been issued and not one has succeeded, do you think they are a fig leaf to cover some problem that is endemic in the relationship between national parliaments and the Commission?

Dr Corbett: You mean reasoned opinions under the yellow card procedure?

Baroness O’Cathain: Yes.
Dr Richard Corbett, Member of the Cabinet of the President, European Council—(QQ 76-88)

**Dr Corbett:** The first time that the relevant threshold was achieved, the Commission did withdraw its proposal, even though it stated it had reservations about whether some of the objections really were about subsidiarity, but it did respond by withdrawing. We now have a second case where the latest I have heard is that it is thinking of not withdrawing it, but I do not have the latest information on that. It is early days, in that sense, but the political weight of a certain number of national parliaments showing the yellow card is something that the Commission cannot ignore. It needs a political steer from the commissioners on their civil servants to make sure that they do not have this pesky attitude to which you referred.

But the reason I do not think the yellow card will be the main route for exercising national parliamentary influence is that most proposals for legislation do not give cause for concerns on subsidiarity. There may on the substance, but not necessarily on subsidiarity, and as time goes on, I think that this will be the case even more. Why do I say that? Because over time, more and more proposals for European legislation are proposals to amend existing legislation that has perhaps become out of date or not worked as intended or needs adaptation to technical progress. In that respect, the argument about whether the EU should be dealing with the subject at all has already been had—a long time ago. Therefore I think that subsidiarity will not feature as the main concern in the bulk of proposals. And if you want to influence the substance, then the yellow card is not particularly useful. If, however, you do occasionally have concerns about subsidiarity, you need a third of national parliaments to wave a yellow card and then the Commission has to think about it, but in the Council, you need at the moment only about a quarter of the votes to actually block, not just to think about it again. No European legislation can be adopted without the approval of a qualified majority—in some cases, unanimity—in the Council. That is 74% of the weighted votes of the member states. No European legislation exists unless an overwhelming majority of national governments have agreed, “Yes, we need to have common rules on this at European level” and it is blockable by a small minority. If your Minister is reflecting the views of the national parliament, then it is easy to block a proposal in the Council. You need a lower majority, a lower threshold than a yellow card, where you need a higher threshold, and then the Commission only thinks about it.

**Baroness O’Cathain:** That is on subsidiarity. What about proportionality? If you say, for example, that most of the legislation proposed is fairly old—or a lot of it is fairly old—and needs to be undated for changing circumstances, the same can happen with proportionality and there just does not seem to be a willingness to admit that maybe a member state has a point. How can we improve that, getting back to this study that we are looking at, in terms of relationships between this Parliament and other national parliaments, and indeed the Commission? What we need is an improvement of understanding when issues like this arise.

**Dr Corbett:** The bottom line of course on proportionality is always and still that your Minister can oppose it in the Council and if there is a blocking minority on the grounds of proportionality or a blocking minority where they have different grounds for voting against, you will be able to block the proposal easily at that level. Upstream of that, I think there is probably room for persuading people that the borderline between subsidiarity and proportionality is not absolutely clearcut and you could interpret subsidiarity a little bit more broadly and raise it earlier with the Commission.

**Lord Hannay of Chiswick:** Could I just go on to your point about the yellow card? I take what you say that you do not believe that much of the legislation coming forward will raise subsidiarity issues as it will be a revision of something that is already on the statute book and therefore subsidiarity has already been recognised. But do you not think there is another argument that plays pretty heavily with a lot of member states, including this one, of
course, that given nervousness about the Commission having power grabs—you know all the headlines—it is important that the yellow card procedure that is now in the treaty should be seen to work when it is used correctly and that if we cannot have a functioning yellow card, then we are never going to be able to deal with this feeling that the European Union is continually creeping forward and increasing its competence? The Commission’s record on the yellow card is pretty awful, frankly. On Monti II, it ducked. It did not simply come out with its hands up and say, “There is a yellow card and we have looked at it and we agree”. It withdrew the proposal.

On the EPPO, I am not sure that it is issued yet, but I saw a document dated 27 November that was frankly an appalling document, entirely written by Commission lawyers, simply saying that 19 or however many parliamentary assemblies that said that this was over the edge of subsidiarity just had it wrong. There was no question of even looking at it again. The Commission was going to say, “We will carry on because they had it wrong”. Is it not about time that the European Council said to the Commission, “We want you to take the yellow card procedure seriously, not to play stupid games with it”? If the European Council said that, said it perhaps to the new Commission coming in, that would have a pretty strong effect. It is not enough to say, “You can go off and block the thing anyway in the Council”. The Commission is bringing this into disrepute.

The Chairman: May I just say for the record we have been advised the document has been issued, so it is a matter of record. It sounds a bit like Brecht saying, “The people have erred. Let us just choose another people.” How do you feel about it?

Dr Corbett: First on the headlines that you referred to, the view is sometimes expressed that the Commission imposes legislation on member states that do not want it. The Commission only proposes. Even if you think it proposes too much and it is too detailed and it is not proportionate, it is a proposal. It does not get through unless there is a very large majority of national Ministers in the Council, who are members of national governments, accountable to their national parliaments, who agree that this is a subject that needs to be dealt with at European level. I would underline that first.

Having said that, the Commission should do better. I think it is too early to extrapolate on the basis of two cases. On the first, although you were grudging about it, the bottom line is that the Commission did withdraw the proposal on Monti II. This time I gather it did not. On the face of it, I am not surprised, because I imagine that it is thinking that if it immediately withdraws every time for the first few times, it has effectively transformed the yellow card into a red card. I personally think it should be not a legal red card but normally a red card that it should withdraw unless it can substantiate a very good reason not to.

But I can understand that for the first few cases it wants to have a precedent either way to show that it used its judgment and so on. On the public prosecutor, I would imagine it would argue that this is something that has just been put in the treaty, recently ratified by every national parliament, and it is explicitly there. I would have thought that it would have been better advised to say, “We will rewrite this proposal!” rather than maintain it, and try to balance the different concerns. But I am not familiar with the paper that it has just issued.

Lord Hannay of Chiswick: When it is issued, perhaps you could think about it with your boss, the Chair of the European Council, because, frankly, if it is issued in the form that I saw it, it will create an appalling impression, which is that even when over a third of parliamentary assemblies say that it has not fulfilled the subsidiarity criteria, the Commission takes two weeks to say, “You are a lot of idiots. Of course we are right. We have taken our legal advice and you are wrong”. This is no way to do politics, frankly. It just is not.
The Chairman: If we can pursue the theme of dialogue, Baroness O’Caithan.

Baroness O’Cathain: I just had a very small point on the last comment of Lord Hannay, that the Commission takes two weeks to say, “You are a lot of idiots”. At least that is some response, but what if you have a situation where you have a serious issue and the national parliaments agree with you and with all evidence? If the Commission refuses to give evidence, refuses to go on video-conferencing or refuses to meet us, or even cancels at the last moment a meeting that was going to be very difficult for us to go over to see this Commissioner, does that help relationships between national parliaments and the Commission?

Dr Corbett: No, obviously not. I am not familiar with the particular cases—

Baroness O’Cathain: I will tell you later.

Dr Corbett: —but the Commission should—and I hope whoever is appointed to the new Commission will—have a healthy respect for national parliaments. It should be part of the normal political processes of the European Union.

Q82 Lord Marlesford: It is in a way following up Lord Hannay’s question, but going back to your distinction between national parliaments seeking to influence their judgments, being more propitious about it, as you put it, than seeking to influence each other, can I suggest to you a possible distinction between national parliaments and Governments in decision-making? While Governments will in general at the Council consider proposals on merit and on national interest, there is always traditionally an element of horse-trading in Brussels. There always has been and always will be. Therefore it could be argued that national parliaments, especially a place like the House of Lords that is remarkably independent of Government, can take a more independent line than a Government will. In this respect, if something comes up, would it not be much better sometimes for national parliaments to get together to discuss it on the merits and maybe on national interest, but perhaps coming to a different view, a view even that some of their national governments would not necessarily support?

Dr Corbett: I agree if you mean using bodies like COSAC or the new inter-parliamentary conference under article 13 of the Stability Treaty. I attended the inaugural meeting of that with Lord Harrison, and the inter-parliamentary conference on foreign affairs and security. If you mean using them as a forum where national parliaments can exchange their views, confront different opinions, hear reports, justifications, ask questions, grill officials from the Commission or from elsewhere, yes. If you mean that such bodies should have a decision-taking role in their own right to approve or reject legislation or budgets or appointments or dismissals, then I would say no. I do not think they are structured in a way that enables them to do that.

Lord Marlesford: I agree with what you have said. I was not suggesting that they should be decision-making, but the point about COSAC and grand meetings, with people discussing whatever is on the agenda, I am talking about much more nuts and bolts stuff. When proposals are made by the Commission that national governments present to the parliament with an explanatory memorandum or whatever, at that stage, ad hoc, parliaments would get together independently of the Commission, independently of their government, to see whether they can muster an agreed position, which may be a more useful position sometimes than that of national governments.

Dr Corbett: Yes. I can see lots of practical problems in organising that in a way that would be useful, but there is nothing to prevent it under the treaties. I think the Danish Parliament
Dr Richard Corbett, Member of the Cabinet of the President, European Council—(QQ 76-88)

has explored the idea of having meetings of like-minded parliaments on specific issues to explore those subjects. There is nothing wrong with that.

**Lord Carter of Coles:** Dr Corbett, I think you have probably dealt with this in your opening remarks, but for clarity around the yellow card, which is essentially a blocking and a reactive mechanism, do you think on the other side there could be a role for national parliaments in proposing legislation and proposing policies?

**Dr Corbett:** Yes, I saw that suggestion in the papers sent to me before this meeting. I think it is an attractive idea. In the Union, the Commission normally has the sole right of initiative, but it does not have the sole right to bright ideas and very often—in fact, usually—the Commission is acting because suggestions have been put to it by national governments, by the European Council, by the European Parliament or by others—NGOs, all kinds of people. If it is all kinds of people, it should certainly not exclude national parliaments playing such a role. I think it would carry a certain weight if a proposal for legislation, or indeed a proposal to repeal legislation, came from a national parliament.

**The Chairman:** Fine. I have collected along the way one or two colleagues who wanted to ask questions, some of which I think will bear on this and earlier exchanges, but I think we should perhaps tidy them up now. There was a question from Lord Sandwich.

**Q83 Earl of Sandwich:** I want just to go back to the European Parliament. Can you look at it from the point of view of the Treaty of Lisbon, which after all puts stress on both the European Parliament and national parliaments? Am I right in perceiving that the European Parliament has benefited and been given the limelight of that decision or do you feel that they have been coming up equally, if you see what I mean? Are parliaments not being left a little bit in the shade?

**Dr Corbett:** It is true that since the Lisbon Treaty, you can adopt almost no legislation, or very little legislation, at European level without the approval of the European Parliament: you cannot adopt the budget; you cannot adopt the multi-annual financial framework; you cannot ratify most significant international agreements; you cannot appoint the Commission; you cannot choose a president of the Commission; you cannot delegate implementing powers or delegated legislative powers to the Commission, without the approval of the European Parliament, so it has become “incontournable” in Brussels.

At the same time, the reinforcement of the role of national parliaments in the Treaty of Lisbon is essentially—apart from the things that require national parliamentary approval such as own resources decisions and treaty amendment and accessions—the eight-week period—it used to be shorter—given to national parliaments, ostensibly for the yellow card, but in practice it gives them the opportunity to do what we were talking about earlier, to shape their government’s position ahead of the Minister going to Brussels. That eight-week period may have been intended purely for the yellow card procedure, but in practice it makes it easier for national parliaments, or gives them more time, to influence their own government before the Minister goes to the Council meeting.

**Lord Maclennan of Rogart:** If an objective is to obtain consensus to legislative proposals, and of course that will not always be possible, what is your objection to having some formal responsibility placed on Members of the European Parliament, or certain Members of the European Parliament, to report on the views of national parliaments? If people were allocated responsibilities, recognising their party allegiances and so forth, could it not be part of the role of an MEP to bring evidence directly to bear on the discussions in order to seek to gain some kind of consensus?
Dr Richard Corbett, Member of the Cabinet of the President, European Council—(QQ 76-88)

**Dr Corbett:** Do you mean an MEP to report, for instance, in Committee meetings in the European Parliament on the views of all the national parliaments when discussing a particular item?

**Lord Maclellen of Rogart:** Yes.

**Dr Corbett:** There is certainly nothing to stop it. I think on a practical basis, the unit in the European Parliament that deals with relations with national parliaments could be put to work to make sure it compiles, where they are already available, the views of national parliaments and perhaps a Member or the Committee Chair could feed that into their own deliberations. Why not?

**Q84 Lord Tugendhat:** May I approach Lord Carter’s question from the other end, as it were? The Commission is often criticised for producing too many proposals on too many issues and constantly seeking to extend its remit, but does this not at least partly arise from the fact that the Commission is trying to respond to the pressures that interest groups of various sorts are for ever bringing to bear on it? With 28 parliaments in the European Union at the moment, and perhaps more to come, to the extent that it responds to pressures from national parliaments to bring forward proposals, the flood of propositions from the Commission will get ever greater. I think there is a difficulty that we do need to face. When you had a limited number of member states, the Commission could have a relationship with them, but with 29 member states, it is very difficult to see how the Commission can have a viable relationship with them. The most effective thing that national parliaments can do is to operate on their national Ministers.

If we did want to bring national parliaments into the central decision-making arena in an effective fashion—there is a lot to be said for that—a proposal put forward by Michael Heseltine back in the 1970s and others have put it forward since of having a two-chamber European Parliament with one chamber made up of members from the national parliaments would be the way forward, but that is not what we are talking about at the moment. What we are talking about is the impossible position the Commission is in if it is dealing with so many parliaments.

**Dr Corbett:** You are right, it is not easy, and that may explain the attitude to which Baroness O’Cathain referred to earlier. Commission officials faced with opinions coming from many national parliaments may feel snowed under, but I think that is just a fact of life with enlargements. We are 28 member states. You need to take account of the views of all of them, you need to show due respect to the concerns that are expressed in each one of them and if that adds to the burden of work, then so be it.

On the second chamber idea, we do have a sort of two-chamber system in the European Union already, the Parliament and the Council. The Council is composed of representatives of the member states in the form of Ministers accountable to their national parliaments. To have a third chamber would make a decision-taking system that is already complicated perhaps even more complicated, but my main criticism of it is similar to my criticism of the inter-parliamentary bodies such as COSAC. They are useful for networking, for the people that are involved in the subject in each national parliament to get to know each other, but if they are given the right to take decisions, they do not work very well, partly because of issues of mandating. The Nordic countries, for instance, would take the view that they mandate their Minister. They do not want simultaneously to mandate members of their own institution to take a position in yet another body. But above all, there is perhaps a very practical problem. It would be a bit like the pre-1979 European Parliament. One day there
Dr Richard Corbett, Member of the Cabinet of the President, European Council—(QQ 76-88)

would be no German member there because of an important vote in Bundestag; the next day, there would be no British member there because of an important debate in the House of Commons; the next day, there would be no French member there for another reason. The majorities would be haphazard—they would not work very well—and the members of course would be doing it only on a part-time basis because their main focus would be their work in their national parliament, and rightly so.

Lord Tugendhat: It is a long time ago and there is no point in going over the old ground. I remember the previous European Parliament very well and I must say I thought it was a much more effective body than the present European Parliament because it was rooted in the member states and the people in the European Parliament at that time were people who understood, reflected and responded to the opinion in the member states. There is no going back, but my own view was that it was a great mistake and greatly complicated matters when the old European Parliament was replaced by the present one. That of course is water under the bridge, but I could not let you get away with saying that it was not very effective. I think it was much more effective and my memories go back that far.

Dr Corbett: In those days, it did not have any co-decision powers on legislation or approving international agreements or approving the appointment of the Commission or all the other things on which it now has powers. It was described as just a talking shop.

The Chairman: If we are looking at the history, I think you have confirmed the views that you expressed to this Committee 12 years ago in relation to the third chamber. I just wanted to ask the question whether you had any sense of moral hazard about this business of what you might loosely call “lobbying the Commission” in terms of either very well-resourced national parliaments or ones that are physically contiguous or remarkably persistent, or possibly all of those, and maybe reflecting their size and clout. Is there a slight danger that the Commission, either now or under any other arrangement, might pick up the view that this was the prevailing view of national parliaments and perhaps some of the geographically peripheral or small countries might not get a look in?

Dr Corbett: That is one reason why the yellow card should legally remain the yellow card even if in practice it could often be a red card. I think you do need to leave some judgment to the Commission to take account of factors like “Is this a view only of the more resourced national parliaments? Is it a view only of national parliaments of a particular part of Europe, Northern Europe, Mediterranean Europe or whatever, that is not more widely shared?” Bear in mind of course that the yellow card is triggered by one-third of the national parliaments and presumably the Commission must also take account of the views of the two-thirds that have not taken that viewpoint, it does need to be left some leeway for making judgment, even if the onus should be in favour of withdrawal. The safeguard—I come back to this—is in the Council.

Q85 Baroness Parminter: Some of the evidence we have received suggests that if national parliaments wish to influence the development of EU policy and legislation, then one of the best ways to do that is upstream at the early stage. Clearly this Committee has a long history of doing that through its inquiry process, with inquiries into things like our fisheries policy, which I think was in 2008, where we talked about regionalisation and discards, which have at long last found fruition in the CFP reform this year, and current inquiries on waste, for example, on which we expect the Commission to bring forward proposals shortly. Would you agree that that role of pre-legislative scrutiny is a useful one for national parliaments?
**Dr Richard Corbett**, Member of the Cabinet of the President, European Council—(QQ 76-88)

**Dr Corbett**: Yes, and certainly when it is done well. The House of Lords has an excellent reputation in this respect, so I would concur.

**Baroness Parminter**: Following on from what you said, what is your understanding of how well it is done and how well it is resourced by other national parliaments so that they can do a similarly good job?

**Dr Corbett**: It is very variable.

**Baroness Parminter**: Any examples in particular?

**Dr Corbett**: It is partly a question of size and resources that are given to national parliaments. We mentioned earlier the German Bundestag in another context. It is partly a question of the way they organise themselves and their attitudes and the self-perception of what is the role of a national parliament. I think that in some southern European countries they do not see that upstream role as clearly as is the case in many northern countries, if I can simplify in that way without falling into stereotypes.

Q86 **The Chairman**: Thank you for that. Can we come now to the institution you have referred to a number of times and that we both go to, which is COSAC? I could reasonably say that I do understand some of the reservations you have already expressed, but in terms of looking forward—not least because my experience of colleagues there in the informal networking is that they are quite anxious to make as much use of it as they sensibly can—could you indicate any areas where you would see the possibility of improvement and maybe steer this, first, to look at the actual conduct of meetings as to how they might be reshaped? For example, we had an informal session that I participated in last time, and indeed I chaired with the Lithuanian Presidency. That was quite a lively affair. I was pleased with that.

Secondly, is there a role outside the margins of the COSAC plenary for better networking, either informally in terms of occasional email round-robin or whatever, but also possibly building on the experience of some, like the Danes, thinking about doing little working parties on specific issues, maybe composed of coalitions of the willing on that particular case? How should we take that forward or should we frankly recognise that there will be a networking body and there is not much we can do for it?

**Dr Corbett**: I have attended COSAC a number of times wearing different hats over the years. I think if COSAC were to perhaps spend less time hearing long speeches from the host Prime Minister and host national parliamentary chairman and so on—

**The Chairman**: I think you detect a degree of agreement about that comment.

**Dr Corbett**: —without being rude to the country concerned, and more time on the sort of ideas that you have just mentioned, it would be beneficial to all concerned.

**The Chairman**: Would it be sensible, without a ridiculous escalation of resources, to look in terms of some maybe informal or virtual arrangements for dialogue that could take place between plenary sessions and would not entail people having to jet around Europe to do that?

**Dr Corbett**: If the technology allows and works, then why not? I would say the same for the new bodies; the inter-parliamentary conference on economic and financial governance. It has had only one meeting so it is too early perhaps to pass judgment. But it struck me that the style, the atmosphere and even the participants were very similar to a COSAC meeting. Although it was intended that this new body would predominantly bring together members of budgetary and finance committees in national parliaments, I noticed, for instance, that the
House of Commons sent the Chairman of the European Scrutiny Committee as its sole representative, so it did not manage to bring in more people or different people to this specialised field.

The Chairman: Thank you. I think at this point I might ask Lord Harrison to come in with his questions. If Lord Hannay would be happy to come in now, perhaps we should do that.

Lord Hannay of Chiswick: I am happy to come after Lord Harrison, but it is about COSAC.

The Chairman: I think you come in then, Lord Hannay.

Q87 Lord Hannay of Chiswick: You have mentioned one or two ways in which COSAC might be improved and those who have been to COSAC meetings will, I am sure, enthusiastically agree with you that there is a lot of room for improvement. But we have tiptoed around several times this afternoon the issue of resources. The issue of resources is real for national parliaments exercising more effective control over the Executive, for national parliaments being able to cope upstream with Commission thinking and for national parliaments collectively to get better at doing things together, which is COSAC, the yellow card and so on. Do you not think there is a case for at least some of these functions to be funded out of the European budget? After all, if the European budget spends many millions—hundreds of millions, perhaps—on financing the European Parliament, it has in the treaty the collective role of European national parliaments, why on earth should COSAC not, for example, be financed out of the European budget?

Dr Corbett: That is an interesting question. Does the European Parliament not provide the interpretation to COSAC, so there is a contribution?

Lord Hannay of Chiswick: It probably helps the presidency a bit, but it is a very heavy burden on most small member states. Frankly, if you suggested expanding the responsibilities of COSAC in any way or making it a bit more structured, I think cries of pain would go out from the presidencies about the amount they were being asked to take on.

Dr Corbett: Yes, but to achieve consensus on such an idea, I expect there would be some national parliaments who would say, “No, we want to keep our independence and not be dependent on European money if we are supposed to be scrutinising the European system”. We then get into arguments about the key of contributions, or if you want to take it out of the European budget as such, is there a legal basis, a budget line, for that? It is a new idea on me. I have not thought about it. It would be certainly worth looking into, but I can also see some potential obstacles.

The Chairman: Following Lord Hannay’s question, there is a separate issue of resources, which is of course parliamentarians’ time, and you have been in the European Parliament yourself. Is one of the constraints on making much more of COSAC or indeed national parliamentarians working in conjunction with European parliamentarians just simply that people are very busy—many of them in national parliaments will have constituencies to nurse, backs to watch, and all that—and they may just simply, other than the few enthusiasts, not feel able to make the commitment?

Dr Corbett: Yes.

---

108 Dr Corbett: The European Parliament also provides offices for the National Parliament representatives in Brussels.
Lord Harrison: Dr Corbett, Richard, you and I and Lord Tomlinson will remember the first overtures made by the European Parliament back in the 1990s to meet national parliaments to share common ground. I have in mind in particular the then EMAC Committee, which has been replaced by the Economic Committee, and I have to tell you—and maybe you will remember this—that sometimes the effort made by the national parliamentarians, including from our own Parliament, to come to Brussels and to contribute to those exchanges was very poor indeed.

You have mentioned that you and I were in Vilnius recently with the first meeting of the newly-formed Financial Affairs and Financial Governance Committee, where we are trying to exchange ideas and views of the kind we foresaw 20 years ago. Could you just reflect on the fact of the growth of the eurozone, of the euro group of 18 now against the 28 within the European Union—28 member states and 28 parliaments? Might there have to be some format whereby the 28 speak to each other effectively but side by side with that the 18 that form the euro group? It has been mentioned and promoted by nations such as France that they ought to be some sort of separate structure to ensure that the dialogue between those interested member states can be effective.

Dr Corbett: Personally, I am very wary of such proposals. I do not think there is a neat dividing line between the 17 and 28, soon to be 18 and 28. Many of those that are not in the euro want to join in due course. Many of the issues that would be discussed at the level of the euro 18 may have knock-on effects on the others on which the others wish to express a view. I thought it was rather telling that the Conference of Speakers decided that the new body, based on article 13 of the Stability Treaty, would be open to all member state parliaments of the European Union. I think that was a wise decision. Sometimes it is suggested that within the European Parliament only members from eurozone countries should vote on eurozone issues. It is the European equivalent of the West Lothian question. As you, Lord Tomlinson and I know from that period you referred to when we were members of the European Parliament, when Britain was not signed up to the social chapter, we were all happily voting on social chapter legislation as British MEPs. In fact, there are several cases: you would not have a neat two-tier parliament, you would have multiple cases where you would have to vary the voting.

Remember, there is not avant garde in the European Union. There are several different arrière garde, if you like, according to the subject. Denmark does not participate in defence policy. Cyprus, Britain and Ireland are not members of Schengen, (nor for the time being are Romania and Bulgaria, but they are on the way in). Britain, Ireland and Denmark have various kinds of possible opt-out arrangements on different justice and home affairs issues. Italy and Spain have not signed up to the new Patent Court. There are other examples.

Lord Harrison: May I give you another example? In a minute we are going to examine the financial transaction tax, sired under the enhanced co-operation procedure of 11 member states. That again is a variation where, in terms of the 11 who are in and the 17 that are out, you may feel that there needs to be dialogue among those two separate groups.

Dr Corbett: Yes, absolutely. That is another good example. In all these cases, I would argue that it is advantageous to have the deliberations in the parliament and in any forums representing national parliaments with the participation of all. In the Union, we do have differential voting in the Council when we have that situation, though normally with everybody around the table, the exception being the euro group. We have a single commission, we have a single parliament and we have a single court, so I think that strikes the right balance in making sure that all can have their say, even if some decisions may have
Dr Richard Corbett, Member of the Cabinet of the President, European Council—(QQ 76-88)

to be taken only by those that are, at the end of the day, participating in that policy. That is where the Council variation comes in.

The Chairman: Thank you very much, Dr Corbett. I think you have exhausted our lines of questioning and the hour we had allocated for them. As ever, you have been very helpful to this Committee and we are grateful for your contribution. We will take steps to draw your attention, if you wish, to the particular problem that was raised in relation to our dealings with one Commissioner. If you would like to know about that, we will make sure that is dealt with. It is always of course open to you to come back to us at any time with any thoughts you may have to supplement your evidence.

Dr Corbett: Thank you.

The Chairman: I think at least one colleague may have an unanswered supplementary that they may wish to email you with. Perhaps I may record our thanks and close the formal session.
Ben Crum, Vrije Universiteit Amsterdam and John Erik Fossum, University of Oslo—Written evidence

The responses below follow the provided format and are based on the findings of a collective volume that was published this summer at the Press of the European Consortium of Political Research, Practices of inter-parliamentary coordination in international politics. The European Union and beyond (eds. Crum & Fossum) (http://press.ecpr.eu/book_details.asp?bookTitleID=55). This volume includes contributions from eighteen European political scientists who examine the challenges for parliamentarians who operate in an internationalizing context.

1. National parliaments in the EU framework: what role?

1.1. National parliaments play an indispensable role in the multilevel configuration of the European Union. Even if decision-making powers are shifted to the EU-level, national parliaments remain the main repository of political allegiance and the focal-point for democratic will-formation.

1.2. As is well-captured by Article 8A of the Treaty of Lisbon, representation through the national parliaments is actually one of two channels of democratic representation in EU decision-making. The other channel runs though the European Parliament.

1.3. Both channels are needed. For normative and practical reasons (sheer scope and density of EU decision-making), a supranational parliament like the EP is required to represent the citizens at EU-level, for transnational political debate, and for holding the EU to account. At the same time, it is clear that the EP cannot shoulder the EU’s democracy legitimacy on its own but needs to be complemented by the national parliaments.

1.4. National parliaments’ primary role in EU decision-making is to scrutinize the involvement of their respective national governments in EU affairs. National parliaments have steadily increased their powers in this respect – also exchanging practices with each other and employing different scrutiny templates. But whereas there has been considerable emulation and learning in terms of adopting more arduous scrutiny models, parliaments’ effective scrutiny varies considerably in actual practice, across parliaments and across policy fields.

1.5. In the last two decades a second additional form of national parliamentary involvement in EU affairs has gradually emerged, through inter-parliamentary coordination and direct national parliamentary involvement in EU decision-making. This is increasingly becoming a distinct channel of influence which raises a number of important questions pertaining, among other things, to the executive-legislative relations at the member state level, notably because national parliaments through the Early Warning Mechanism can influence EU-level decision-making at a very early stage.

1.6. In this more complex representative configuration (with national parliaments having two ways to influence EU decision-making) a great amount of information and knowledge is circulating. In this context, a major challenge with regard to EU scrutiny now would appear to be that of prioritisation: given that EU decision-making is logically a secondary concern for national parliaments, how to make sure that time and resources are focused on the EU
dossiers that most merit it (among the plethora of EU-issues going around)? Also on this challenge national parliaments are making progress by systematically scanning the EU (legislative) agenda and by developing alert mechanisms between each other.

1.7. Operating in the context of the EU multilevel political system deeply challenges the established modes of procedure of MPs. Rather than seeing their organisation as the ultimate and singular site of parliamentary sovereignty, they have to recognize that they operate in a network or ‘field’ of 28 national parliaments plus the European Parliament, none of which can effectively steer or shape European politics on its own. Collectively, however, they can determine the direction of EU politics as they are the ultimate repository of the EU’s democratic legitimacy.

1.8. The development of the EU has a systemic impact on national parliaments which thus need to see each other as part of each other’s operating environment and to put that fact to their advantage. The big question is then to determine how parliaments in the EU can effectively collude to (re-)gain power in the EU rather than being played off against each other. They also need to work out what this requires from MPs (in terms of functions, role conceptions and broader democratic orientations).

2. Are the treaty arrangements, particularly the yellow card procedure, working in practice?

2.1. It is still early days with regard to evaluating the effects of the Treaty of Lisbon reforms, particularly the yellow card procedure. While we see considerable variations in its use across national parliaments and over time, by now the number of reasoned opinions provoked seems to level off at around 70 per year. Notably, in May 2012, parliaments for the first time reached the required threshold for a ‘yellow card’ on the ‘Monti II’. The Commission subsequently withdrew the proposal – even if it was not obliged to do so. This instance does however demonstrate that the EWM can have decisional effects. If one considers the practical challenges that national parliaments face, like the strict time limits and translation issues, these results are already more than many sceptical observers had expected.

2.2. The yellow and orange card procedures might lead to national parliaments unduly limiting their scrutiny to narrow readings of subsidiarity and, to a lesser extent, proportionality. Experience so far suggests however that such a fear is likely to be exaggerated. First, the concept of subsidiarity is broad enough to accommodate a wide range of concerns that national parliaments may have. Secondly, subsidiarity (in a broad sense) is indeed an apt issue for national parliaments to focus on.

2.3. However, the success of the yellow and orange card procedures is not necessarily best measured by the number of times that it is invoked. If the mechanism were to be activated too often, it would impose a major brake on the EU legislative process. Ultimately, the Early Warning Mechanism requires a ‘responsible usage’ that should increase the sensitivity of the Commission and the governments towards parliaments’ concerns about EU legislation, but where parliaments only need to turn to its actual activation as a last resort.

2.4. Rather the main effects of the yellow and orange card procedures are likely to be anticipatory in nature: they may change the attitudes and involvement both on the side of national parliaments and on the side of the Commission (and to some extent also the other EU-institutions that are activated through the orange card). They may serve as an incentive
for national parliaments to become more alert to, and also more directly involved in, EU
decision-making. They encourage the European Commission to internalise the principle of
subsidiarity and to anticipate the criticism of national parliaments.

2.5. For sure, the yellow card procedure has not (yet) woken up all national parliaments to
EU affairs. Furthermore, experiences so far also highlight that different parliaments may have
quite different – and even opposing – concerns about EU legislative proposals. Still,
involve in the yellow card procedure has brought mutual awareness and interaction
between national parliaments to unprecedented levels. Thus, the procedure has clearly
contributed to engaging national parliaments in EU decision-making and indeed
demonstrated that they can be of consequence.

3. What is the level and quality of inter-parliamentary coordination and inter-institutional
dialogue?

3.1. Collective mobilization is key if national parliaments are to be effective in EU decision-
making. National parliamentary interaction with the EP will also, on balance, add to that.

3.2. For different policy issues, we find that different platforms and networks facilitate the
collective mobilization of MPs. For some generic EU issues, like the scrutiny of EU affairs and
the use of the Early Warning Mechanism, COSAC may be the obvious platform for
coordination and collective mobilisation. In practice, however, parliamentarians prefer to
coordinate their actions along policy-specific lines. Thus, MPs in fields like defence matters
will often coordinate through the NATO Parliamentary Assembly. When it comes to EU
legislation, particularly with regard to the single market, the European Parliament may
actually fulfil some of these platform functions, especially if it initiates inter-parliamentary
meetings.

3.3. Importantly, these inter-parliamentary platforms are complemented with a wide range of
more bilateral arrangements and, not least, all kinds of informal contacts among individual
parliamentarians and political parties. In fact, these informal contacts are probably of even
greater importance than the official networks. The overarching structure is clearly a
facilitator, but informal contacts are by their very nature spontaneous and highly resilient to
institutional engineering.

3.4. Thus, in general, national parliaments have an interest in fostering a wide range of
(formal and informal) inter-parliamentary networks that they may call upon if EU initiatives
so require. Ideally, these networks would mirror the whole range of fields in which the EU
holds substantial competences.

3.5. At the same time, inter-parliamentary coordination cannot be premised on the
assumption that the interests of parliaments naturally align. Certainly on issues with
distributive implications, the interests of national parliaments may well conflict and, hence,
national parliaments may prefer to operate in coalitions that involve smaller subsets of the
parliaments in the system.

3.6. Tensions are particularly discernible in the relation between national parliaments and the
European Parliament, as the latter tends to be more open to supranational solutions and less
concerned about subsidiarity. Still, certainly in areas of shared competences, both national
parliaments and the European Parliament have a legitimate role to play and there are clear
benefits to coordination. In fact, in recent years, and induced by the Treaty of Lisbon, the willingness to coordinate seems to have increased on both sides. Again, there are notable differences from one policy area to another. For instance, when it comes to EU military missions, national parliaments scrutinise their governments’ decision to join an EU mission. However, once a mission is under way the EP takes on a more active, monitoring role. Similarly when it comes to EU legislation on the single market, national parliaments’ primary task lies in the monitoring of the principle of subsidiarity, an issue that is unlikely to be picked up by the EP. However, when it comes to more ideological concerns, its central and supranational position allows the EP to operate as a particularly useful go-between in the exchange of positions between national parliaments and parties.

4. How effective are national parliaments at engaging with European affairs

4.1. Probably the main challenge in fostering effective engagement of national parliaments in EU affairs and the development of inter-parliamentary relations lies in the fact that the incentives for MPs to do so are rather small: the investment costs are high and the gains very uncertain. Indeed, for most parliamentarians their primary focus remains their own institution and not necessarily the EU setting in which it has come to be embedded. This is also the context in which MPs are most likely to find immediate rewards: political influence, media exposure, party political credits.

4.2. Still, short of successfully amending EU decisions, there are some incentives that may motivate MPs to engage with other parliaments in the EU. Above all, it may provide them with information that they can use in the national setting. Moreover, depending on the party, international engagement may help to increase one’s status in the faction and open up possible new (European) career prospects. Even if such incentives remain relatively small, they seem to have gained in relevance and force in recent years.

4.3. Ultimately, successful influence of national parliaments on EU decisions hinges on collaboration and, hence, is a collective achievement. There are two conditions that seem particularly important for getting such collaboration off the ground. One is that it is essential that (some of the) stronger parliaments are involved, where strength may reflect both the size of the member state involved and the EU scrutiny powers of the parliament. A second condition is that successful collaboration requires one or more national parliaments to take the lead in seeking to mobilize others. Most naturally, this is the parliament of the country holding the rotating Council presidency. Ideally, of course the two conditions coincide in that the leading parliament is also recognized to be a prominent one.

4.4. The network of national parliament representatives in Brussels is gaining in relevance and usefulness and it certainly has a valuable role to play in linking national parliaments on EU affairs. By now arrangements in Brussels seem to operate rather well. Still, we have some evidence of the network members being outpaced by events in their home parliament and informal coordination between MPs of national parliaments. Hence, the big challenge seems to lie in the network members remaining fully attuned to and up to speed with everything that is going on in their home parliament.

5. Other possible changes with or without Treaty change

5.1. This question cannot be properly addressed without clarifying two important issues. One is to clarify what increased inter-parliamentary coordination and direct national
parliamentary involvement in EU decision-making does to representative democracy, both with regard to the notion of self-legislating citizens and with regard to accountability. The other is what the crisis has done to the multilevel parliamentary system in the EU.

5.2. Given these uncertainties we would at this point not see the main issue as that of granting new Treaty powers to stimulate national parliaments’ engagement with EU affairs. In practical terms, the main challenge rather seems to lie in fully exploiting the formal opportunities that are there. Here the main issues requiring attention are the MP-incentive structure and the fostering of formal and informal networks across parliaments.

5.3. The broader issue that requires more in-depth examination is to spell out in detail the implications of the different ways in which national parliaments get involved in EU matters. That in turn also requires paying attention to issues of democracy and power relations. With regard to the Early Warning Mechanism, for instance, there is a distinct possibility of co-optation, in the sense that national parliaments will be increasingly made co-responsible for actions taken at the EU-level. Such a development might undermine other representative functions that national parliaments are meant to serve.

5.4. Through the crisis, the operating conditions of debtor state parliaments have been severely constrained, to the point of compromising the very idea of representative democracy. There is an urgent need for (treaty) provisions that guarantee the continued respect for, and effective functioning of, national parliaments in countries that are bailed out and find “Memorandums of Understanding” imposed upon them.

5.5. More generally, there is an urgent need to flesh out the role of parliaments in the reorganization of economic and financial policies that has taken place in recent years. Despite appropriate exhortations of the need for adequate parliamentary control (e.g. Art. 13 of the Fiscal Compact), the new arrangements around the European Semester put parliaments in a marginal and reactive role. What is needed, is a clarification for each decision-phase of the European Semester, in which parliamentary forum (national or European) scrutiny is to take place and the development of effective arrangements for inter-parliamentary coordination, again specified for each phase of the process and each decision to be adopted.

24 September 2013
Since the start of this millennium the European Union has been preoccupied with securing a new constitutional settlement with the primary purpose of making the EU more accountable, democratic and relevant to the lives of its citizens. Though the project for a Constitution for Europe was abandoned, the Treaty of Lisbon 2007 maintains many of the constitutional principles and values that were contained within the Constitutional Treaty and which arose from the Laeken Declaration and the Convention on the Future of the European Union. The Laeken Declaration 2001 noted that:

"The European Union derives its legitimacy from the democratic values it projects, the aims it pursues and the powers and instruments it possesses. However, the European project also derives its legitimacy from democratic, transparent and efficient institutions. The national parliaments also contribute towards the legitimacy of the European project (emphasis added). The declaration on the future of the Union, annexed to the Treaty of Nice, stressed the need to examine their role in European integration."

The significance of this statement is that it is recognition of not only the democratic credentials of national parliaments and that they remain constitutionally relevant institutions in the EU polity, but also that national parliaments should have a definitive role to play in the future of EU integration. Determining the precise scope of this role and how it will be executed remains a challenging proposition. In the first formal recognition of the democratic credentials of national parliaments in the Treaty, Article 12 TEU provides that national parliaments will contribute 'actively to the good functioning of the Union'. Accordingly, in the post-Lisbon EU national parliaments are endowed with new prerogatives of subsidiarity monitoring under the terms of Protocol 2 which, under certain circumstances, may lead them to conclude that an EU legislative proposal breaches the principle of subsidiarity in Article 5 TEU. However, while acknowledging the existence of this collective task of subsidiarity monitoring, the extent to which national parliaments, as individual institutions, engage in subsidiarity monitoring remains inconsistent.

The challenge facing national parliaments since 1957, and which remains relevant today is the ongoing process of Europeanisation which has witnessed a transfer of significant legislative competence to the EU. The primary effect of this Europeanisation is what has been termed a ‘deparliamentarisation’ of the EU. In short, the EU while pursuing closer integration has, through Treaties since the Single European Act 1986, pursued an agenda of democratisation which has seen the rise of the European Parliament within the EU polity. However, unlike national parliaments which are expressions of popular democracy in each Member State, the European Parliament does not share many of the democratic credentials of national parliaments, remains distant from citizens and within the process of EU decision-making may be viewed as part of the legitimacy problem. To this extent, increased legislative powers for the European Parliament has not reduced criticisms of a deparliamentarisation; on the contrary, the presentation of imprecise Impact Assessments by the Commission, the increased use of Trilogues in the ordinary legislative process, the expansion of qualified majority voting, the growth of technocratic decision-making and the greater reliance upon soft law, all mean that national parliaments continue to face numerous challenges to their legislative competences and their ability to review the actions of EU Institutions.

---

109 Laeken Declaration on the Future of the European Union, p.5.
The formal recognition of subsidiarity monitoring by national parliaments in Protocols 1 and 2 of the Treaty of Lisbon has provided enhanced new opportunities for national parliaments through which they are able to exert some control over the legislative process. There is no doubt that such competence monitoring, together with the improved dialogue of the Barosso Initiative, contributes positively to the legislative process and that it may help to inject some improved democratic legitimacy in to EU decision-making. The defining feature of subsidiarity monitoring is that Protocol 2 envisages that this takes place as a ‘collective exercise’. Thus, if national parliaments can secure the relevant thresholds contained within Protocol 2 (as in the case of the Monti II proposal) then the Commission may be required to reconsider the legislative proposal. This is significant because it marks a change from the pre-Lisbon position in which national parliaments focussed primarily on securing the accountability of their minister to the parliament. Yes, competence has always been an important issue, but pre-Lisbon any concerns about the exercise of EU competences would be communicated via the minister in the Council. Protocol 2 creates an additional political opportunity by permitting national parliaments to make representations concerning the compatibility of a legislative proposal with the principle of subsidiarity directly to the Commission.

The question this raises is whether, in years to come, this will make Protocol 2 a real ‘game changer’ for national parliaments and alter their position within the EU polity? The evidence to date is limited and it is not possible to conclude that the ‘yellow card’ shown to the Monti II proposal is indicative of some future co-ordinated action on a regular basis. However, the operation of Protocol 2 does raise some important considerations. Firstly, do the prerogatives of Protocol 2 afford to national parliaments some ‘quasi-institutional’ status within the legislative process? Secondly, are national parliaments now to be considered as a coherent bloc of institutional actors who are all pursuing the same agenda when reviewing EU legislation? Both these questions, as well as the question of whether by engaging in subsidiarity monitoring national parliaments are providing improved output legitimacy to EU legislation remain unanswered. That is to say, if national parliaments conclude that a legislative proposal does not breach the principle of subsidiarity, will EU citizens be more accepting of it? The overarching issue is whether, and if so to what extent, subsidiarity monitoring helps to improve the chain of legislative legitimacy to EU citizens which the Laeken Declaration identified as being absent.

The discourse surrounding improved legislative legitimacy has tended to focus on the position of national parliaments in their capacity as the legislative institutions of the Member States. However, and as the Treaty of Lisbon recognises, the EU possesses a multi-level governance structure in which regions and sub-national governance is increasingly important. It must be borne in mind that in the discussions surrounding the exercise of EU competence and the application of Article 5 TEU, the EU will often be sharing competence, not with national parliaments, but with sub-national institutions. Article 5 TEU and Protocol 2, for the first time recognise that when assessing subsidiarity, regional consequences of EU legislative action must also be considered. In conjunction with this, Protocol 2 affords opportunities for subsidiarity review to the Committee of the Regions, as the representative of regional governance within the EU polity, in circumstances where its prerogatives are affected. Though the Treaty of Lisbon’s acknowledgement of regional competences is important, the provisions of Article 5 TEU and Protocol 2 are limited because there is no EU wide consensus of precisely what competences regional governance should have. Regional competences (and therefore national parliamentary competences) are heterogeneous across
the Member States and largely depend upon domestic constitutional arrangements. These variations across the Member States remain a barrier to the improved participation by both national and sub-national institutions in EU affairs and one which participation by the Committee of the Regions in subsidiarity monitoring does not remedy.

The constitutional consequences of EU integration on national parliaments have been considered predominantly in a negative manner. In addition to concerns of deparlamentarisation, national parliaments have been portrayed as ‘victims’ or ‘losers’ within the integration process. The inclusion of Article 12 TEU and Protocols 1 and 2 was intended to remedy this perception. While it may be fair to conclude that national parliaments are no longer marginalised in the EU polity, and that the Treaty does recognise that their democratic credentials and traditions do have a formal role to play in EU integration, it would be incorrect to conclude that national parliaments exist as a collective bloc which acts as some form of ‘revising chamber’ within the EU legislative process. Indeed, it would be difficult to sustain an argument that all national parliaments are fully engaged in EU affairs to the same extent and the Article 12 TEU requirement of ‘actively contributing to the good functioning of the Union’ is undoubtedly interpreted differently within the national parliaments.

Under the Treaty national parliaments have been granted improved recognition of procedural rights to undertake competence monitoring, but this activity takes place against a background in which the EU is pursuing closer integration and harmonisation to address the socio-economic challenges which it is facing, especially in the light of the Financial Crisis. In particular, this entails not only the increased use of qualified majority voting, but also an increased reliance upon soft law arising from the exercise of complimentary competences, for example, the Agenda 2020 Programme, to achieve Europeanisation. Moreover, in the case of soft law, its increased use within the EU will significantly impact upon the ability of national parliaments to influence decision-making because the process of policy coordination is outside the scope of Protocol 2, yet this form of governance will regularly lead to outputs which may have significant regulatory and financial implications for Member States. While there may be no legislative impact upon Member States in the form of a regulation or directive the process of policy coordination still raises clear questions of subsidiarity and accountability which must be addressed. It is open to national parliaments to review policy coordination, but this must be considered unrealistic, at least systematically, within the terms of their overall responsibilities.

14 October 2013
Evidence Session No. 2    Heard in Public    Questions 18 - 33

TUESDAY 22 OCTOBER 2013

Members present
Lord Boswell of Aynho (Chairman)
Lord Bowness
Lord Carter of Coles
Baroness Corston
Lord Dear
Baroness Eccles of Moulton
Lord Foulkes of Cumnock
Lord Hannay of Chiswick
Lord Harrison
Lord Maclean of Rogart
Lord Marlesford
Baroness O’Cathain
Baroness Parminter
Earl of Sandwich
Baroness Scott of Needham Market
Lord Tomlinson
Lord Tugendhat

Witnesses

Professor Adam Cygan, University of Leicester, Professor Simon Hix, London School of Economics and Political Science, and Dr Julie Smith, Senior Lecturer, University of Cambridge

Q18 The Chairman: Good afternoon to our witnesses. We are extraordinarily grateful to you for spending time with us, given your own interest in the subject and your distinguished academic track records in this area, which are of great interest to us and where we are anxious to get the maximum input. I invite you all to make a small opening statement. Given the time constraints, I would be very grateful if you could keep it to a
minute or two and we will pile into the questions and will try to conclude this in an hour or so because of our other business.

In relation to Dr Smith, for the record, I would say the roles are reversed because she has interviewed me in relation to her own OPAL work. Whether that is a declarable interest I will leave to others. You are very welcome, and it might be sensible if you could say a line about what OPAL is in your opening statement.

I have come to this batting order—alphabetical—so I ask Professor Cygan, who is from Leicester University, to introduce yourself and tell us in a couple of bullet points anything that you would particularly like us to take note of. Thank you.

Professor Cygan: I am Professor Adam Cygan. I am professor of European Union Law at the University of Leicester.

The Chairman: Before you say anything substantial, I normally remind witnesses of the rules of engagement and you may be familiar with this from other Select Committees. So this session is on the public record and is being televised. We will prepare a transcript and will send it to you for any factual minor corrections, but it will also be on the web before that process is done.

Professor Cygan: Thank you. Briefly, having followed the work of this Committee and the Committee in the House of Commons and committees across Europe for the last 20 years, I would say that for me the issue has not really changed. It is: how can we still improve legislative accountability and democracy within the EU decision-making process? While Protocol II may offer new opportunities and to some extent has raised what we can say is the EU focus of national Parliaments, I think the challenges go way beyond just what Protocol II covers. There are two issues that I would like to highlight. One is that this Committee and other committees should start going further upstream, looking at impact assessment and going directly to the Commission at source to consider what the Commission is using as justification for legislation, particularly this internal market justification that I think the Commission is often very complacent about the way it uses it.

The second thing that I would like to highlight is that post-Lisbon a lot of new legislation, a lot of new legislative Acts, are coming through what we call soft law, policy co-ordination, the use of complementary competencies. Europe 2020 is a very good example of this. These have regulatory, financial, political impacts across the member states and they are not open to systematic review, and I think this remains a very big challenge for national Parliaments.

Q19 The Chairman: Thank you. Professor Hix.

Professor Hix: Yes, I am Simon Hix. I am Professor of European Politics and Head of the Department of Government at the LSE. I agree with a lot of what Adam has just said. I think the rules in the treaty’s Protocol II, and the various other mechanisms for trying to involve national Parliaments, leave a lot of room for discretion for national Parliaments for how they want to design their own scrutiny methods and mechanisms. Two issues that I have been pushing on with both this Committee and the Committee in the Commons are the following. First, I think national Parliaments should be scrutinising the whole legislative process and breaking away from historically the role being seen as one of scrutinising our man or woman in Brussels, where our Minister goes off and bats in the Council and that is who we hold to account. I think the role should be one of scrutinising the whole legislative process from the Commission’s initiation through what happens inside the Parliament through to the Council.
On the issue of the Council, I think the court ruling last week on 17 October of the ECJ on transparency of documents in the Council is very salient on this matter. The ruling is that the Council will cease blacking out the names of member states on working documents when the member state is sponsoring amendments in the Council. I have argued for a while that national Parliaments and the media should be able to see what our Governments are supposedly doing in our names in half of the EU legislative process. That is one set of issues.

The second set of issues relate to how national Parliaments as a whole—not just the European committees in Parliaments—scrutinise the legislative process. Here I would urge national Parliaments to think about what some other Parliaments call mainstreaming. The Dutch Parliament I think does it. The Irish Parliament did it during their presidency and I think have carried on doing it. Given the volume of legislation and the volume of issues involved, the European committee should take a leadership role and a co-ordination role but brings in the other committees in Parliaments in specific areas of expertise. So if it is a piece of environmental legislation it should go to the environment committee in a national Parliament. In a sense, this would involve the other Members of Parliament in the process of scrutinising law that is being made in the name of the citizens of the member state.

Q20 The Chairman: Thank you. Dr Smith, OPAL and other matters.

Dr Smith: Thank you. OPAL is the Observatory of Parliaments after Lisbon. We were trying to find a catchy title. It started off in the funding application as EU PAL Watch. Essentially it is a project run by the universities of Cambridge, Cologne, Maastricht and Sciences Po in Paris, looking at the roles of national Parliaments in European affairs post-Lisbon, with aspects of formal and informal powers, looking very much at how the Parliaments of all 28 member states view European affairs, how they scrutinise and what engagement they have. Each of the four partner institutions is responsible specifically for two countries, but across the whole project we are looking less formally at all 28 member states, including Croatia.

The Cambridge team are looking in particular at the UK and Poland. I am not the expert on Poland. I am the one that got the delegation for the UK on the grounds that I am the person in the team that does not speak Polish. It has meant that we have interviewed members of the Foreign Office, the House of Commons and, as Lord Boswell said, the House of Lords. The project started in May 2011 and will go on until May of next year.

One of the things that is noticeable is that at the start the Foreign Office kept telling us about how they wanted to engage the Houses of Parliament, Westminster MPs and Peers much more in European affairs. There were three things that needed doing, and two of them have already been mentioned by my colleagues this afternoon. One is upstreaming, one is mainstreaming and the other is streamlining. That discourse got into the rhetoric, so one of the first events I went to as part of this project was organised by the Hansard Society and a Government Minister came out with all three of those points. But we find that other Parliaments are doing the same thing, that they are keen to upstream to try to look at European policy slightly earlier in the process than when it comes down to scrutiny reserve. It is too late by the time of the Commission’s proposed legislation suddenly to start looking at it, so using national Parliament representatives in Brussels is hugely important in engaging the process at an early stage. Also there is the idea of mainstreaming European policy, taking it into sectoral committees. Obviously the House of Lords is in a very unusual position, but for almost all other chambers, including the House of Commons, there is a choice between: do you send European matters to a European affairs committee where you have real expertise on Europe, or do you send it to sectoral committees where you do not have the same expertise? Other organisations, such as the CBI, tried to mainstream European matters
20 years ago. Parliaments have only started doing it recently. It works well in the Netherlands. It does not necessarily work as well in other countries, so there is a lot of opportunity for flexibility.

The Chairman: Thank you very much for those initial statements, which are helpful and I think will be consonant with some of the themes we are exploring. I should say to you—not in any exclusive sense to preclude you talking about other matters, including the process of scrutiny—that I think the emerging area of particular interest for this particular inquiry is going to be the interaction of national Parliaments in doing the business, either in stopping legislative proposals, through yellow cards or otherwise, or in investigating them further back, and, as witnesses have already said, in influencing the process rather than creating a perfect template for an individual scrutiny exercise. I think it is evident, even in our past track record, that national Parliaments have wanted to go a little further than that purely formal role. No more from me on that, but I would like to turn to Lord Hannay to ask the first formal question.

Q21 Lord Hannay of Chiswick: Could I make one comment on that last observation? I am sure you are aware that the House of Lords mainstreamed European matters in 1973, admittedly, by creating sub-committees from its European Union Committee. Since those sub-committees are specialised and have people on them who are specialists in the thematic areas covered, I think that is one way of achieving mainstreaming, which you may wish to take account of.

I will go on to the first question, which is all about the eurozone and the financial and economic crisis that assailed not only the eurozone but all member states in 2008 and indeed the whole world. I think the response to this crisis has brought out the importance of democratic accountability and legitimacy within the EU. Clearly national Parliaments have an important role to play in this because, under whatever arrangements are reached in the eurozone, they will still be very important actors in those systems. How might this impact future interparliamentary co-operation and the development of the role of national Parliaments in the EU context? If it leads—as it seems to be leading—to a pressure for more parliamentary oversight on whatever arrangements are made, should this oversight be of the 28 or should it be separately of the 17 or 18, or however many it may be at the time, who are members or who have the euro as a currency?

The Chairman: Who would like to go first? Professor Hix?

Professor Hix: I am happy to go first. On the way here just by chance I read Notre Europe’s new policy report, The New Interparliamentary Conference on Economic and Financial Governance. This in a sense a subset of COSAC, of the member states in the eurozone plus prospective eurozone states. There are two issues here. One is: what should be the role of national Parliaments in the emerging new framework for economic governance of the eurozone? The other one is: what should be the role of the UK Parliament? These are two separate questions.

The first question relates to the question of soft law and the emergence of the mechanisms within the eurozone: the banking union, fiscal compact, the ESM, the new Euro Plus Pact and all the various mechanisms for co-ordinating national macroeconomic policy. The aim of the New Interparliamentary Conference on Economic and Financial Governance is to bring together representatives from the national Parliaments of the eurozone-plus states into that framework. The difficulty for the UK is that the UK is one of only two member states who are not a member of at least one of those things so far—maybe you should count the Czech
Professor Adam Cygan, University of Leicester, Professor Simon Hix, London School of Economics and Political Science, and Dr Julie Smith, Senior Lecturer, University of Cambridge—(QQ 18-33)

Republic, but it depends on how you count that. So I think it is part of a broader question of: what is the status of the United Kingdom, vis-à-vis the deepening of economic and monetary union within the rest of the EU? It is not just the eurozone, it is the eurozone plus the member states, who see themselves as prospective eurozone members.

There I think the Committee should have a view on the broader question of the UK’s relationship to the emerging economic and monetary union, and that should then lead to what you think the role of this particular Committee should be within that. For example, some people are arguing that the UK should have observer status at Eurozone summit meetings or at Euro-group Ministers’ meetings or perhaps even observer status in the European Central Bank when the European Central Bank is doing banking union business. If that is the case then I think it would be logical to argue that this Committee should have observer status in this new Interparliamentary Conference. I will leave it at that because I know time is short.

Professor Cygan: I would like to focus on something slightly different because one of the important things we have to look at is: what has been the response of the European Union here to this crisis? Part of the response to this crisis is this 2020 agenda, where the European Union talks about smart growth, smart jobs and so on, trying to have a real value added impact in the daily lives of citizens. I think that is one thing that is important to note here. A lot of this is about the relationship the European Union has with its citizens, and institutions such as Parliaments, sit within this framework and Parliaments have to somehow be able to connect with citizens and promote what Europe is doing, as they do in some other member states. For example, one sees this in countries such as Portugal. The Portuguese Parliament has been very active with regard to its relationship with the Commission over the last two to three years—the way it promotes that Europe is not necessarily the problem for Portugal even though many Portuguese citizens may look at it this way.

A lot of what Europe is now trying to do has led to the realisation that the answer is not hard law. It is not directives. It is not regulations. It is different types of solutions, policy co-ordination, trying to find the best practice across the member states. Here I think one of the challenges that comes out to Committees such as this is that I am not necessarily sure that a horizontal block of 28 is the answer to every problem that exists. Inevitably there will be times when I think committees and Parliaments should look to form strategic alliances with other Parliaments, where they feel there may be like-minded responses or where they share a problem. I think that is a slightly different way of working to the way in which many committees have in the past, where there has tended to be a singular response coming through COSAC in relation to legislative or policy proposals. I am not sure that in an EU of 28 that is possible any longer. So perhaps cherry-picking those pieces of legislation or those policies that are seen as being relevant and trying to find strategic partners across the EU, I would see as being the way forward.

Dr Smith: May I comment first on Lord Hannay’s observation? Perhaps I was not sufficiently clear in my opening statement. I explicitly excluded the House of Lords from my characterisation of national Parliaments precisely as the one that has mainstreamed at an early stage, so in that sense is exemplary and perhaps does not have lessons to learn in quite the same way. In terms of the interparliamentary co-ordination and how to deal with the eurozone crisis, I think one of the issues that has struck me very much in the last couple of years is the extent to which the academic class has said, “National Parliaments have been empowered by the Lisbon Treaty”. Well, they have been given a few limited powers but at the same time the Lisbon Treaty began by talking about the Europeans co-ordinating their
Professor Adam Cygan, University of Leicester, Professor Simon Hix, London School of Economics and Political Science, and Dr Julie Smith, Senior Lecturer, University of Cambridge—(QQ 18-33)
budgets, and that has been extended much further with the fiscal compact. So in many ways some of the roles of national Parliaments have been reduced and the question then is: how do you engage? How do you ensure that there is parliamentary oversight?

The Interparliamentary Conference is potentially a good mechanism but it is clearly one for co-ordination and communication. At the moment it is not one for decision-making. One of my colleagues, Ian Cooper—who I believe submitted written evidence to this Committee—was at the Interparliamentary Conference last week on economics and governance and he was looking closely at the discussions that were being held about precisely how the new body should work. At the moment it is structured in the same way as the Interparliamentary Conference for CFSP and CSDP. But the questions are: what are the rules of procedure going to be and how are they used, because Parliaments engage with them differently?

My colleague mentioned the Portuguese Parliament. The Portuguese are one of the few Parliaments that always send a full complement of six MPs to COSAC and to the New Intergovernmental Conference and CFSP and CSDP, and they sent six people again last week. At the moment there seems to be scope for Westminster and other non-eurozone countries to participate fully. I would say politically it is hugely important that all member states can participate because, unless the United Kingdom wishes to be sidelined, then I think absenteeism is not helpful.

Q22 Lord Hannay of Chiswick: Could I follow that up very briefly? If as you say—and I am sure that is correct—this interparliamentary oversight is about co-ordination, exchange of best practice and so on, and not about decision-making, then there is no respectable argument for not doing it at 28. The argument about smaller groups getting together is, of course, the same in the European Parliament now. If you want to pass an amendment in the European Parliament then you have to get allies. If you want to do so in the Council you have to get allies. It would be the same. If it is only about co-ordination—which I think it is going to be, and I cannot believe it will be given a decision-making function—then the case is surely very strong because the non-eurozone countries are just as much affected by the decisions that are being taken as the eurozone countries, although in a different way.

Professor Hix: That would be my view.

The Chairman: We will go straight on to a couple of supplementaries.

Lord Bowness: Can I go back to something that one of our witnesses said about our Government wanting a greater involvement of Parliament of both Houses, and just explore that? You draw the distinction between this House and the House of Commons. How much do you think the Government’s desire to involve Parliament to a greater extent is in fact a desire to have another power, another weapon in their hands, given that most decisions in the House of Commons are made by a whipped Government majority? We tend to talk about parliamentary involvement and a parliamentary view as if Parliament is going to take a different view from the Government. That might be true in many countries. It might even possibly be true from time to time at this end of the Palace of Westminster. It gets much rarer at the other end. So are we in a position that is quite distinct from most of the other 27 countries?

Professor Hix: I would not say “most”. Two things: first, I agree that it was interesting that the Governments were tge ibes pushing for more powers of national Parliaments in various negotiations on the treaty. In political science we know why that is, which is that governments like to tie their hands when negotiating—“I am not going to be able to get it past my Parliament”—so strengthening national Parliaments for a lot of Governments was
strengthening their own influence in the EU. But that has not been the case for all governments, and I do not think in fact it is for a majority. There is a distinction between member states who have a tradition of a single-party majority government and member states who have traditions of coalition or minority government. Member states with single-party governments tend to weaker parliamentary committees than member states with coalition majority governments or member states with traditions of minority governments. It is no surprise that Denmark, Finland and Sweden tend to have stronger parliamentary committees.

Part of the problem with the debate about the role of national parliaments is a one-size-fits-all view. There are very different parliamentary traditions and very different powers of committees. I think it is right that there should be a lot of discretion for Parliaments to try to work out what are the most appropriate mechanisms for scrutiny themselves.

Professor Cygan: If we look at the Treaty of Lisbon, it has taken 50-plus years before the treaty formally acknowledged national Parliaments, which have had to endorse every previous treaty. So I think this is unwanted. Article 12 talks about, “They contribute actively to the good functioning of the union”. Is that a positive requirement upon them? Must they do that? If so, how should they do that? I know that prior to the first draft of the Treaty of Lisbon this House looked at this very issue: what does this mean for national Parliaments? If it means that national Parliaments have to look at every legislative proposal that comes out of Brussels, that is not going to happen. Even the House of Commons, which prides itself upon trying to look at everything, simply does not have the time available to dedicate itself to every piece of legislation.

In reality, what national Parliaments have to do is identify what their influence can be. In some respects, if we say that national Parliaments are there to somehow condone European legislation, if national Parliaments say, “There is no problem with subsidiarity” does that make our citizens feel better that this piece of legislation is compatible with the subsidiarity principle? Does it make it any more democratic? I am not sure that happens. So if they are looking at legislation in this way, then it is a technical exercise that is being carried on. National Parliaments may want to do something that is a bit more substantive. The Foreign Secretary in his Berlin speech talked about national Parliaments and the bigger role of national Parliaments in the European Union. I wonder if that is more for internal consumption, as to what may happen subsequently should the UK decide it wants to review its relationship with the European Union by placing this Parliament at the centre of that debate. I am still not convinced that what the Treaty of Lisbon does is fundamentally change things that national Parliaments were doing before. They did not look at subsidiarity in the way Protocol II says they should do it, but they were still doing it. They were still looking at it on a regular basis because it was all about monitoring competence.

The Chairman: May I ask a one-worder: is it your view that national Parliaments, individually and collectively, have a very clear and—what one might call, from a lawyer’s point of view—a principled view of subsidiarity or is that more honoured in the breach than the observance?

Professor Cygan: I have yet to come across a single collective definition of how this is interpreted across the national Parliaments. That is certainly my view.

Q23 Lord Tugendhat: Would you agree with me that the financial crisis highlights a fundamental difference between eurozone matters and other aspects of the Union? In the case of other aspects of the Union, national Governments hold national Ministers to account
for what they do at Council or what they have done, both future and retrospective. No such opportunity exists in relation to what the European Central Bank does, because obviously national Parliaments do not have leverage over the members of the Council. I am not suggesting that the implication is not that they should. I am saying that they do not have leverage over the Council as the president of the Central Bank reports to the committee of the European Parliament, which has very little echo in the member states. However good its questioning may be it has very little echo in the member states. In fact, the Central Bank is cut off from the normal democratic accountability that applied in the case of the old Bundesbank, that applies in the case of the Federal Reserve, and which up to a point applies in the case of the Bank of England, so that there is a democratic deficit of quite a different order in relation to the activities of the Central Bank than anything else in the European community.

The Chairman: Professor Cygan, would you like to lead on that?

Professor Cygan: I agree. The ECB is a particularly important institution now. It has massive powers. It can make decisions that can change the lives of not just ordinary citizens but can change the fortunes of Governments in many cases. We saw that, in essence, Mario Draghi can make or break whether a Government survives by what he says.

In terms of the accountability, there is accountability. We can say that they will go to the European Parliament.

Lord Tugendhat: Yes, but that has no echo.

Professor Cygan: Absolutely, but we have to work within the treaty structure and this is what the treaty provides for. At present the treaty makers—that is the member states, the Governments—when they sat down did not see this as being an issue that they needed to address or they forgot to address it.

Lord Tugendhat: But my question was: is there not a fundamental difference with the ECB? It is very simple. Do you agree or not agree that there is a fundamental difference?

Professor Cygan: I agree there is a fundamental difference, but the purpose is that it is an independent Central Bank.

Professor Hix: I disagree. It is not quite true that there is no echo. There is no echo in the UK but it does not mean there is no echo, full-stop. Other newspapers and national media do occasionally cover ECB president hearings in the European Parliament. If you are Germany your media covers them because they know this is an important scrutiny role. There are plenty of other things national Parliaments could do if they wanted. I cannot see why you could not have live-streaming in this Chamber if you wanted to sit and watch it, and perhaps feed questions to MEPs. This would be consistent with my general view that committees in national Parliaments should be more creative in how they scrutinise the whole system, not just “our Minister in Brussels”—how you scrutinise the whole system and how you can engage directly with the European Parliament. I do not accept the idea that there is the European Parliament on one side and national Parliaments on the other side, and there is some sort of battle between the two about who gets to scrutinise what. Both are parliamentary institutions with common interests.

We have “our” MEPs. So, I do not understand why our MEPs are not made more use of in national Parliaments when it comes to scrutinising legislation. They are experts in particular policy areas. Under the same principle: why cannot national Parliaments use the Monetary Affairs Committee in the European Parliament if they would like better scrutiny of the European Central Bank?
Professor Adam Cygan, University of Leicester, Professor Simon Hix, London School of Economics and Political Science, and Dr Julie Smith, Senior Lecturer, University of Cambridge—(QQ 18-33)

The Chairman: Dr Smith, would you like to come in on that?

Dr Smith: Yes. One of the things that I think we lost post-1979 and the introduction of direct elections to the European Parliament was gradually the loss of a dual mandate and now formally the loss of the dual mandate. At least there used to be some connection back between national Parliaments and the European Parliament. I am absolutely not calling either for a third chamber or for the reintroduction of the dual mandate, but some form of better communication between the Parliaments. I am not sure that the Interparliamentary Conference is quite that vehicle, but at least it ought to offer some opportunities for exchanging ideas of best practice if the members engage fully. Part of the problem is the European Parliament is very keen to exercise its own rights, and the idea of giving ever more powers to the European Parliament to solve the democratic deficit only works up to a point, because there is not a huge amount of resonance back in this country. There is not a huge amount of resonance back in other countries either. Yes, some newspapers may cover it; yes, it may be covered in Germany, but it does not resonate back to the people. So I think a better exchange of ideas would be helpful.

Q24 Lord Tomlinson: We have been through much of the question I was going to ask in the rather generalised part of the first question, but nevertheless my question is: how far has the role of national Parliaments in the EU framework either developed or regressed in recent years, particularly since the adoption of the Treaty of Lisbon? As I ask that, do you think that those powers are being appropriately or otherwise used?

Professor Cygan: I would say that at a very simple level national Parliaments are doing the same now as they were 20 years ago. Ministerial accountability has still not decided to meet this point—

The Chairman: We are no further forward?

Professor Cygan: We are no further forward, in the sense that that is still the preoccupation certainly of this Parliament but I know it is of others as well.

Lord Tomlinson: If I can interrupt briefly: so you think that the role of national Parliaments through COSAC is largely a waste of time, if it has not added anything in the last 20 years?

Professor Cygan: Those are your words but I would not necessarily disagree massively with what you have said.

Lord Tomlinson: That is very welcome to hear. Yes, I interrupted you.

Professor Cygan: Part of the issue is this. Look at Protocol II and what it offers national Parliaments. We have had one yellow card. We may have a second one now with this European public prosecutor’s proposal. I think we were at 12 last time I looked. We need 14 because we need 25% for that. That will be two. If one looks at the Monti II regulation we have had the yellow card. I went back to look at some of the justifications for the yellow card across the member states. Sweden and the Scandinavians had a completely different reason from the United Kingdom. For the UK it was too intrusive. The Swedes said it dumbed down the protection that we have. So to me it brings people together by coincidence. There are alliances. You will get the yellow card, but for me it is more a coincidence rather than necessarily being a systematic process that goes on.

Now COSAC will be the way in which they can transfer the information. I think it does have a role to play, but to elevate COSAC after all of these years of it being around is almost like trying to reinvent the wheel. I am not sure it is going to make a significant difference.
Dr Smith: A little bit. The feedback I was getting from my colleague, who was in Vilnius last week and will be in Vilnius next week for the COSAC meeting, is that there is a lot of discussion going on behind the scenes about how to get to the level for the yellow card to be played. I disagree with Adam to some extent. Yes, you need to get like-minded countries together and they may be like-minded on a particular issue for different reasons, but that is how Europe works. Looking for partners across issues and saying, “We want to have a limited group that can work all the time” is not necessarily going to work, but the opportunity of regular meetings with colleagues gives you a sense of what the thinking is in the Scandinavian countries or in Portugal. So you begin to know where the common points are where you can work together. In that sense it is useful. I am not saying it is necessarily the best use of everybody’s time, and there is a self-selection about people who go perhaps, but at least there is the opportunity for building up relationships and discussing what national Parliaments think and why, so it is not totally pointless.

Q25 Earl of Sandwich: Just going back a bit, because we may want to come back to the yellow card, I think we would all agree that there is less democratic legitimacy in the European Parliament than there is in national Parliaments. Yet from what you say I have the feeling that the Treaty of Lisbon is encouraging relations with the European Parliament and not with national Parliaments. So we are somewhere stuck in a rut and you said we cannot go back to the dual mandate. You made some suggestions of exchanges between the Parliaments but, Dr Smith, would you agree with what Professor Hix was saying about more connection directly between the European Parliament and our national Parliament?

Dr Smith: Absolutely. What we need is much better vertical and horizontal communication, so talking to other Parliaments. It is not that difficult in the age of the internet. Somebody talked about live-streaming the debates from Strasbourg or Brussels, but equally with modern technology it is much easier to have those regular communications.

In terms of vertical communication, what are our political parties doing? Why do MEPs and national MPs not talk to each other more? Some do but many do not. If you look at the votes, which I think is work that Simon has done, in terms of how national delegations vote in the European Parliament and how that fits with what the party position might be in Westminster, Berlin or in Paris? You tend to find very often there is a disparity. Having more communications through political parties would potentially help, and then more regular meetings. Again, it is part of the same problem as the dual mandate issue. How do you have people being in a European Parliament and in national Parliaments and meeting up at certain points? The diary communication is difficult, unless of course it is by Skype.

Professor Hix: Following on from that, I do not see a problem with the following scenario: that every national Parliament is immediately informed about who the rapporteurs and shadow rapporteurs are on a piece of legislation. If a national Parliament is then concerned about a particular issue it should have the freedom to call on any of these people. These are the experts. These are the people involved in the nitty gritty on the legislation, meeting the interest groups, trying to work out compromise positions etc. Why would this not be normal practice? This is how I envisage a closer connection.

It is easy to criticise the European Parliament. Of course the European Parliament has not reduced the democratic deficit as much as some of us might have hoped. However, I think one could say that a lot of EU law is a better designed. because we have the European Parliament. Heaven knows what the EU would look like if we did not have it. We have to
recognise that the European Parliament is a different to national Parliaments. It works much more like the U.S. Congress. MEPs become experts on policy. The European Parliament is a legislative scrutiny and legislative amendment institution. MEPs are not holding governments to account. It is a very different role and I think they are your allies in this process not your rivals.

Lord Tomlinson: You were saying about the importance of the rapporteur and the shadow rapporteur. That is fine. I dispute that they are always experts. The real experts are in the secretariat of the political groups. How far do you think a democratic Parliament ought to be making contact with secretariats and political groups? That fits in with your analogy about Congress as well.

Professor Hix: Yes. If you do not want to call them experts, what I would say is that they are recognised officially as decision-making players. Even now in the rules of procedure of the European Parliament, the role of shadow rapporteurs in the Trilogues at first reading is officially recognised. So these MEPs have an official role now procedurally in the way the European Parliament works. How does a national Parliament bring to the attention of these people a particular issue that they care about? These are the people who are going into negotiations in Trilogue meetings with officials from the Council and with the Commission. In fact, there may be no British representative from the Commission or the Council or the Parliament sitting in a Trilogue meeting. As a national Parliament how do you get your views represented on a key issue in the legislation you care about?

The Chairman: Are you aware of any national Parliaments that have sought to break into the Trilogue process?

Professor Hix: No.

The Chairman: Thank you. I think we will go on to Lord Carter if we may?

Q26 Lord Carter of Coles: I think it flows from that. It is a question of the effectiveness rather than the theory of national Parliaments and how they have, individually and collectively, influenced decision-making at EU level. Perhaps you could point us to a national Parliament or two that has been effective.

Professor Hix: We can repeat the same old, same old. Tell them about Denmark Adam.

Professor Cygan: There is Denmark. There is Estonia, which I think has an even more advanced type of mandating process. I think that again goes back to what Simon was saying, and I agree that that is the issue of ministerial accountability. That is controlling your Minister before he or she goes to Council to make the decision.

Before I came to this Committee I looked at this year’s annual report from the Commission on relations between national Parliaments and the Commission, and it paints quite a positive picture in one sense. They talk about the increase in the number of opinions that are going to the Commission—not reasoned opinions, these are opinions. So there is a difference and these are not Protocol II type opinions. This is the national Parliaments communicating. I have already mentioned Portugal. For the second or third year running Portugal has produced more of these opinions than any of the other national Parliaments. There are two possible reasons. One is a sort of Barroso effect,—it is the Portuguese and potentially that could be one. But that might be a bit disingenuous. I think it is also a Parliament that recognises that, in the context of going back to the financial crisis that we talked about earlier, Europe is inevitably a major part of the problem but it is a major part of the solution. So they are trying to avoid the mistakes that at an institutional level as a Parliament they
made before—that Europe somehow neglected. It was one of these southern Mediterranean countries that did not look at EU legislation and was often criticised. I think they have responded. They have taken advantage of something that is less formal, which is going direct to the centre, trying to move upstream and trying to find out what is going on. I would say that one of the things that all national Parliaments could be doing—the Commission publishes its annual work programme—is looking at what is in that programme to determine which are the priority areas that we think should be scrutinised more directly as a policy, even before it gets to legislation.

Q27 Baroness Scott of Needham Market: I want to take the question of how the roles of national Parliaments should be developed in future a little bit further. In among the mainstreaming, upstreaming, live-streaming debate I wonder if you could help me with a couple of questions. First of all, how would enhanced engagement by national Parliaments operate in such a way as to not simply add to an institutional gridlock, and make the current series of trade-offs of negotiations even more complex, so that you end up with something less transparent ironically that you started with? That is my first set of questions. The second is about the capacity of national Parliaments to do this job. I was very taken with the evidence we had this week from Lithuania, where they said, “We have no problem getting all the information from Brussels. We just cannot cope with it all”. I thought that was a very good point, so how do you choose these topics, the ones on which you are going to concentrate? If you are only focusing on a certain number does that not then reduce even further the chances of getting the required number for reasoned opinions?

Dr Smith: I think in some ways there is a parallel with activities in the Council of Ministers, that states will identify which issues are particularly important for them. Some countries—particularly the UK and France—will have a view on everything and have their view quite early on. I use those two countries rather than Germany because the federal system means that Germany sometimes takes rather longer to come to a position.

The smaller states will sometimes say, “Fisheries matter to us but other aspects of agriculture perhaps do not, so we will not have a view but we will look to our neighbours, countries with whom there are often similar views, so we will share expertise”. It may be possible for Parliaments to also share reports. One of the things I discovered, and was somewhat shocked by, was doing a report for the European Parliament where they wanted to look at if there was any way of looking at best practice in defence budgeting ahead of the multi-annual financial framework. You discover that every Parliament is busy doing its own reports, sometimes both chambers in a bicameral system are doing reports, and the European Parliament is doing a report. They are all talking to the same people. They are reinventing the wheel very often. But then what they do not do is exchange the information. They keep it all in their own Parliament. They might put it on the website, but if people are not looking at it what is the point? So exchanging information at an earlier stage and having almost a role of specialisation might be a helpful way forward.

Q28 The Chairman: Following on from that can I ask about IPEX, the EU Interparliamentary Exchange website? It is occasionally a tactic I use to invite embarrassment when people have not heard of it or do not use it. I suspect it is more used by academics than working parliamentarians, but do any of you have a sense on how useful it is or how it could be made more useful?

Dr Smith: My colleagues have spent a lot of time using it. I have tended to do more of the qualitative interview-based activities. I think it is not as user friendly as it might be. What
Professor Adam Cygan, University of Leicester, Professor Simon Hix, London School of Economics and Political Science, and Dr Julie Smith, Senior Lecturer, University of Cambridge—(QQ 18-33)

would be helpful is if you could click a button and get all the national positions and reports simultaneously, and my understanding is it is not easy to use in that way. That is the sort of thing we need, a portal that would allow easy engagement. It enables you to follow what is going on in terms of formal positions, but looking at some of the background material and exchanging information that way would be even more useful.

**The Chairman:** Is that a common view?

**Professor Cygan:** I think so. I certainly access it on a weekly basis, but I am not sure how much use it is to Parliaments.

**Professor Hix:** I would agree with that. On the specific issues here, I am less concerned about gridlock. At the first reading of course there is a long delay, but once the first reading is over, there is a timetable. Gridlock is not a bad thing if it means broader consensus and deliberation. I think history has shown that the longer it takes to make decisions, the better decisions tend to be. So I am not necessarily worried about gridlock.

On the overload issue, I agree with Adam’s point about perhaps focusing on the Commission’s Work Programme. This is where COSAC could play a more important role than it currently does. COSAC should play much more of an information-sharing role than I think it does, and also could also play a deliberative role, where perhaps Parliaments could collectively say: “here is the work programme, and these are the five or six key issues that we as national Parliaments would like to focus on this year”, and then collectively signal this to the EU institutions. The onus would then be on the Commission, the Council and the European Parliament to do everything they can to respond to the collective voice of national Parliaments. Often this would be quite easy to do. For example, recent Work Programmes have had the telecoms package and a financial services package, so it would have been quite easy to see what are the key legislative issues coming “down the pipe”.

Q29 **Baroness O’Cathain:** I want to turn it round the other way totally. We have been talking about the engagement between national Parliaments when they have what we think might be like-minded issues on which we would like to gain some support from them. But the rules of engagement between the EU institutions and national Parliaments in our case—and I am talking specifically about one sub-committee—have been very difficult indeed. I would like you to confirm that there have been some 300 reasoned opinions since the Lisbon Treaty was signed and not one of them has been accepted by the EU institutions. It is a blocking mechanism. We have spent a lot of time trying to get our opinions across and there is a block. I think something has to be done, either as a coalition of national Parliaments to say, “Up with this we cannot put” or to go straight to Brussels and just complain about it. For example, there is a commissioner we have tried to see for at least six weeks. The commissioner will not come over here to see us, and we have now been given a most inconvenient slot of about three-quarters of an hour the day before we break for the mid-term recess. Is that not saying, “Oh for heaven’s sake, they are at it again. Tell them to buzz off”? We have to look at both sides of this coin, so I would like your views on that.

**Professor Cygan:** One thing that I would say about the reasoned opinions, and I have read a large number of them—and this is reasoned opinions and also some of the opinions that are sent to Barroso under the political dialogue—is that the problem is with the drafting by the national Parliaments of how they put their ideas and their objections across. Often you would find that a national Parliament wants to raise a reasoned opinion but does not actually declare that it is one. That is part of the problem. Surprisingly that happens quite a few times. Secondly I would say that, having looked at some of the early reasoned opinions—and
I think it is still true today—national Parliaments are getting subsidiarity and proportionality mixed up within Article 5 TEU, and often talking about the extent to which a measure goes rather than its compatibility with the principle of subsidiarity. Again I think that is something that is a problem.

On your point, yes, we have had one reasoned opinion that led to the withdrawal of a proposal. Well, according to the Commission it did not because the Commission in its documentation subsequently never acknowledged the yellow card. That was the reason and they came back with some other policy justifications for withdrawal and reflection. It will be interesting to see what happens with the public prosecutor’s proposal because I think that is going to be the next one. That one is going to be a bit more difficult. I think the House of Commons gave a very, very good reasoned opinion on this, which goes right to the heart of the issue. But it goes back to the point that I think we have all made in one form or another: national Parliaments when they are involved in EU affairs are still trying to ensure that the Minister remains accountable. While there is an overlap between subsidiarity and monitoring ministerial accountability, I am not sure that they are being able to do both as effectively. There comes a point when there has to be a judgment made as to which is going to be the priority, whether it is the fulfilment of Protocol II or the ministerial accountability. Yes, you are right in what you say but I think national Parliaments do have to look at themselves.

Q30 Baroness O’Cathain: Can I ask for clarification on this point? I totally agree with you that there is a lot of ignorance between subsidiarity and proportionality. Where does the onus lie to clear that up, so that national Parliaments know exactly what is subsidiarity and what is proportionality? If that is the blockage that says that 300 reasoned opinions are not getting through and they are not even going to be looked at, surely something ought to be done about it.

Professor Cygan: It is part of the blockage. I do not think it is the whole thing. Certainly there should be a clearer statement on subsidiarity from the Commission, but I think an understanding within national Parliaments. If you look at some of the early reasoned opinions that were given, they address the issue that the legislation went too far. They were talking about the extent of the legislation. That is a problem from the national Parliaments and a problem with the advice that national Parliaments are receiving internally.

Professor Hix: I would like to say something on that and Julie might as well. The critical point here is that the incentives for the Commission to respond to national Parliaments are very weak. Commissioners do not fear a sanction. The Commission can simply ignore Reasoned Opinions, or withdraw a piece of legislation without recognising that this withdrawal has anything to do with the yellow cards, or say that the Reasoned Opinions are about proportionality rather than subsidiarity and so can be ingored. There is currently no sanction for the Commission behaving like this.

There are only two institutions the Commission fears and that is the Council and the European Parliament. I hence think that this is where pressure needs to be put on Governments and the European Parliament to make sure that there is sufficient pressure on the Commission to take national parliaments seriously.

The Chairman: For the record, Professor, the European Citizens’ Initiative requires a Commission response within three months, but there is no obligation on the Commission to reply in a timely way—and I must say they have not—to reasoned opinions.
Professor Hix: A Commissioner will respond to a national Parliament if the Commissioner lives in fear of his or her legislative proposal being blocked by national Parliaments. Until that happens the Commission will not have any incentive to listen.

The Chairman: Dr Smith, do you want to come back on this?

Dr Smith: I would strongly agree with what Professor Hix has just said. An anecdote that goes back to the time when I think Lord Tomlinson was in the European Parliament was the Wild Birds Directive.

Lord Tomlinson: I will take your word for it. It clearly did not grab me at the time.

Dr Smith: It was about migratory birds. The French being rather keen on shooting decided that this was a matter of subsidiarity, even though they were birds that migrated. So they did not live in France. They were not French birds that were just there to be shot during the shooting season, they were actually migratory birds. The idea that this was about subsidiarity raised some questions, but even Jacques Delors, as President of the Commission, bought into this idea that it should be dealt with in France because it was such an important national issue. There is a real problem about states saying, “This is about subsidiarity” because they feel there is a national interest, versus the Commission and the court saying, “It is not about subsidiarity because we can see that it is best dealt with at a European level” and independent arbitration of that is incredibly difficult to manage.

Q31 Baroness Scott of Needham Market: That has exactly gone to the nub of what my question was: as a practitioner, as a Chair of a Committee, how one makes this judgment. I think the women on boards question, which Lady O’ Cathain and I grappled with, is a very good example of that where, in effect, in wanting to achieve a laudable ambition in a uniform way, across all the member states, in my view is inevitably going to rub up against national Parliaments who believe that they want to be free to do things in their own way and to respond to their own challenges. So all the dialogue in the world between European parliamentarians and national parliamentarians is always going to come down to that fundamental point, because there is an old expression that if you have a hammer all problems look like nails. That is the European issue, is it not? If you are sitting in Europe you see European solutions. If you are sitting here you see national ones.

Professor Hix: Well, two issues. One is we are a legal community and I think there are clear legal norms. The fact that the treaty is very detailed is a good thing. This means that it is not vague on most things. On the contrary, it is very precise on most things, and this helps define clearly the issues for action at the European level. The other side of this question, though, is that these issues are political if the treaty is not as clear as it could be. It is correct that things should only be decided at European level if there is sufficiently broad political commitment across Europe, across political families, and across national Parliaments. Because of this I think it is appropriate that national Parliaments buy in to the political nature of this question and occasionally say, “We might recognise that, yes, we could all do our own thing but it is in our collective interests to do this together”. So I think that “politics” is part of the answer. The other answer is that we do have legal rules that are meant to help us decide when these things can be done at the European level and when they cannot.

Lord Hannay of Chiswick: Can I follow up on that point? Given the Centre for European Reform’s recent publication a week ago, and their idea that the European Council should say to the EU Commission that they expect the Commission to respect a yellow card and not proceed with a proposal that has received the full quotient under the yellow card. That is,
without treaty change you would be making the yellow card into something close to a red card. What do you think about that?

**Professor Cygan:** It is a nice idea and I understand the attraction of it, but it is not enforceable. Assuming the Commission does not do it, national Parliaments have no locus standi before the Court of Justice anyway to try to enforce that decision. What categorises the yellow card for me is that the process goes on in the capitals of the member states and then the final decision is taken over in the EU institutions, because it is either the Commission deciding it does or does not or the Council and the Parliament can decide whether they wish to continue by their various voting procedures. I think that this is part of the problem. But, as you say, if you had an alternative it would be a red card and then that was rejected for a variety of reasons by the constitutional convention that led to the constitutional treaty and then the Treaty of Lisbon.

**Lord Hannay of Chiswick:** I am sorry. If I may say so, I think you are giving a slightly facile answer to that question. First of all, one of you has already said in your testimony that the two institutions that the Commission fear are the Parliament and the Council. So simply telling the Council to get lost would not perhaps be entirely cost free. Secondly, you would not be changing the treaty. Of course it is not enforceable in the European Court of Justice, but my question is: is it useful politically for dealing with Commission proposals that one-third of Parliaments think are not fulfilling subsidiarity?

**Professor Hix:** It is not easily enforceable but I think it could be very politically useful. Adam is correct legally of course, but I think the analogy would be the co-decision procedure, where the European Parliament said, after the first time where the Council returned to its common position after failure to agree in Trilogue, “We are going to throw this out. We want the principle recognised that co-decision means co-decision. The Council cannot just act unilaterally”. This principle was not legally enforceable but was politically very powerful, because the Council was then not willing to take the risk of the European Parliament rejecting a piece of legislation again.

The EU decision-making process usually works within rules that have been established by a political process. That is exactly how I could see the rules for involving national parliaments developing. So, if the Governments tell the Commission that they have to respect a yellow card. The first time the issue arises it would then be a political test, and the Commission would have to have a pretty damn good reason why it would not respect a yellow card. Then the politicians, in the European Parliament and the Council, might accept the Commission’s reason for not respecting a yellow card but the onus would be clearly on the Commission to make its case much more strongly than it currently does.

**Professor Cygan:** I suppose the point I am trying to make is that in Monti II it was 19. It just got above the threshold. So you can still say that two-thirds of Parliaments either did not think there was a problem or did not do anything. I think there comes a point at which there has to be some sort of threshold for that to happen.

I have argued in the past that one way of looking at this potentially is to have something that mirrors the voting requirement in Council: 55% of national Parliaments across 65% of the population. If you have that across the national Parliaments then I would agree that that then has a robust position to force the Council. Simply 19 out of 54 at the time or 14 as it could potentially be now out of 58 I think is not going to be overwhelming. It has to be something that is robust that makes the Commission stand up. So, yes, it is politically useful but there has to be some sort of minimum for it.
The Chairman: Because of the timing, I am going to ask Baroness Parminter to put her question and then perhaps we will wrap up and explain what we can do from now on.

Q32 Baroness Parminter: Looking at it from the other end in a sense, if national Parliaments did get a stronger role and, therefore, became far more demanding, how would the institutions cope, particularly in the light of the resource constraints that may be put upon them?

Dr Smith: Could I possibly start?

The Chairman: Yes, please.

Dr Smith: One of the changes with the Commission over the years appears to be how much legislation was put forward and at what time. Before co-decision the Commission proposed legislation and by and large the Council would agree it, with very little input from the European Parliament. Sometimes legislation was put forward with relatively little chance of getting through the legislative process. Over the years the Commission has put forward legislation that, by and large, it thinks is going to be acceptable. If national Parliaments make clear that they are not going to accept certain things, particularly if they are likely to breach subsidiarity, then we might expect gradually the Commission to be seeking to talk to national Parliaments as well ahead of time, in the way that they will talk with the permanent representations and the European Parliament, and get a sense of what might be acceptable. So I think in the medium term it could be effective.

The Chairman: Any other comments?

Professor Cygan: When I was researching the work of this House 20 years ago for my PhD, one of the ideas that I looked at and struck me was that, even at that stage—20 years ago—national Parliaments would potentially become lobbyists. That was their role. I think to some extent that is exactly what Dr Smith is saying. They have to be able to make their views known directly. Whether “lobbyists” is the right word I am not sure, but I do think that it is something that is a change in the role for the Parliament. It is not the traditional role that a Parliament would have. It is something different. I think that recognises both the supranational nature of decision-making and co-decision, but also what you see for example with soft law.

Professor Hix: But 20 years ago the European Union was passing 300 pieces of legislation a year. There have been several big changes since then: there is a lot less legislation now, which means increasing the possibility of national Parliaments playing a role and it not leading to more gridlock. There are also a lot more packages of legislation with several pieces of legislation being passed together. Again, this allows national Parliaments to identify a particular package they care about, and look broadly at the principles involved in this package of five or six or more pieces at the same time. I think those changes allow the institutions in Brussels to cope with a more active role of national Parliaments. A third development is more difficult for national parliaments, as Professor Cygan mentioned: the emergence of soft law and the growing co-ordination role of the EU institutions. These processes cover not just economic and monetary affairs but a lot of other aspects of how the single market is governed. It is more difficult for national Parliaments to play a more active role in these areas.

Q33 Lord Foulkes of Cumnock: Chairman, I was—

The Chairman: If you will forgive me, Lord Foulkes, I was rigorous in our timing because of our load.
Lord Foulkes of Cumnock: I have a procedural question.

The Chairman: All right, if it is a procedural question.

Lord Foulkes of Cumnock: I was quite taken by Professor Hix talking about more imaginative ways of this Committee dealing with it, and I wonder if he could let us have more in writing—more suggestions.

The Chairman: Indeed, that is entirely congruent with what I was going to say, Lord Foulkes. Thank you.

Lord Foulkes of Cumnock: Even better.

The Chairman: I think it is evident, from the fullness of the hour and the intensity of the interest expressed, that our three witnesses have performed a great service for us. I was going to trail that I think this process may not be quite at the end because I know a number of my colleagues have unanswered questions, and I apologise to them for that. It is partly because of the fullness and the interesting nature of your answers. So if we can leave it that—over and above what I said earlier about the transcript—we can enter into dialogue with you through the clerks in terms of unanswered questions. Conversely, if you have further unreported treasures to share with the Committee we would very much like to hear them. We are very much in the business of a dialogue on this and please do not feel in expressing our appreciation for this afternoon that, as far as we are concerned, this is necessarily a closed book because I think a continuing series of thoughts on this would be greatly appreciated. We are very grateful for your presence this afternoon.

Professor Hix: Thank you.

Professor Cygan: Thank you.

Dr Smith: Thank you.

Lord Maclennan of Rogart: Chairman, I have a postscript.

The Chairman: It is another postscript and I think Lord Maclennan should have it.

Lord Maclennan of Rogart: Thank you. It is simply to ask that, if we going to continue the dialogue, if you could give some consideration to whether new institutional structures should be considered in order to improve co-operation between national Parliaments.

The Chairman: Thank you.
Averof Neofytou, Chairman, Committee on Foreign and European Affairs, House of Representatives, Cyprus and Eva Kjer Hansen, Chair, European Affairs Committee, Folketing, Denmark—(QQ 34-50)

Transcript to be found under Eva Kjer Hansen, Chair, European Affairs Committee, Danish Parliament
I would like to thank you for the information regarding the inquiry undertaken by the House of Lords European Union Committee on the role of national parliaments in the European Union. I will welcome information about the conclusions of your inquiry.

Regarding your request for inputs from the Member States’ legislatures, I would like to briefly summarize the main positions articulated by the Senate and its Committee on EU Affairs regarding the topics and questions mentioned in the call for evidence:

I. The role of national parliaments in general

National parliaments constitute a pillar of democratic legitimacy of the European Union. The Senate considers the new instruments entrusted to national parliaments by the Lisbon Treaty as a stimulating factor that could enhance their involvement in the EU affairs.

Regarding the parliamentary control of the principle of subsidiarity, the Senate is of the opinion that a deeper interest in the issue of subsidiarity on the part of COSAC would enhance the effectiveness of this scrutiny. The Senate also lacks comprehensive, user-friendly and reliable information about the results of subsidiarity checks carried out by national parliaments, which would be available shortly after the elapse of the deadline set for control of subsidiarity with regard to individual draft legislative acts.

The Senate agrees with the European Commission as regards the significance of national parliaments’ involvement in the political dialogue in the pre-legislative phase. It aims to dedicate greater attention to consultation documents initiating public debate about appropriateness of a new regulation on European level. However, the Senate would welcome if the impact of national parliaments’ contributions within the above-mentioned public debates was monitored and published by the Commission.

Concerning the Commission’s replies within the framework of the political dialogue, I would like to add that there seems to be a common feeling in my committee that the quality of Commission’s replies, although it is slowly improving, is still insufficient, especially because of the level of abstractness and lack of concrete counter-arguments to the points raised by the Senate.

II. New developments in the economic and monetary union

As far as the possible new developments in the role of national parliaments are concerned, the Senate has paid considerable attention to the institutional changes proposed by the Commission and debated by the European Council with respect to the economic and monetary union.

In the wake of the publication of the Commission’s Blueprint for a Deep and Genuine EMU, the van Rompuy Report and the subsequent conclusions of the December 2012 European Council, the Committee has stressed that such key documents should be published in a time that enables a thorough debate on the level of the Member States (especially with their parliaments) prior to the adoption of any political decisions in the European Council. This seems to be a more general problem connected with the European Council’s procedure.
As for the contents of the Commission’s Blueprint, the Senate has highlighted the irreplaceable role of national parliaments in the decision-making concerning economic and especially budgetary matters of the Member States as well as in scrutinizing the economic policies of national governments. The economic and, above all, budgetary policy represents the very core of sovereign statehood and parliamentary democracy and, therefore, the constitutional powers of national parliaments should be duly taken into account and should not be eroded in the course of further integration in this area.

The Senate has found that enhanced coordination of economic policies of the Member States and above all mechanisms used by the Commission or the Council to addresses particular issues in individual Member States, if they were to become more binding or enforceable, concern the competences of national parliaments and have a direct impact on the citizens of the Member States. The Senate has noted that the role of national parliaments in matters that fall within the competence of the Member States and are subject to coordination at EU level cannot be replaced by a greater involvement of the European Parliament as it does not bear political responsibility for the economic situation in the Member State. Therefore, the Senate considers that such coordination requires a strong involvement of national parliaments, including their right to ask the Commission to participate in the discussion on these issues in the national parliament to clarify its position there, and necessitates a consent of national parliaments with final terms of any contractual agreement between the Government of the Member State and the EU institutions. The Senate also considers it very important to engage in a parliamentary scrutiny of the European semester. It is adapting its procedures in this respect.

Finally, I would like to inform you that our committee is going to debate the annual Commission reports on the relations with national parliaments and on the principles of subsidiarity and proportionality in September with a view to update its general position on these institutional matters. The final resolution adopted by the Senate in autumn will be distributed for information via the national parliaments’ permanent representatives’ network in Brussels and will also be available for the purpose of your inquiry.

I am looking forward to our further cooperation.

28 August 2013
Q34 The Chairman: Good morning, ladies and gentlemen. This is a formal evidence session for the House of Lords European Union Committee. We are in small numbers because of our location in Vilnius. I will begin by expressing our thanks to the authorities of the Lithuanian Seimas for making these facilities available to us, and, secondly, to our witnesses this morning, Mrs Eva Kjer Hansen and Mr Averof Neofytou, from Denmark and Cyprus respectively. We hope that we can have a good, lively interchange of views—albeit that this is a formal session—on the effectiveness of national Parliaments. That would be much appreciated. I should perhaps say that we will be taking a parliamentary transcript and publish the evidence in due course, and we will send you a copy of that transcript for any technical corrections that you may have.

Given that we are all busy and it is a very early hour in the morning, we will start straightaway. I will ask you an opening question. Both your countries have been in the presidency, and you have been involved in Troika meetings for COSAC. My simple question is: has it been worth it? Do you feel that national Parliaments, both within the Troika and outside, have added value to the democratic process and the process of decision-making? In particular, there is always a potential danger that we may say more and have more meetings,
Eva Kjer Hansen, Chair, European Affairs Committee, Folketing, Denmark and Averof Neofytou, Chairman, Committee on Foreign and European Affairs, House of Representatives, Cyprus — (QQ 34-50)

but may not be more effective in getting things done or changed as a result of our intervention. Eva, perhaps you would start.

Eva Kjer Hansen: I think our presidency was a good experience. It is a time when you get much closer to the machinery. This time it did not cause that much debate in Denmark. It was more like just having the machinery going on; it was not a very new topic. That depends very much on the political situation. The economic crisis was the big issue this time. For the national Parliament, again, it was very interesting, but we ought to consider how to improve in our work together, because when we jump to another country, it is like starting our work all over again, with these changes in the presidency. So what we learn from meeting to meeting somehow is not kept and used. So we have to consider in our work as national Parliaments how we can improve and how we can get better over time. On your last question, we care too little about the purpose of meeting one another. We arrange, if I may say, a hell of a lot of meetings—do not quote me on that—and we try to send colleagues from the national Parliament to all these interparliamentary meetings, but none of us really knows what the outcomes are.

Q35 The Chairman: Let me put my thoughts to you. Is there a danger that meetings are a substitute for action, not a vehicle for delivering it?

Eva Kjer Hansen: It is a little like keeping the sessions for the European Parliament in Strasbourg; it keeps the parliamentarians busy. They waste a lot of time on things that do not really give anything to you. What I feel is missing is more thinking about the purpose of each meeting and what we want to be the outcome.

Averof Neofytou: For the small country of Cyprus, it was a big challenge and a great opportunity to preside over the Council of the European Union in an era when we faced a lot of financial problems. While chairing the Council of the European Union we had to apply for assistance to the Troika. It was a good opportunity for Cyprus to show that we could succeed, even when we had to tackle the financial problems, due to the good administration that the British left to Cyprus. We can blame you for many things, but wherever the British passed through, they left those countries with a well functioning system. We can see that in every corner of the universe. Concerning the continuing and end result of all those meetings, I share the view of my colleague Eva, but we have to have in mind that we, as parliamentarians, are not an executive branch.

Q36 The Chairman: Can I take you a little further on the issue of continuity? I think that you have both accepted that this is a concern. Do you have at this stage—perhaps you do not yet—an idea of how best to meet that concern? Is this something that can be done by a permanent secretariat? We appointed a new permanent official at the secretariat yesterday, as it happens from one of your countries: Cyprus. Does it need more firepower there, or is there another way of doing this?

Eva Kjer Hansen: A permanent secretary is not enough, because that is what we have practised for some time. We need those who take the decisions. Either we should give more decision-making power on how to organise the meetings to the secretariat, or we need some permanent leadership.

Q37 Lord Hannay of Chiswick: So could you envisage a situation—which, after all, is what the eurozone had in the form of Mr Juncker at one stage, and now the Dutch Finance Minister—in which you appoint a chair of COSAC who serves for two or three years? That
Eva Kjer Hansen, Chair, European Affairs Committee, Folketing, Denmark and Averof Neofytou, Chairman, Committee on Foreign and European Affairs, House of Representatives, Cyprus — (QQ 34-50)

would not necessarily mean that you did not go to the country of the presidency for the meetings, but you would have a greater degree of continuity. Is that possible to envisage?

Eva Kjer Hansen: Yes. It would be my proposal.

Averof Neofytou: You are talking a political appointment?

Lord Hannay of Chiswick: Yes. You would choose one of the representatives.

Averof Neofytou: It might be a good idea, but we would have at the same time the chairperson at the political level of COSAC and every six months we would have the chairperson of the Committee of European Affairs, who would be co-chairing. How would we tackle this?

The Chairman: It would be a matter for tact, but I think that neither of you is saying that it would be impossible. We would have to think how to do it.

Eva Kjer Hansen: It is like the rest of the EU has done—so why could we not do the same?

Lord Hannay of Chiswick: Although there is sometimes resistance. We wrote a report suggesting that the Committee on Internal Security, COSI, should have a chairman for more than six months rather than a rotating one, because police work, justice and so on is an area where continuity is very important. That was given no support at all, either by our own Government or by anyone else.

Averof Neofytou: Eva knows better than I the cost of conflict between the European Parliament and national Parliaments. I am not against the idea, I am just putting down possible problems that we would have to face: on the one hand, the conflict around the chairperson of the presidency—a political figure—for two years, and then the conflicts among national Parliaments and the European Parliament. We need a good English diplomat to solve the issue.

Q38 The Chairman: That is very gracious. Perhaps I may ask one more question before I ask Baroness Corston to come in on her concerns. I think that there is a suppressed problem in the whole discussion about COSAC. Tell me if I am wrong. It is about parliamentarians’ time—particularly national parliamentarians. They have to stand for election and they are, as it were, not dedicated to Europe all the time, because they are representing their national districts. You have both been in that position, when your countries have been in the chair. Did you personally find that it was a considerable strain to be in your national Parliament, dealing with your local constituents or populations, and representing the wider interests of your national Parliament in Europe? Are we, in effect, asking too much of flesh and blood to be able to perform these functions?

Eva Kjer Hansen: Of course we can do it, but our problem is that our voters are not that much interested in EU affairs. So in an election campaign, no one cares about the work that you are doing at European level.

The Chairman: Thank you. I understand. I think that is very eloquent.

Q39 Baroness Corston: I would like to talk about the response to the Treaty of Lisbon and the role of national Parliaments. Do you sense any change in your own national Parliament in relation to the EU framework under the treaty of Lisbon? What has the response been? Has there been a response?

Eva Kjer Hansen: On procedural matters, there has been a change. We now send a lot more to the other committees and try to get people involved.
Eva Kjer Hansen, Chair, European Affairs Committee, Folketing, Denmark and Averof Neofytou, Chairman, Committee on Foreign and European Affairs, House of Representatives, Cyprus — (QQ 34-50)

**The Chairman:** This is the so-called mainstreaming, where things are meant to go through your Parliament.

**Eva Kjer Hansen:** Yes. In some cases it works when we have this involvement, but it depends very much on the issue. The tobacco directive is something that causes interest, and there are other examples. But in general—maybe some of my colleagues would disagree—I do not think that it has changed much in ways that we would not have changed anyway if we had not had the changes. It is always a fight to try to get national parliamentarians more involved and more into the discussion, and then to understand—we have had a long debate on this—the difference between a subsidiarity check and a political contribution.

**Q40 Lord Hannay of Chiswick:** Presumably the yellow card procedure has brought some changes in the way in which you handle European business: the need, within eight weeks, to decide whether to file a reasoned opinion.

**Eva Kjer Hansen:** But my personal point of view is that the yellow card is very much a pacifier. There is another, nastier word than “pacifier”.

Because the national parliamentarians have now got closer, we are able to use the yellow card. The first time we did it was when Denmark had the presidency. In the Danish Parliament, we did a very quick procedure on our contribution. Then we printed it and gave it to all our colleagues at the COSAC meeting in April in Copenhagen. We said to our colleagues, “Don’t you think you have the same opinion on this issue, Monti II?” That was the first time we managed to get enough votes. Now we know more about it, and it is possible. I understand that we are just about to have another example. This is fine, and it is okay if it works. But does it matter and does it change anything? On Monti II, the Commission’s answer to us was, “We disagree. This is not against the principle of subsidiarity, but we can hear the political points of view, so we will withdraw it”. To me, this is a very negative approach. It is very late. We should look at how we could, at an earlier stage, give our opinion on whether we think that an initiative on an issue should be taken. The nature of the Commission is that it has the right to take initiatives. A Commissioner, just like a national Minister, will always look for issues to bring up. To me, it is too late and it is too negative, and we have to look at how we can get a more positive approach. That is why we should also have the right to propose an initiative.

**Q41 The Chairman:** Can I share a dilemma that is in my mind? We are asking to get further upstream in the decision-making process—whether we make our own initiative or respond to a Commission initiative at the planning stage. Traditionally, although I appreciate that practice in the Folketing is slightly different from British and Cypriot practice, we are responsive. We look at proposals and say that we do or do not like them, or would like some modifications, rather than initiating or being involved in the policy process. Do you see a dilemma if we were able to arrange with the Commission to be more upstream in the process? Does that clash with our work in scrutiny and reporting, and with the accountability of the Commission for its work, or can those difficulties be reconciled?

**Eva Kjer Hansen:** Of course. Maybe I should reflect a little more on your question. I do not think that it is a coincidence. To scrutinise our Government is also to know about what is going on, and to be involved. What I see very often is that we get in too late, so what can be changed?

**The Chairman:** Would it be fair to say that to some extent the Commissioners close ranks as a college? They have effectively made the decision.
Eva Kjer Hansen, Chair, European Affairs Committee, Folketing, Denmark and Averof Neofytou, Chairman, Committee on Foreign and European Affairs, House of Representatives, Cyprus —(QQ 34-50)

Eva Kjer Hansen: Yes. I am responding to your question about the dilemma over scrutinising the Government. This goes a lot further, to my mind. It also has to do with first readings being the normal thing. I was in favour of first readings. I remember the debate that we had. It was about how, in a very few cases, when it is so important for a decision to be taken, it is okay to have only one reading. Now it is the normal thing; I think up to 95% of new proposals are covered by first reading. This means that the decision procedure has become a lot more closed. Again, that has the consequence that national Parliaments have more difficulty in following developments in the negotiations. It is not only people from outside but national Parliaments that might have difficulties in following. We have agreed with the Government that they have to come back and tell the committee about important developments on a mandate. They never do that. It is a matter of what changes are important. I claim that we are also quite flexible. We give a broad mandate so you can negotiate in that frame all the way through. So to me it is also a matter of having a more open and transparent system. When we have to agree on what is going on, the way we can get more information and be closer to the decisions is in our co-operation with the Commission. Therefore, I do not think it is much of a dilemma. We need to be close to the Commission and have Commissioners presenting initiatives in national Parliaments, with the ability to ask questions. I would claim that it improves our scrutiny of the Government, rather than being negative.

Averof Neofytou: In Cyprus there is a strange political situation. After the Lisbon Treaty, our Parliament may have more powers to scrutinise proposals of the European Commission than the decisions of our Government. Due to our constitution in 1960, we have full separation of the three powers: the Executive, the judiciary and the legislature. We have many decisions of the Supreme Court that say that decisions of the Parliament are unconstitutional on account of this distinct separation of powers. Of course, after the Lisbon Treaty, we scrutinise and examine proposals from the European Commission. There were cases lately where we prepared reasoned opinions, with other countries, concerning the European Public Prosecutor’s Office. This proposal has been blocked for the time being. So we have the tools after the Lisbon Treaty, and we have to work with these tools, even though we agree that we need more involvement and more direct contact with the Commissioners, and so on.

The Chairman: I should record at this point in the discussion that I should perhaps have made it clearer in my question that there is clearly a distinction between our role in scrutinising the work of national Governments, whether or not we have a mandate system, and our role with the Commission in the development of policy. Obviously, those are parallel activities, and very often we side-copy our reports to the Commission. However, our main discourse is through Ministers to the Commission.

Q42 Lord Hannay of Chiswick: Perhaps we could move on to the eurozone. Yesterday we had from Monsieur Fabius, the French Foreign Minister, probably the most detailed account I have heard of the Franco-German approach to how national Parliaments should exercise oversight of the activities of the eurozone. He said that there should be a completely separate institution composed of the national Parliaments of the members of the eurozone that would conduct this, together with Members of the European Parliament—presumably Members from countries that are in the eurozone, although he was not explicit about that. We are very cautious about that approach and rather critical of it, because it seems to us that the matters discussed in the eurozone are of great importance to the non-members, too—not just because they might be straying on to areas that belong to the 28 rather than to the 18, but also because, for example, major macroeconomic decision-making
and suchlike will affect us very directly. So we do not like this idea very much. One of you is from a eurozone country and one is from a non-eurozone country, like Britain. What is your feeling about how the oversight should be carried out of the clearly much more integrated economic policy machinery of the eurozone that is coming about? Should this be handled by national Parliaments—by 28 or by 18?

**Averof Neofytou:** On the one hand, we can understand the argument that those who are in the eurozone have to decide about policies that concern the eurozone: the countries that are members of the club. On the other hand, I absolutely agree with your view that any decision of the eurozone will affect not only the European Union as a whole but the whole economy. Therefore, I understand that the non-eurozone countries have to have a say in the monetary policies of the eurozone. Therefore, I will raise a broader question. Was it wise to have two different kinds of countries within the European Union when the European Union decided to introduce the euro in the eurozone? How did they decide that some countries can be out and some have no choice other than to be in the eurozone? When the 10 countries were accepted into the European Union—I am talking about Cyprus, Malta and the eight from eastern Europe—there was a clear clause in the accession agreement that said that they have no choice but to enter the eurozone once they meet the Maastricht criteria. We heard yesterday night from the President of Lithuania that they would apply for membership of the eurozone in 2015, even though there are a lot of problems in the eurozone. She underlined that they had no option. It is mandatory and an obligation on the new member states. So we need a serious political and economic dialogue about this crucial issue.

**Eva Kjer Hansen:** I am against new institutions, and I think that the consequences of the decisions being taken by the euro member states are very important also to the other states. So I think we should have the possibility of commenting on what is going on.

**Lord Hannay of Chiswick:** Perhaps I could complete the point. What strikes me as irrational in the Franco-German approach is that they are not proposing that this parliamentary assembly of the members of the eurozone should have any decision-making powers. I am not surprised. It would be odd if they did; but they do not. They are quite clear. It is there for consultative and oversight purposes. In that case—if they are never going to take decisions—why on earth do you have to exclude the non-members? I can understand why, in the eurozone, you could argue that if the body was decision-making, as the Finance Ministers are, then only the members of the eurozone should take decisions about the eurozone. That is totally logical. However, with the parliamentary oversight role, there is confusion. I am sorry, that is not a question but a point of view.

**The Chairman:** Perhaps we might move with Baroness Corston to the other concern that is part of this, which is that parliamentary debate, whether at national or European level, also impacts on people. There are plenty of difficulties in Europe at the moment, and plenty of issues. I know that you have had a conference. I will turn to Jean Corston to explore some of the concerns that we have.

**Q43 Baroness Corston:** To the credit of the Danish Parliament, and possibly to your credit, I understand that earlier this month you organised a voluntary meeting for Members of national Parliaments on free movement and national welfare systems. What was your assessment of that meeting? Could you tell us about it?

**Eva Kjer Hansen:** We discussed what to do among national Parliaments: that we need new tools in the toolbox for our daily work, and that we need more at the European level if we...
want to have a say. One idea was to have clusters of interests. We would not expect all Parliaments to show up whenever there is an initiative, but those with an interest in a certain issue could meet and discuss it. This was the first meeting of that kind. We decided to pick up the issue of free movement and social welfare systems because there was a letter from four countries—the UK, Holland, Austria and Germany—on cheating with different benefits. In other countries, including Denmark, there is a discussion about the rights you have when you use the possibility of free movement, and what kind of benefits you have a right to. We had a very good discussion, and this is one of the ways in which we should work more together. It gives us a good knowledge about what the debates are in the different countries. We also had the opportunity to meet a representative from the Commission, and we had some researchers. So the outcome of the meeting was very good.

Q44 Baroness Corston: You said there were people from the Commission and the European Union institutions. How did they respond? Did they accept it as an interesting and useful initiative?

Eva Kjer Hansen: The health unit was very good at presenting the point of view of the Commission. Therefore, the dilemma was very clear. The Commission claims that free movement is not a problem and that only around 1% of EU citizens use these possibilities. Of course, what you gain in one country, you have the possibility of bringing to another country. I agree that the level of free movement is very low and I would like to see the numbers raised. Of course, there are certain benefits that you bring with you when you move around. What we said—which was a broad political view from those who were present—was that the question is not how many but whether the system today is fair and right. How do you define a worker or a non-active person? What kind of rights and benefits should you have access to? So it was very clear that we were far away from one another on what kind of debate we have as politicians, with the system answering, “Well, we can see that the numbers are not that high, so it can’t be a problem”.

Baroness Corston: That is the difference between people who are parliamentary representatives and people who are not.

Q45 The Chairman: I will probe you a little more on the follow-up to this. Could you envisage a system, for example, where you had, to borrow a phrase, a “coalition of the willing”—people who are interested in a particular topic—meeting, identifying a need and then reaching an agreement with the Commission, perhaps to have a working group to try to work something out? For example, we all know that social security systems are very complex. Some depend on residence—where you live—and others on your record of contributions. I remember many conversations with a French driver I had at one stage about how he could not get hold of the pension he had earned in London. It was difficult to get it administered. Can you see some of these almost nuts-and-bolts issues being discussed by national parliamentarians and the Commission to try to get a more sensitive response?

Eva Kjer Hansen: Only if we can do it ourselves, and are strong enough to stick together and say, “This is what we want to do”. Ten of us would show up in Brussels and say to the Commission, “We want a discussion on this”. But then we would have to go further in our co-operation. I mentioned yesterday that we learnt that there was now a committee of representatives of all the member states that is trying to find definitions for Regulation 883 on free movement and working on how to implement it in national legislation. I wrote a draft request to Commissioner Andor, asking that, when the committee has finished its work in the new year, the report should be sent back to national Parliaments so that they
Eva Kjer Hansen, Chair, European Affairs Committee, Folketing, Denmark and Averof Neofytou, Chairman, Committee on Foreign and European Affairs, House of Representatives, Cyprus —(QQ 34-50)

have the opportunity to comment on it. That might be difficult because it might be very technical; I do not know about that, or about how the different Parliaments will cope with it. But at least we should have the opportunity to comment on it. I noted throughout the meeting that sending such a request does not have political substance; it is only about asking the Commissioner to send us the work that has been done by the committee. We will probably end up—I have not heard from your colleague yet—sending this just on my behalf, because it is too difficult for national parliamentarians to get a mandate back home in their Parliament for something like that. That leads me to mention that the problem we will face when we get further in our co-operation is how to act, and what kind of mandate we will bring from our committee. We are so used to it in Denmark. I would never act in a way that would be against the majority of the committee; we know a lot about this. It seems to be a difficult issue for us to cope with, and that will be a bigger thing in the longer run.

Lord Hannay of Chiswick: I see what you mean, and I can see how we might have difficulty initiating a request of the sort you did. You asked what we would do if the Commission gave an affirmative response to your request and sent to all the national Parliaments the work that the group you convoked had done. As you say, it will probably be very technical. We would have no difficulty at all in dealing with that. We would simply take receipt of it from the Commission and, if we wanted to, we would take evidence from Ministers who were responsible for that area and from experts about what they did. Then we would either write a letter or a report. We would have no problem responding to something that came to us from the Commission, because that is part or our remit. It is within our remit to write reports on anything that comes to us from the Commission, to question Ministers and so on. So we would have no difficulty with that.

The Chairman: Provided we had enough time, I think it is fair to say.

Lord Hannay of Chiswick: Well, yes. But anyway, we would have a choice. We could either write a full report or we could do what we call “enhanced scrutiny”, which is taking evidence but writing a letter, or we could do the normal process, which is to correspond with the Government.

Q46 The Chairman: Mr Neofytou, are you seeing things in the same way as your colleague from Denmark? Can you see the difficulties?

Averof Neofytou: Politically I agree with Eva about what we should do, taking into consideration the restraints that we have as a small country with a Parliament that has not much support, and with a lot of other priorities on our national agenda. On the one hand there is the national issue and on the other the financial crisis. But I think we as parliamentarians have to take initiatives on issues such as the welfare system. We should tackle it and come up with some proposals.

Q47 The Chairman: Thank you. We started this session with a discussion about the capacity of national Parliaments to get further engaged—and, to some extent, about the appetite of national Parliaments to do so. The other side of this that we ought to touch on is the capacity and good will of the Commission and of the other European institutions in dealing with this. It would be possible—for the purposes of argument—to say, as you rather implied with the yellow card procedure, that this is some kind of elaborate charade in which we say, “We are very anxious to hear from you”, but if we all knocked at the door and said, “We have come along with these requests, or even demands, from national Parliaments”, they might not thank us for doing so. How much of this is a matter of what might be called
cynical management of national parliamentary opinion, and how much would the new Commission be able to use it as a real vehicle for improving European decision-making?

Eva Kjer Hansen: It depends on the quality of the opinions that are sent from the national Parliaments, and whether they would help a Commissioner very much in her work. To me, the interesting point—and why I started thinking about the role of national Parliaments—has to do with the legitimacy of EU decisions and the lack of trust of the citizens.

Averof Neofytou: The Commission has to show more respect to national Parliaments and to the reasoned opinions that we send. We commented on the last reasoned opinion concerning the Public Prosecutor’s Office. The Commission did not react in a good manner, saying to some people in Brussels that they had no right to object because it was clear in the Lisbon Treaty. The Commission has to change its culture as well, to consider the opinions of national Parliaments as an opportunity for further political debate on issues, rather than creating an atmosphere in which they do not like to see, and reject, different views on issues.

Q48 Baroness Corston: Eva, I would like to talk about the lack of trust that you sense that your electorate have in the European Union—I think that is what you were saying. What is the cause of that? Is it for a legitimate reason or is it about press reporting, for example? I remember the British press, 20 years ago, criticised the European Union because it was going to insist that we all ate straight bananas. Actually we knew that it was about the protection of the African, Caribbean and Pacific banana, which happens to be smaller and curved. As an elected Member, I used to get people on the doorsteps saying to me, “We don’t want anything to do with Europe, they’re even telling us now that we’ve got to eat straight bananas”. That was not something the Commission had done or that we were proposing; it was about a decision that had been misreported. Which is it—or is it a mixture of both?

Eva Kjer Hansen: But we are the politicians, so we have to take responsibility, no matter what the press is doing. We had it with straight cucumbers. In Denmark we have had regulations about cucumbers since 1926 or something. It is actually a success because when we became a member of the EU, we came up with a proposal that the regulation we had on cucumbers should be the EU standard. So it was a success for Denmark, but for 40 years we have used it as an example of how crazy the EU is. We have another saying, which is the quote of Margaret Thatcher that the European Parliament is a Mickey Mouse Parliament. This was studied, and she never said it; it was a journalist who changed what she said about the European Parliament into a headline. But that has been common in the Danish debate. So we can claim that the press is awful, and it means a lot in the debate we have, but instead of pointing at the press—and I think that they are awful and getting even worse—we have to find out how we can have a more serious and substantial debate about EU things. Again, that is where we as national parliamentarians are closer to the voters. It is still national parliamentarians who have most time in the media. We have to get our colleagues more involved. I will give you one example from this week. I have colleagues on the committee on businesses. There was a proposal on consumer rights based on a new EU directive. My colleague, who was the committee spokesperson, was of the opinion that this was very bad legislation and that some of the elements were silly. Those of us who were members of the European Affairs Committee could tell him that two or three years ago, or whenever it was, we had this discussion and that this was the compromise that came out of it. That really shows the problem we are facing. Even in Denmark, where we have a very long tradition and are known for being good at scrutinising the Government, it is still a minor group of
parliamentarians who really know about things and a very big group who find it difficult to get involved in EU matters. Again, it is not an issue whenever we have an election campaign. We discuss growth and jobs but we never mention the EU. We have to change that, to get support for EU decisions and to develop co-operation.

Q49 Lord Hannay of Chiswick: Could I ask a couple of questions about the yellow card again? We have talked about how the national Parliaments might collectively seek certain improvements in the system. The Centre for European Reform—I should declare an interest because I am on its advisory board—launched a set of proposals for the reform of the European Union which included two relating to the yellow card. One is that the eight-week time period should be extended to 12 weeks, giving national Parliaments more time to prepare reasoned opinions, and, perhaps more importantly, giving national Parliaments that are preparing opinions more time to talk to their colleagues in other national Parliaments and see whether there was common ground between them. That is the key, of course, to working the yellow card. That was one proposal. The other was that the European Council and the national Parliaments all collectively should say to the new Commission, “We want you to treat the one-third”—or in some cases less—“of yellow cards which cause you to reconsider as a cause for withdrawing your proposal”. Both those changes could be made without treaty change, though of course they would not have an absolutely firm legal base. Could you comment on those two possibilities?

Averof Neofytou: I think that they are very reasonable changes, because the Commission has unlimited time to discuss and consider a proposal. We have a very limited time as a national Parliament to respond. It is unfair.

Eva Kjer Hansen: We would be in favour, but to me it would be much more important to have political opinions in the same frame. Really, you can find any article for any proposal in the Treaty, so it is important that the political opinions are being taken more seriously.

Lord Hannay of Chiswick: So you mean that some way should be found by which the reasoned opinion should also accommodate some political views on the proposal, not just the view about “Does it meet the ‘subsidiarity’ criterion?”

Eva Kjer Hansen: It is just the same—12 weeks for corresponding, and if there is the same opinion it should be taken into account.

The Chairman: “We don’t like it”, not, “We think it’s illegal or a breach of the principle of subsidiarity”.

Eva Kjer Hansen: Yes, because the subsidiarity is limited. If this was the case for political opinions as well—

Lord Hannay of Chiswick: We are on the point of putting in a reasoned opinion on psychoactive substances, which not only uses subsidiarity but also points out that the Commission have acted in a disproportionate way in this particular case, because they have used a single market treaty base and argued that a lot of trade would be hampered if there were different decisions by the member states, which appears to us to be not founded on any evidence whatsoever. The evidence from our Government is that the legal trade in these products is very small. Therefore, in our reasoned opinion we will cover the disproportionate point as well, although that is not of course the basis for the reasoned opinion. It is a way you can extend the thing.
Eva Kjer Hansen, Chair, European Affairs Committee, Folketing, Denmark and Averof Neofytou, Chairman, Committee on Foreign and European Affairs, House of Representatives, Cyprus —(QQ 34-50)

Eva Kjer Hansen: I will take the tobacco directive again. Really, you could claim subsidiarity on a lot of elements in that directive, but it has always been there. This is not for discussion any more.

Lord Hannay of Chiswick: We decided not to.

Eva Kjer Hansen: That should be a political decision.

Q50 The Chairman: A final question from me, with almost a one-word answer because of the time constraints. We have heard something already at COSAC about the need to share information between the national Parliaments. Do our two witnesses think that it is a) important and b) practicable to have a better information system so that I can talk to the two of you, for example, as national chairs and we can start to have a proper dialogue about how we should react to a Commission proposal? Just a brief response, please.

Eva Kjer Hansen: Yes.

Averof Neofytou: Yes.

The Chairman: Thank you; they could not be more positive than that. We can do it, so we should do it. We are coming to the end of our session. I would just like to ask our witnesses, who have been so helpful, if there is anything particular that they would like to add. If not, may I express the thanks of our Committee? As I made clear in the informal session yesterday, this is not a kind of private activity: it will be publicly available. It will be shared with colleagues as a contribution to the debate, not as the final answer to what I think is bound to continue in the process of national Parliaments asserting their own rights and exercising their own responsibilities in relation to Europe. In thanking our two witnesses—perhaps also conscious that we often forget that they are having to use a language other than their native language, despite their fluency in the English tongue—I conclude by saying "tak" and "efharisto".
Mr Andrew Duff MEP

Evidence Session No. 7  Heard in Public  Questions 100 - 114

WEDNESDAY 8 JANUARY 2014

Lord Boswell of Aynho (Chairman)
Lord Bowness
Lord Foulkes of Cumnock
Lord Harrison
Lord Maclennan of Rogart
Lord Wilson of Tillyorn

Examination of Witness

Mr Andrew Duff MEP

Q100  The Chairman: I welcome Andrew Duff MEP for our first formal evidence session today. He is well known to many of us here and he sits in the ALDE group. It would be helpful if in the course of your evidence—without necessarily doing it all the time—you make it clear where you are expressing a personal view rather than an ALDE view. It would be helpful if you want to go further than the group might do, not least because occasionally we hear that there are some divergences between domestic groupings and their MEP representatives. I think the rules of engagement are familiar to you, but the other point I would make is that we will record the session and prepare a transcript. That will be available in draft for any factual corrections, but we will be issuing it as part of the evidence of the inquiry. Beyond that, I would like to say—and I think it is entirely characteristic of your relationship with many Members of this Committee—we are very grateful for the time you have put into this and very happy to explore your views. Is there anything you want to say to us before we start?

Andrew Duff: It is a great pleasure to be asked to appear before you. I appreciate the constructive approach that I think each of us has displayed to improving interparliamentary collaboration, complex as we all know it is.

The Chairman: Thank you for that. I will start with a question that could, almost in the spirit of your remarks, be seen as slightly rebarbative, but it is probing. We have already heard from our witnesses—those who have given either oral or written evidence—that the
Lisbon treaty gave only the appearance of bringing greater democratic legitimacy to EU affairs. To put my own gloss on that, you might even say that there has been something of an exercise in mauvaise foi in that people have said, “Oh well, we will give them something in order to appear not to give them anything substantial”. Could I ask you what your assessment is of the real impacts that Lisbon has had, both for the European Parliament and national parliaments and, indeed, for the relations between them?

Andrew Duff: The entry into force of the Treaty of Lisbon has had an historic and dramatic impact upon the quality and pace of integration and on the parliamentary style and character of the EU. Of course, we have had to implement it in pretty fraught times, when we have been buffeted by the crisis of the Great Crash. This has not been the easiest context in which to apply a treaty that carries so much weight. There has been a process of learning and we have made some practical mistakes, which we can correct through experience, but I think that it is too early to draw strong conclusions about the role of national parliaments.

Q101 The Chairman: Thank you. Can I follow that with two supplementaries? One is: would it be your broad judgment that the engagement and interest possibly—if those two are not the same—of national parliaments with the European Parliament are divergent or are they reaching some degree of convergence? That is one question. The second one is in a sense a more political question. It would not have escaped anyone in this room that people out there, electors, are having a tough time. It may be too early to say, but do you feel that on the whole European parliamentarians, and indeed national ones, have risen to the occasion in expressing that distress and are there problems that people feel as opposed to perhaps what some of them may see as the mere process in Brussels?

Andrew Duff: On the first issue, we have to recognise that we are living in a quasi-federal structure so it is quite normal that there are tensions between the parliaments of the states and the federal Parliament. We have different mandates, competencies and powers. But I regard this as a creative tension. Through deeper collaboration and dialogue, the quality of law-making and of political scrutiny improves and we ought not to be intimidated by the occasional clash of interest. I think that is normal and, as democratic parliamentarians, we have a collective interest in improving the governance of the EU. That cannot only be done by us MEPs. It also has to be done by national parliaments, who have a huge responsibility to act as a conduit between the EU, on the one hand, and the electorates, the press and national governments, on the other.

I sometimes feel that national parliaments are a little bit behind the curve, which is not surprising because the pace of things that have been happening here has been quick and somewhat unexpected as we have reacted to the crisis. We must see whether we can improve the level of communication and of comprehension about just what goes on here. Political parties have a big role to play, and this will not be for the first time that I am very critical of how national political parties on the whole—although there are some exceptions—have generally failed to sustain the European integration project, if I may put it like that, in a democratic and efficient way. At the same time as the weakness of national parties, we have the problem that the European political parties are fairly primitive. They do not have the power and maturity to substitute for national political parties, so somewhere there is a democratic sinew that is not quite working well.

Can I directly address your second question? I think that the EU's crisis management that has been displayed through law-making here has been very good. Yet one thing that has happened is a shift of the centre of executive power from the Commission—which is where we had expected it all to be—towards the European Council, which is for parliaments rather than
frustrating. It is very difficult to grip upon our Prime Ministers or Presidents, either collectively or as individuals, as they meet in the European Council and have arrogated to themselves powers that the treaty does not really prescribe. So in this sense there has been a tilt of power from the Commission to the European Council. We have stretched the Treaty of Lisbon close to its limits with respect to what we can do to resolve the crisis. For parliaments—both national and European—we have to be alert to the risk that the parliamentary deficit is growing.

Q102 The Chairman: Thank you. One final question from me, which is: as we have looked at the evidence, I think it has become more apparent that there is a degree of asymmetry between the role of an MEP, whose job in effect and by definition is to specialise in matters European, and the role of a national parliamentarian. I think it would be wrong to call it a contingent function, but certainly many national parliamentarians do not engage with Europe and those that do are almost self-defined and in particular categories, either in specialist EU committees or in certain cases where there is mainstreaming in Select Committees of other kinds. Do you recognise that as an asymmetry and do you have any specific ideas for how that might be resolved if you see it?

Andrew Duff: You are correct; I think that it is an issue. Of course I would wish to see MEPs having the capacity to articulate what we are doing here more widely and more directly to our publics. That is not going to happen overnight. As you know, we have a tough election campaign in the spring. We are experimenting with the idea of having Spitzenkandidaten for the European political parties. That is an experiment that I have always been in favour of and, indeed, have promoted. It might not work, but in these circumstances of trial for parliamentary governance at a post-national level we have to be brave and clever enough to experiment. There are lots of other things that I think we ought to have done. As you probably know, I am an advocate of there being a certain number of MEPs elected from a transnational constituency. That has not happened. It will not happen this time but I think that it is going to happen sometime. We have to keep working at this business.

Q103 Lord Harrison: Andrew, just to shade your reply to that last question, you are known and have a reputation as a federalist MEP.

Andrew Duff: Yes, I am sorry.

Lord Harrison: Not at all. But you are a national parliamentarian. It is more than a contingent factor, is it not, that you come from the United Kingdom? I would say that largely shapes how you think and what you do in presenting the federal case.

Andrew Duff: Yes, I think that that is right. Certainly, as a historian, I have always admired and followed the federal thought of a lot of British political thinking. We have exported it to our former dominions with great acuity and we were strongly in favour of a federal solution for Germany after the war, but strangely we seem to have forgotten these lessons when it comes to our own domestic politics.

Lord Harrison: We forgot to remind ourselves that we sent Vic Feather over to reform the German trade unions.

Andrew Duff: That is right.

Q104 Lord Harrison: I will come to my question. Syed Kamall, Roger Helmer and Sharon Bowles came before the Committee—which I chair under Lord Boswell’s tutelage—on Economic and Financial Affairs to talk about genuine economic monetary union. A very good session it was indeed. But that is a ready example of the interface between MEPs and
the national parliament, and I understand that many of our reports are attached to some of the work that you do. We did one on banking union, on MiFID II, and we have done a couple on the financial transaction tax. My question is whether you have personally invoked the views of national parliaments as you have drawn from them, whether from the House of Lords or from the House of Commons, and whether you have heard your colleagues do so and whether you can bring—

Andrew Duff: Sorry, do you mean British colleagues?

Lord Harrison: I will come on further to that because the third part of my question is whether you can remember that you heard a view of a national parliament—like Latvia or Portugal—which you then drew into the political debate within the European Parliament, whether it was you or whether it was one of your colleagues. I am trying to test the water.

Andrew Duff: I have to be honest that I have not read all the reports of the House of Lords Committee from start to finish, but I have certainly read all the summaries and your conclusions and I appreciate them. I think that some of them have been first-class pieces of analysis. Sometimes one has been slightly disappointed that the political punch at the end was not quite there, but I think that says a lot about the powers of the House of Lords or the Westminster structure. But, yes, we appreciate all the work that you do, so please do not think that you labour in vain.

Lord Harrison: But can you go further? Can you recollect where something was brought to your attention by the Portuguese or Latvian—

Andrew Duff: Yes, as you probably know I am the Liberal co-ordinator for the COSAC exercise, so I try to be at all those meetings. Of course, I find them very instructive. I speak to groups of national parliamentarians from a lot of member states.

Lord Harrison: What they say nourishes the debate in the European Parliament.

Andrew Duff: Absolutely. Perhaps we do not speak of it much in plenary where we have a very constricted time to speak, and one does not want to flatter people who are not there. But my impression is that in the legislative committees, the central committees, the opinions of national parliaments are increasingly digested. Certainly, in the constitutional realm that I prowl in, we are extremely sensitive to the opinions of national parliaments. That does not mean to say we agree with them, but we hear them.

Lord Harrison: Good. Thank you very much.

Q105 The Chairman: Very briefly, as you mentioned it—I think we will not want to major on that in this session—can I ask you to give us a snapshot? In your experience, is COSAC on the whole a good thing and pointing in the right direction towards the right kind of dialogue, or are you unhappy with it?

Andrew Duff: As I think we all do, I find them to be quite a tough 48 hours. There are some frustrating moments. If I had a thought about the role of the European Parliament in COSAC, I think that it is slightly odd that we are part of the decision-making procedure. We are party to these conclusions that we address to ourselves. I think that following the elections in the spring and as we go forward, as we will, to a new treaty change exercise in the next five years—I am quite clear that that will happen—we ought to reconsider the formal position of the European Parliament in COSAC. We should certainly be there; I think we should be there to speak, to meet and to greet, but whether we should be tied into the conclusions or not I think we ought to open a discussion on that.
Lord Foulkes of Cumnock: Mr Duff, I was very interested in what you were saying about the transfer of power from the Commission to the Council—which I had not fully appreciated—without any treaty authority. You will know that there have been suggestions that national parliaments, either singly or collectively, should be given the power to make initiatives, to make proposals. What do you think about that? Could that be done without treaty change?

Andrew Duff: No, it could not, and I think if it were to be done it would destroy the Community method.

Lord Foulkes of Cumnock: Why?

Andrew Duff: Because the Community method rests on the right of initiative of the Commission to propose legislation. The Commission has to hear the European Parliament and the Council and they have to respond to our expressions of will, and we have to agree a work programme. But the actual formulation of a draft law must be exclusively in the arms of the Commission. In fact, I have always resisted the idea that is often trotted out that the European Parliament is not a proper parliament because it does not have the right of initiative. The Westminster Parliament does not have that.

Lord Foulkes of Cumnock: We do.

Andrew Duff: Well, the Government is responsible for the legislative—

Lord Foulkes of Cumnock: Not completely. On Friday I am going to go back to take part in a major debate about a European referendum that is based on a Private Member’s Bill. So private Members, in both the Lords and the Commons, can initiative legislation. Why cannot a national parliament do the same within a European context?

Andrew Duff: Because national parliaments are not part of the legislative procedure of the EU. You are part of the pre-legislative scrutiny process and you are there to manage the performance of your Governments in the Council if you can. That is your primary role.

Lord Foulkes of Cumnock: You sound as if what is now always must be. What the Dutch House of Representatives has suggested, for example, is that Europe should evolve and it can evolve in different ways. You want it to evolve by becoming more centralised. Other people might want it to evolve in different ways.

Andrew Duff: Yes, sure, and we are to address this in the next Convention. That is the place to have that discussion. But what I want is a more federal Union, which is not a central superpower. In federal history there are times when powers flow either to the states or to the centre. At present we are in one of those latter phases, when we have to strengthen the central government of the EU. In my view, the critical thing is not the parliamentary problem; it is the absence of a discernible, transparent, accountable Government. Executive authority in the EU is dispersed, diffuse and opaque and we need to draw it together. Chancellor Merkel has her preference for centring powers on the European Council. The federalist response is, “No, the proper place for a parliamentary government is the Commission”. We have to play out these alternative prospectuses for the future of Europe inside a Convention. National parliaments will have their own part to play in the Convention, of course, but as to whether I think that national parliaments ought to rival or usurp the legislative power either of the Council or of the European Parliament, my answer is no.

Lord Foulkes of Cumnock: I could have a debate with you about what we mean by federalism but this is not the place. Your views are very clear, thank you.
Q107 **The Chairman:** If I may gloss for a moment, as I hear you, you are making a fairly clear distinction between what is procedural, process and formal and is defined in the treaties or may be changed in future treaties, and the whole process of policy formulation and debate.

**Andrew Duff:** Yes, politics.

**The Chairman:** Politics. I do not think—but tell me if I am wrong—you are sending the signal at all that it is improper or in any sense out of order for national parliamentarians to engage at an early stage, either with yourselves as the European Parliament or indeed with the Commission or anybody else in terms of having the discussion about where we go next.

**Andrew Duff:** Absolutely right, and I would expect that to happen. I would be appalled if it did not happen. But it is happening. This is an extremely political polity that we are trying to repair and refine and, in my view, strengthen.

**The Chairman:** Thank you. I think that is a good lead in to our next line of questions that are very much about the nature of co-operation in the wider sense and not necessarily in the formal legislative procedure, so perhaps we will bring Lord Maclennan in.

Q108 **Lord Maclennan of Rogart:** Andrew, the integration process might be assisted by the involvement of national parliaments at an earlier stage of policy formulation because it might lead to a greater consensus or understanding of what is not possible. This is a follow-on from what George Foulkes has been saying, and I take it that you would not have any objection to that.

**Andrew Duff:** Of course not. I am a democrat really and one ought not to forget that, but I think one has to be realistic that if we build in further formal processes you are going to cause delay. There is already quite a protracted time for the legislative process to be started and completed in the EU. But one must try to clarify for the public just who is in charge of the EU. Part of the process of clarification is simplification. I believe that if we were to move—as some people seem to wish to go, like the Tweede Kamer in the Netherlands—to the creation of a putative third Chamber of the legislature that that would be a disaster. The public would think us all completely mad.

**Lord Maclennan of Rogart:** There are now many more interparliamentary meetings, and you touched on this earlier. Do you think that they have any particular impact on the thinking of the European Parliament?

**Andrew Duff:** Yes. They do not all have the same impact, but certainly the European semester process, which we have built in for economic and monetary policy, seems to me to be increasingly fruitful and critical. Certainly the Commission thinks that to be the case. An exchange of opinions between us and any national parliament enjoying—if that is the right word—a troika programme is extremely important so that we appreciate the tensions and social needs of a particular country. In the area of foreign security and defence policy, it is a little more experimental but we have agreed now on the format of these interparliamentary meetings. If we can control our blood pressure a bit better than we have at some of the meetings, I think the outcome is going to be fruitful.

**Lord Maclennan of Rogart:** I recognise that you do not want to formalise things too much because it might convey the impression that power rested other than where it does. Could you suggest any ways in which these interparliamentary meetings might be made even more constructive, in the sense of building a consensus by preliminary information?
Andrew Duff: Yes, I think that they all ought to be better prepared than they are. That is part of this settling down period that I was describing earlier. I think they do not have it quite right.

Q109 The Chairman: Who should handle the preparation?

Andrew Duff: There should be a prior exchange of documents in each direction.

The Chairman: Could one example—I do not want to anticipate your thought—be to look at joint working parties saying, “We know there is a problem here. Perhaps we should get a few representative MEPs, or ones with an interest, to work with two or three national parliaments to come up with an idea”?

Andrew Duff: Yes. There would be no objection to doing that at all. I think that practically for the British Parliament you would need to move to a rapporteur system. There is a problem of finding the right interlocutors, where we have a specialist member who is responsible for a dossier, and he or she is the appropriate person to speak to.

Lord Macldennan of Rogart: Is that person capable of representing the views of the different political parties?

Andrew Duff: In theory the rapporteur is obliged to do that, yes. They are a rapporteur not of the political group but of the committee. As you know, we have to be a consensual parliament here to a large extent. We have to get cross-party majorities, and it is up to the rapporteur to build those. Speaking on behalf of the committee on a particular issue, they have to speak responsibly. That is not to say that that always happens, but the quality and calibre of my colleagues here is generally quite high.

Lord Macldennan of Rogart: Do you see that happening in the reverse way, so that there would be some kind of rapporteur from a national party?

Andrew Duff: That would be very helpful. I mean I—

Q110 The Chairman: Can I interpose again? Would that also be a moment to reflect on whether one should mainstream some of the European activities in the work of the departmental Select Committees? We are not responsible for the other House. They have their own views. But is that also part of your thinking?

Andrew Duff: Yes, absolutely, and I have expressed that opinion to Mr Cash and his Committee quite often. Just one other thought: a thing that we are probably going to do here at the start of the next mandate is to create a euro scrutiny committee. It is not going to be a legislative committee—the ECON will still be responsible for law-making—but the euro scrutiny committee will be responsible for scrutinising the monetary dialogue, the supervisory mechanisms, the ESM, and Article 13 of the fiscal compact treaty. That will be done by this new committee. We have not quite agreed that yet and, as you know, it poses serious questions for the performance of the British members. I have always argued—and I think that I am at least respected for my opinion—that you can create special committees to become specialists on euro matters but that the membership of that committee must be open to all members of the European Parliament, regardless of nationality. In any case, all legislative acts must be voted on by the whole House.

Q111 Lord Maclennan of Rogart: Can I ask a supplementary that reflects back on what you said earlier about your expectation that there will be treaty change within five years, and that there would be a convention? I do not know when you expect that to be initiated or by
whom. It would be interesting if you could comment on that, but the changes we have been talking about would not necessarily require treaty change.

Andrew Duff: But some might. The COSAC things would. I would like it to start the treaty change process as soon as we have all caught our breath.

Lord Macleannan of Rogart: After the elections.

Andrew Duff: After the elections and after we have the Commission in place in the course of next year. At the end of the British competence review exercise is a good time to have a reflection. I expect that in the spring of 2015 there will be a British election. That is when it is supposed to happen, so it probably will. As soon as we have that out of the way, I think that the European Parliament is minded to initiate the treaty change process. If I am in the European Parliament at that stage—which I hope to be again—I will certainly be arguing for that and I will not be on my own. It is not only parliaments that have an interest in modernising and taking the opportunity to rectify some of the less good parts of Lisbon, to prepare ourselves properly for the deepening of the fiscal integration that has to happen if the euro is to be salvaged properly. The courts are beginning to be a bit queasy about this stretching of the present treaty. If they are to be calmed I think there is a huge need to be dynamic on the constitutional front in the EU, to keep up with what is happening and to build democratic confidence in a stronger governance of the EU.

The Chairman: If one were to go for that, do you think it would be acceptable to all the people, given that it has to be done by consensus?

Andrew Duff: I think that it will be very difficult, but we are not in this business because we thought that it would be easy. All states and all parties to that Convention I hope will approach it with a sufficiently serious sense of responsibility to make it work, just as the previous one did in the end.

Q112 Lord Bowness: Andrew, looking at the role of national parliaments, I may be wrong but I think we inevitably tend to view this question through our own eyes and through our own experience. How much is this an issue for the majority of member states? Of course, France and Germany—and perhaps the Netherlands and ourselves—believe that their national parliaments are very important and have a role in all this. How much is that view shared and, even if it is shared, is there capacity in the majority of parliaments to enter into the kind of involvement that we are talking about and which we could probably do despite our constrained circumstances?

Andrew Duff: The feeling that all national parliaments have a job to do in the European dimension is growing fast. The COSACs and the interparliamentary meetings have spread that. Do all national parliaments have the capacity to do it very well? Of course not, so sharing between national parliaments becomes very important. All national parliaments cannot be expected to do everything across the spectrum, but some national parliaments will have a special interest. For example, in Poland they have a special interest in the energy policy of the European Union. The Sejm is quite prepared to export its view to other national parliaments and is pushing that quite hard. The Baltics have regional interests. The Mediterranean parliaments have an acute understanding of the pressure of migration across the Mediterranean. We cannot do everything but we all hear each other speak of the things that matter to us most. That is what we do here in this European Parliament, and the forums that we have for co-operation with national parliaments can be exploited for that reason too.
One other thought: something that we will have to have another look at in the Convention is the role of the rotating presidency of the Council. My own view is that that system is bust. If it is bust and we are going to replace it with something else,—which I think we ought to because of the poor management of the Council business that we are now experiencing—then we will lose the charm of the geographical circus that we all enjoy from Vilnius to Athens. Even if one scraps the rotating presidency, one has to be careful that one does not lose that sense of Europe being a provincial place.

Lord Bowness: Forgive me, Lord Chairman, if I stray, but I think it is a question of capacity. One thing that concerns a number of us is how we keep up our scrutiny work once matters go for co-decision. Is there scope for some sort of informal protocol or understanding as to how views on particular matters get to the key people in parliament? Likewise, how do we hear from you about key amendments that may be agreed, which could change—and I am thinking of my own experience—peace and justice matters? Relatively small amendments can make a big difference to the proposal once originally seen under scrutiny.

Andrew Duff: Yes.

The Chairman: Can I bring in Lord Wilson who has a specific question on a specific issue on that?

Q113 Lord Wilson of Tillyorn: To follow up on what Lord Bowness is saying, it would be very useful if you could share with us your views on what seems to be a growing trend of First Reading deals to get legislation through. If that is happening, what is the mechanism for it happening and then—to pick up Lord Bowness’s point—how do the rest of us get involved? We have commented at an early stage and we have given our advice to our own Ministers, then it vanishes and it appears to go into the European Parliament for co-decision and there could be really quite significant deals made in that sort of First Reading. Is that happening, should it happen and, if it is happening, how can we then get ourselves involved?

The Chairman: If I might put it in a sentence, I think that the worry is that there is a democratic black box in which the thing disappears and from which a conclusion emerges.

Andrew Duff: Yes, it is called the trilogue.

The Chairman: Exactly. But we are not in the trilogue.

Andrew Duff: No, you are not, but you know who is—the rapporteurs on the portfolio and the co-ordinators of the committee. So I go into a trilogue. Of course you are quite correct that extraordinary things can happen in a trilogue at 4 o’clock in the morning. That is the process by which we, with the Commission, forge an agreement with the second chamber, the Council. All three of those institutions are democratic. At the end of the trilogue we have breakfast and then the result goes back to the committee. This is a public committee where the report back from trilogue takes place, and of course any concluding vote has to be in plenary. So it is not either as complex or mysterious as it might look, but I agree it might look mysterious.

The Chairman: To put it crudely, if you want to do a dirty deal and concede something in order to get something else, we may see the outcome of that but we have not seen the thought process or the nature of the formulation that you have had to do in the negotiations.

Andrew Duff: Yes, but that—

The Chairman: It happens in Council. I am not suggesting that you are all in politics.
Mr Andrew Duff MEP—(QQ 100-114)

Andrew Duff: I am shocked at the idea that we do dirty deals.

The Chairman: Well, of course, and for the record I will qualify that and say you reach an accommodation.

Andrew Duff: That is right. It could be that we agree to complete this piece of legislation but to postpone some other piece of legislation, so there is a trade-off. But that is part of a parliamentary process that you are all part of. You all understand that. Nevertheless, I do not think that the rush to First Reading agreements is always appropriate. Indeed, I have been able to point out that the quality of a concluding piece of law often improves if you complete the entire co-decision process and go to Third Reading. From our point of view, the problem is we have to get strong cross-party majorities for that. In quite a lot of complex legislation that is not easy, especially if we get into the social and environmental stuff, which is controversial in terms of party politics. But I think that the rise of First Reading has something to do with Lisbonisation—that is, the need to Lisbonise the law. That period will pass as we complete that phase of integration.

Lord Wilson of Tillyorn: Sorry, what did you mean by the Lisbonisation?

Andrew Duff: Large numbers of existing law, the acquis, before Lisbon have had to be recast to respond to the new legislative procedures, including changes of competence of the Union and the balance of power between the institutions. Upgrading and modernising a lot of the acquis has been very, very hard work but we have had to do it as fast as we can. I think that that is at least one cause of the rise of First Reading. Our administration would certainly be able to supply you with some figures on that.

Q114 The Chairman: Perhaps I could ask a final question prompted by that. You said earlier that you want to move towards a convention and a future treaty change and you explained your thinking on that. Could it be argued—if only for the purpose of debate—that, until we have absorbed the post-Lisbon agenda in terms of modernising the acquis, you should not be turning to the next phase until you have sorted that out, or will it be sorted out within the timescale you envisaged?

Andrew Duff: With respect, I would prefer you to ask me that question again in the autumn, Lord Chairman.

The Chairman: We will look forward to doing that. If I may say in conclusion—Mr Duff formally, or Andrew to many of us—as ever your evidence has been very frank, very thoughtful and very thought-provoking for us and immensely useful to our inquiry. We would like to express our appreciation, both for this and for the continuing attention that you have been prepared to give to us.

Andrew Duff: It is a great pleasure. Thank you very much indeed.
Arto Aas, Chair, European Affairs Committee, Riigikogu, Estonia—Written evidence

I. Why should national parliaments have a role in the EU framework? What role should National parliaments play in a) shaping and b) scrutinising, EU decision making? In answering this question you may wish to consider:

a. Is there wide spread agreement on what this role should be?

b. Do national parliaments have access to sufficient information and the requisite influence at an EU level to play the role that you suggest? Whose responsibility is it to ensure that they have the information they need?

1. National parliaments should have a role in EU framework to ensure the legitimacy of the EU level decision making and reduce the democratic deficit. National parliaments should play a central role at an EU level by scrutinizing government’s behaviour and decisions at EU Council’s working groups and political level meetings, by meeting with Members of European Parliament and by participating in political dialog form of cooperation with each other and with European Commission. National parliaments should have the possibility to say stop EU legislation on the matters that are better to regulate at national level and subsidiarity check’s system gives today tools to say this. Lisbon Treaty protocol 1 and 2 are explaining the role of national Parliament very clearly

a.) There is a widespread agreement what the role should be in Estonia, the procedures for parliament to participate in EU decision making have not changed since 2004 and there has not been any indications that the changes are needed.

b.) Yes, Estonian parliament has sufficient information.

Formal role of national parliaments

2. How is the formal role (of national parliaments under the Treaties working in practice? In answering this question you may wish to consider:

a. What impact have the Maastricht. Amsterdam and Lisbon Treaties had on interactions between national parliaments and EU institutions?

b. What is your assessment of the existing yellow and orange card procedures? Are national parliaments making good use of these?

c. Is there a well-developed, common understanding of subsidiarity. If not. is there a need to develop one?

d. How effectively is proportionality scrutinized by national parliaments?

e. Should national parliaments have a greater, or different, role in the development and scrutiny of EU legislation?

2. The formal role gives enough possibilities to regulate the system at national level according to political culture and traditions.
a.) After Lisbon there is a formal way for national parliaments to work towards European Commission.

b.) The national parliaments have started to use these yellow and orange cards procedures. It is a start, and you can see how it has started to change the behaviour of European Commission and governments.

c.) There should be enough freedom to interpret and understand the subsidiarity element at national level.

d.) Quite effectively- it is an element in government's memorandums, and issue considered at committee meetings.

e.) The role has been formalized, now we need time to make best of it- in flexible and suitable manner, reconsidering all the differences national parliaments have in their working manners.

Dialogue and scrutiny of EU policies

3. What is your assessment of the level and quality of engagement between EU institutions and national parliaments, and between national parliaments? We invite you to offer specific examples: In answering this question you may wish to consider:

a. What assessment do you make of the adequacy of the level of dialogue between the Commission and national parliaments regarding legislative proposals? What influence, if any, do national parliament opinions have on the legislative process?

b. How effective is engagement between national parliaments and the European Parliament? Could it be improved?

c. What effect are procedural trends, such as increased agreement on legislation at first reading, having on the ability of national parliaments to scrutinize EU decision making?

d. What should be the role of COSAC? Does it require any changes to make it more effective?

e. What is your assessment of other mechanisms (such as Joint Parliamentary Meetings, Joint Committee Meetings and IPEX) for co-operation between national parliaments and EU institutions: and should any other mechanisms be established?

3. Estonia's parliament feels engaged in the line of EU institutions and national parliaments.

a.) The influence is there via governments at council level. The balance and roles between EU institutions should not change.

b.) The cooperation between national parliaments and European Parliament should be more tense and serious, despite the fact that European Parliament starts to work with EU legislation proposal much later than national parliaments. The MEP's should more than today participate at national parliament's working sessions, where the proposals are considered.

c.) Procedural trends have quite a big effect, especially because they tend to produce path dependence effect. Increased agreement on legislation at first reading is rather good, it
makes it more open and possible to follow the negotiations between three institutions (so called trilogy).

d.) COSAC work’s well, there is no need to change it. The initiative to change COSAC ends in constant discussions about change and no consensus. To discuss youth employment or eastern partnership is much more useful. COSAC role is to keep national parliaments in good contacts with their colleagues.

e.) Joint committee meetings are necessary to meet, to set agendas and to introduce different positions at national level about certain matters, IPEX should work more effectively- but it is a tool to gather information, and find things afterwards. No new mechanisms are needed.

Capacity of national parliaments

4. How effective are national parliaments at engaging with European affairs? In answering this question you may wish to consider:

a. Are national parliamentarians sufficiently engaged with detailed European issues? Are national parliaments as effective at political dialogue with EU institutions as they are at holding their own governments to account?

h. Can you give specific examples of Member States that are good at building co-operation and co-ordination between national parliaments? What do they do well? Should other countries learn lessons from this good practice?

c. Is there political will and resource for increased interparliamentary co-operation?

d. What role does the network of national parliament representatives in Brussels play? Should the network be further developed?

4. Estonia’s parliament feels engaged with the European affairs.

a.) Parliamentarians look at the big picture and political directions, also at influence the issues have at national level generally. They don’t have enough capacity to be informed on matters as detailed as the experts should be for example in council working groups. But they are starting to be more active taking account the possibilities political dialogue context gives towards European Commission. The cooperation with European Parliament of course more complicated, but possible to manage via political groups for example.

b.) For example- 3 Baltic and Polish cooperation format, bilateral meetings.

c.) Status quo is ok.

d.) For Estonia it is more based on information exchange, but it is needed. The information is exchanged on matters of other parliament’s positions and on meetings that take place in European Parliament.

Other possible changes

5. In what other ways should the role of national parliaments in the European Union be changed or enhanced? Which of these suggestions would require treaty change and which
would not? In answering this question you may wish to consider: whether there are any specific policy areas (such as financial and economic policy) which are particularly relevant.

No

30 September 2013
National parliaments in the EU framework

1. The European Union’s fundamental treaties define the EU as a union of its member states, on which the Member States have conferred competences. The principle of conferral limits the competences of the EU (art. 5, TEU). The Union is founded on representative democracy. Citizens are represented “directly” through the European Parliament. Member states are represented by their heads of state or government at the European Council and by their governments at the EU Council; governments are to be democratically accountable either to their national parliaments or to their citizens (art. 10, TEU). We see these treaty provisions as the prime legal justification for national parliaments’ role in the EU framework. As a fundamental question of democracy, we believe that national parliaments should be the ultimate source of all public power in their respective states. It follows that when a state confers competences on the EU, national parliaments should have been involved in the conferral, and should remain responsible for how the conferred powers are exercised.

2. There is broad agreement in Finland that the Eduskunta’s role in relation to the European Union is primarily national. As the supreme organ of state power, the Eduskunta controls Finnish policy and how Finland is represented in the European Council and the Council of Ministers. While powers have been delegated to the government, this delegation has limits. The constitution reserves for the Eduskunta the power to approve laws (i.e. all norms that affect the rights and obligations of citizens in general), the national budget and taxes. When proposed EU Acts have the same effect in Finland as domestic laws, taxes or budgetary decisions, the Finnish ministers negotiating these proposals in the EU need a specific mandate from the Eduskunta.

3. In the Finnish understanding, democratic legitimacy in the EU would require that each national parliament controls its country’s EU policy to the full extent of that parliament’s powers under the national constitution. Obviously, the national role of parliaments varies greatly. However, all parliaments are responsible for enacting the laws, approving the budget and supervising the governance of their respective countries. A democracy deficit occurs when a policy issue that is constitutionally within a parliament’s remit, ceases to be so when the policy issue is handled at the EU level. EU matters should thus not be treated in the same way as ‘traditional’ external affairs; because firstly, most EU business concerns ‘typically domestic’ issues like agriculture, and secondly, because EU decisions lack the democratic safeguard of a ratification procedure.

4. The Finnish understanding of national parliaments’ EU role as an extension of their domestic powers has not been fashionable in Europe in recent years. The emphasis at the European level has been on collective action by national parliaments and on establishing a political dialogue between national parliaments and the EU institutions, particularly the Commission. We believe that the steps taken in this direction have not been effective in lessening the democratic deficit of the EU. While it is good that more national parliaments have taken an active role in EU affairs since the Lisbon treaty, we see no evidence that the inputs of national parliaments have actually affected outcomes at the EU level. We fear that the post-Lisbon arrangements have created the appearance but not the reality of increased parliamentary participation.

5. We do not see access to information available at the EU level as a problem at all. EU documents are effectively distributed and easily accessible. Shortcomings should be sought in
the interface between each national parliament and its national government. We fear that not every member state opinion expressed in the EU Council has been subject to adequate ex ante consultation with the national parliament. Ideally, the members of the Council should be able to assume that the positions expressed by their colleagues have been adequately cleared at home. Member states whose parliaments have been involved before the Council tend to be tough negotiators, but can be relied on to implement the ultimate EU Act without delay. Conversely, member states whose governments feel free to make European commitments first and seek parliamentary approval afterwards are frequently tardy in implementing directives.

Formal role of national parliaments

6. We believe that the Maastricht, Amsterdam and Lisbon treaties’ impact on national parliaments’ influence has been more formal than real. The number of reasoned opinions sent by national parliaments to the European institutions is large. However, the institutions are usually very slow in replying to these, and the replies frequently fail to address the content of the reasoned opinions. Most importantly, we have seen no evidence that national parliaments’ opinions are reflected in the handling of EU proposals in the Council or the European Parliament.

7. The European Commission recently published its annual reports on relations with national parliaments and on the application of the subsidiarity principle (COM (2013) 565 and 566). The reports show that national parliaments are quite active in providing input to the European legislative process. However, the reports do not attempt to analyse what parliaments actually have to say. The reports give no indication that national parliaments’ inputs are in any way taken note of in the European legislative process. It is hard to avoid the impression that national parliaments’ inputs are not given effective consideration by the Commission. It is also telling that national parliaments’ inputs are dealt with by the department responsible for relations with national parliaments, rather than the services dealing with the relevant legislative dossier. According to our information, the inputs of national parliaments are circulated in the Council working groups, but are never actually referred to. The European Parliament does not acknowledge receipt of inputs from national parliaments and we do not know what the EP does with reasoned opinions.

8. There is no commonly agreed definition of “subsidiarity”. The broad intention was no doubt that the EU should stay out of areas that are regulated or administered more effectively by the separate member states. However this intention is not reflected in the treaty’s definition of “subsidiarity” (Art. 5 TEU, protocols 1 and 2). The treaty uses a procedural definition that lists the areas on which national parliaments may challenge Commission proposals on subsidiarity grounds. The result is constrictive: Commission proposals cannot be challenged if they are within the EU’s exclusive competence, e.g., no one can question a competition policy proposal’s conformity with the subsidiarity principle – even when that proposal impacts at a very local level. Also, the wording of the treaty puts an unreasonable burden on national parliaments; under article 5 TEU, a proposal is at variance with the subsidiarity principle only if it can be demonstrated that the goals (themselves set at EU level) of the proposed action can be achieved by all of the member states acting separately. This means that any subsidiarity objection can be overcome by referring to the least efficient member state.

9. There is a need to get national parliaments’ contributions into the European legislative process, and this requires a rethink of existing procedures. The reasoned opinions
and other contributions by national parliaments show that national parliaments have a valuable contribution to make to the European legislative process. In our assessment, however, most of these contributions deal more with the substance of proposals (“good or bad”) or proportionality (“unduly intrusive”) than with “subsidiarity” (“wrong legislative level”). Typically, reasoned opinions point out how a proposal needs improvement, but they rarely make a credible case against legislation at European level. “We can draft a better law” is not enough; a successful subsidiarity challenge would have to demonstrate that there is no need for European level action, because all national authorities already have the issue in hand.

10. If national parliaments’ contributions are to have the best effect, they need to be brought into the European procedure at the point where they are relevant. In most cases, reasoned opinions are delivered when work is already underway in the Council working groups. This is where substantive questions are dealt with by the Commission and the member states. This is where parliaments’ substantive opinions (“the proposal needs amending, because…” or “the proposal is unworkable in our country, because…”) need to be delivered and addressed as political contributions. The Council and its working groups consist of representatives of national governments. All of these are answerable to their respective parliaments. If national parliaments’ opinions are unknown to or ignored by national government representatives in the Council and working groups, this is a tangible democratic deficit, and should be remedied. National parliaments seldom reach a particular opinion because they are parliaments. Normally, a parliamentary opinion would reflect a national interest, “what is best for our people”. In short, parliaments’ substantive arguments are most effective, if they form (or at least influence) the national position argued in the Council by the national government.

11. The existing yellow/orange card procedure should be reserved for the few but important cases where national parliaments genuinely make the case that the EU is getting into an area where it has no business. For these cases, the treaty provides a legal remedy that calls for legal arguments. Any future treaty change should formulate an agreed and broad enough definition of “subsidiarity”. Parliaments should consider extending subsidiarity examinations from legislation into EU programmes and policies; it is not necessarily useful for the EU to finance and oversee, for example, local development projects.

Dialogue and scrutiny of EU policies

12. At the Dublin COSAC, the United Kingdom representatives delivered a forceful criticism of the Commission’s responses to national parliaments’ reasoned opinions. We believe that the sentiment was shared by all national parliamentarians present. At present, there is no genuine dialogue between national parliaments and the EU institutions: National parliaments publish their opinions on topical issues and the Commission reacts mechanically with pro forma (and tardy) replies, the European Parliament does not acknowledge receipt, and the Council circulates the reasoned opinions in a way that ensures they are never discussed.

13. The concept of “dialogue” among institutions needs to be examined more closely. It seems doubtful whether there can really exist a “dialogue” in the sense of an on-going exchange of views between a large bureaucracy like the Commission and the 39 chambers, each comprising scores or hundreds of vocal and opinionated individuals, that we call parliaments. Any “dialogue” would probably involve either a formalised exchange of generally
phrased letters or be controlled by a small group of individuals acting in the name of their respective institution. The first is ineffective, the latter risks being opaque and undemocratic. We believe that it would be helpful to replace the concept of “dialogue” with that of information flows, inputs and outcomes: Parliaments need better access to the Commission’s reasoning. The Commission should inform itself of reactions to its proposals. Parliaments’ inputs need to be channelled to the places where the decisions are taken.

14. We are strongly of the opinion that parliamentary inputs on the substance of Commission proposals have the greatest chance of being effective when they reach the Council working groups – preferably via national governments. An exchange of views with the Commission about a proposal that the Commission has already tabled will always suffer a relative handicap; the Commission is bound to be defensive. Where improvements are needed is in the flow of information at the working level, as opposed to formal communication at the highest level. It should be much easier to get Commissioners and their staff to appear in national parliaments to explain and justify their policies. (We understand that this may be less of a problem in London or Paris; in Helsinki it is virtually impossible to get anyone from the Commission to come when we want them.) The Commission could do much more than today to inform itself about the views of national parliaments. We note, for example, that the Commission has well-staffed representations in each member state capital. It would seem reasonable for these to monitor and report on the work of national parliaments; every parliament has a publicly available information system and every representation has staff who read the local language.

15. The increased use of first reading agreements between the Council and the European Parliament creates difficulties for national parliaments. The increased speed of the procedure necessarily cuts the time available for national parliamentary scrutiny. The mechanics of the first reading agreements pose a separate challenge: Both the Council and the EP delegate their powers to a small group of negotiators, and this is bound to limit the scope of action of most member state governments, and thus of parliaments. As a separate issue, the first reading mechanism severely limits public scrutiny by the EP and in the member states. Instead, decisions are taken by a small, opaque and unaccountable group of negotiators. The democratic legitimacy of decisions taken in this way may be questionable.

16. COSAC is very valuable as a meeting place, where members of parliament can exchange views informally and build up networks for informal interaction. COSAC has in the past helped to promote best parliamentary practice and can do so again. COSAC has on occasion had fruitful and informative debates on subjects that are topical in all participating parliaments and actually contributed to work in these parliaments by disseminating fresh ideas. However, COSAC is intrinsically unable to take an institutional role. COSAC cannot and should not claim to represent the views of national parliaments in general. 28 delegations of six persons meeting twice a year for two days will never be truly representative of the sum of opinions in national parliaments. Nor can any national parliament constitutionally delegate any of its authority to such a body. The same applies to all of the other inter-parliamentary meetings; they are frequently useful platforms for discussion and networking, but unsuited to take an institutional role.

17. There is a risk that inter-parliamentary meetings become counter-productive. When parliaments choose not to carry out their own scrutiny of a given proposal or policy, and are content with discussing it at an inter-parliamentary conference, the result can easily be that there is no scrutiny at all. After all, 28 delegations meeting for a day and a half are bound to
be less effective than a structured parliamentary committee meeting that takes evidence and writes a report. On the other hand, any parliamentary conference allows the institutions to claim plausibly that the proposal or policy in question was put before representatives of the 28 national parliaments and well received. What we get is the appearance of parliamentary participation without the reality of scrutiny.

Capacity of national parliaments

18. The data in IPEX and in the Commission’s reports indicates that a rather small group of parliaments provide the bulk of reasoned opinions. There is very little research on how effective national parliaments are in influencing European decisions. Most studies look more at the volume of reasoned opinions and inter-parliamentary relations than at the content of parliamentary opinions and how they shape European outcomes. Being active in inter-parliamentary relations and correspondence with the Commission does not necessarily translate into influence on the outcome of European decisions.

19. Probably all national parliaments are favourably disposed to increased inter-parliamentary co-operation in the abstract. Nonetheless, the question of capacity and value needs to be addressed. The IPEX website lists 38 inter-parliamentary meetings in 2013. In some years the number has been as high as 60. Being represented at that many international meetings is a burden; on occasion the many hundred work days used for international meetings have actually hurt the ability of our parliamentary committees to carry out their normal business. The Members with the most to contribute to an inter-parliamentary meeting tend to be the busiest people in the House; often, the delegation sent to a meeting abroad has to be a random assortment of people who happened to be available. While we welcome enhanced inter-parliamentary co-operation, we cannot honestly support any increase in the number and size of meetings.

20. We should recognise that inter-parliamentary meetings do not of themselves affect outcomes. Because they are infrequent and relatively brief, inter-parliamentary meetings cannot carry out a proper scrutiny role. They are not sufficiently representative to make political statements that anyone would consider binding on the participating parliaments. In any case, there are not many policy issues on which parliaments could or even should agree: the job of national parliaments is to promote the interests of their own electorate. Inter-parliamentary meetings do serve an important function in supporting EU work within each national parliament by making members better informed. When they attempt to adopt common policy statements, the result is disappointing to all.

21. We would welcome a dispassionate review of the value of existing inter-parliamentary co-operation. The traditional approach that inter-parliamentary “dialogue” and “relations” are valuable in themselves and more meetings mean more value, is no longer appropriate. The emphasis should be on the quality not the quantity of inter-parliamentary co-operation. We would welcome more meetings where MPs share views on subjects with which they are familiar from their home parliaments. We could do with fewer meetings where Members deliver pre-written speeches. The best inter-parliamentary meetings are those from which Members bring home new insights.

22. The staff members sent by national parliaments to Brussels perform different roles depending on the expectations of their respective employers. Interaction with their peers and with the European institutions is an important part, but not the sole purpose of their position. The Eduskunta’s Brussels-based post was the subject of an administrative review
this year, as part of a general budget review. The post was retained, but the job-description and grade were adjusted. The Eduskunta defines the Brussels job as a “liaison officer” rather than a “representative”. The main task is to provide reports and to support Eduskunta missions to Brussels. The main inter-parliamentary dimension of the Brussels post is as a conduit for information, a sort of one stop shop: Other national parliaments and the EU institutions can send any query, invitation etc. concerning the Eduskunta to our Brussels office and be assured that it will reach the right desk without delay. Members and staff of the Eduskunta can use the liaison officer to get queries and communications to the EU institutions or as a convenient way to distribute messages to other national parliaments. We would be very hesitant create a “representative” role for a single staff member or to institutionalise the network of Brussels staff.

Other possible changes

23. The Eduskunta was broadly critical of the Lisbon treaty’s provisions on national parliaments, believing that they did not address the real problem. We believe that experience since then has vindicated our position; national parliaments today have no more real influence than they did before the treaty. Although the volume of national parliament inputs to the European institutions has grown, these have had no effect on outcomes in the EU decision-making system. It remains our conviction that the role of national parliaments cannot be improved via the treaties. Democratic legitimacy in the EU requires that each national parliament controls its country’s EU policy to the full extent of that parliament’s powers under the national constitution. This can only be achieved within each member state. We believe that in most cases parliaments can take a stronger role within existing constitutions.

September 2013
Foreign Affairs Committee and the European Affairs Committee Chairs and Members, Assemblée Nationale of France—Note of formal evidence session

Formal evidence session with the French National Assembly’s Foreign Affairs Committee & European Affairs Committee Chairs and Members

9 January 2014

1. During the discussion with the Committee Members, the witnesses made the following points. It was not possible to take a full transcript for this session, and a note, as below, was taken instead.

2. **Elisabeth Guigou** (President of the Foreign Affairs Committee) noted that the democratic deficit is a principal question facing the EU. The deficit is deep rooted, but was less of an issue when the EU was focussed on dealing with technical issues. Now that countries are sharing policy issues, it has been highlighted as a problem.

3. National parliaments have to hold governments to account for their actions in Brussels and France has a long way to go in this respect. A mandate system is not needed as it leads to blockages in the future.

4. Improving ways for national parliaments to cooperate is interesting, but a congress of national parliaments would not be a good idea due to the negative perception it would have in the European Parliament.

5. National parliaments should focus upon subsidiarity, and the future Commission should nominate competent commissioners who can focus upon fewer, but more key issues, whilst working in a collegiate manner with one another.

6. The European Parliament has an image problem, but does work well. In France, this is due to the election method, as it means the European Parliament has no relationship with the electorate and is not visible to them.

7. The Council and the European Parliament do have democratic legitimacy but the work of the Council should be better held to account. National parliaments need to ensure they are holding their governments better to account for their role in Europe.

8. **Danielle Auroi** (President of the EU Affairs Committee, and a member of the Foreign Affairs Committee) presented her report published in July 2013, which concluded that increased dialogue at national and EU level between legislative chambers was needed.

9. There is a lack of full capacity for true dialogue of citizens at an EU level. At the inter-parliamentary conferences, MEPs should be reminded that they represent the citizens of Europe, despite not being very visible to them.
A bicameral legislative body for the EU could be considered, with the European Parliament being joined by an upper house – a ‘citizen’s chamber’- which would have for instance six representatives from each country in order to increase dialogue and visibility. It would trigger as a compromise for this new representation for Nations in Strasbourg a reform of the current institutions, with for instance the grant of the right of initiative to the European Parliament or the end of the “one” commissioner per state rule.

National parliaments are starting to use the existing mechanisms available to them that are beginning to emerge. Not all EU member states have the same ‘clout’ as others, especially in regards to financial affairs. This ‘clout’ should be more fairly distributed, thanks to a proper dialogue between MEP at the European level.

The National Assembly does not use the ‘yellow card’ procedure as it prefers to make constructive counter proposals. The Dutch proposal for national parliaments to have a right to initiate is favoured, and it is important to get national parliaments and the European Parliament to work together creatively.

Pierre Lequiller (Vice President of the EU Affairs Committee and a member of the Foreign Affairs Committee) noted that, if the issue of the EU being detached from the concerns of citizens is not addressed, the European elections will be a nasty surprise.

The number of Commissioners needs to be reduced, and there is a lack of collegiality now. Each Commissioner will guard their own proposals, and the Commission is not focussing on issues like industrial policy, energy, immigration or defence. It should focus on greater issues, not trivial ones and the EU should be restricted to these major issues, as citizens will not see the bigger picture when the media focuses on the trivial proposals made.

Axelle Lemaire (member of the EU Affairs Committee) noted that there is a consensus in EU affairs between the major political parties in France, and the EU debate is ideological and not focussed on the finer detail. It should focus more on this detail as it has a greater impact upon EU citizens.

To address the democratic deficit, Europe needs to be repoliticised, especially as it can be considered that the EU institutions have run out of steam. The mandate system would not however work as it clashes with the French constitution.

Members of the EU committee in the National Assembly are members of other standing committees.

Christophe Caresche (member of the EU Affairs Committee) noted that post 2008, economic and financial matters have caused serious issues for the EU. There is a question of whether the European Parliament can work effectively with national parliaments.

Citizens need to feel closer to decisions being made in Brussels, and further European integration is needed to achieve this.
20. **Elisabeth Guigou** discussed the Treaties, and how further treaty change is not needed. The existing Treaties should be better utilised as they currently exist, with national parliaments being better motivated to take an active role, as well as increasing inter-parliamentary relations. National parliaments have never had a debate on what they want to achieve together and this must happen.

21. Economic affairs have an impact on all, so national parliaments (regardless of the fact that they are in the Eurozone or not) need to work on this together more effectively.

22. When considering the co-decision process, **Danielle Auroi** noted that the concerns of national parliamentarians are being listened to more frequently (i.e. common agricultural policy). National parliaments have limited access to information and if the European Parliament and the Council agree with one another, there is little opportunity for national parliaments to influence policy.

23. In regards to the issue of resources for increased inter-parliamentary meetings and the appearance of focussing on EU affairs at the expense of domestic issues, **Pierre Lequiller** noted that he explains to his constituents the importance of frequent dialogue with his European counterparts, and that others should not be afraid to do the same.

24. **Axelle Lemaire** noted that there has never been an expenses scandal like the one in Westminster, and there is therefore less criticism in France. There is an increasing demand for politicians to be accountable, and travel for them is being restricted. However, face to face contact is important and should not be underestimated. Information technology can bridge this dilemma and help make politicians more active.

**Luke Hussey**  
Second Clerk
1. National Parliaments have important responsibilities in the life of the European Union. They have a power of decision on the most important acts: revision of the treaties, accession of new members, setting maximum limit to budgetary resources, possible establishment of a common defence. They have to scrutinize governments’ action within the Council, and to transpose European directives into national law. They also have to check the compliance of the European draft legislation with the principle of subsidiarity in accordance with the Treaty of Lisbon.

Besides, important aspects of the functioning of European Union depend on an inter-governmental approach or the coordination of national policies. In these cases, the European Parliament does not seem to be the right institution to fulfill alone the parliamentary scrutiny on the European level, since its role is not to scrutinize the action of national governments.

Finally, a deeper association of the national parliaments can contribute to strengthen the relation between public opinions and European institutions, which is often considered to be weak.

In order to fulfill those different responsibilities, national parliaments need to consult and to cooperate. If national parliaments were strictly limited to the national field, they would not be worth scrutinizing governments which work together within the European Council and the Council of the European Union. In addition, to have an inter-parliamentary dimension allows national parliaments to better state their views in order to be heard.

The French Senate considers that the level of information on European decision-making processes is satisfactory, notably thanks to its representation in Brussels.

It must be underlined that if the French Senate’s statements or resolutions have a political significance, they are not legally binding for the government: it is not an imperative mandate.

2. It has been necessary to revise the French Constitution each time a new European treaty was adopted. It gave the opportunity to enhance the European role of both chambers of the French Parliament, which is now detailed in the Constitution.

In the French Senate, a special working group within the European Affairs Committee scrutinizes every draft legislative acts transmitted by the European Commission in the framework of protocol 2. Reasoned opinions adopted by the French Senate are few. The scrutiny shed some light on the difficulty to distinguish subsidiarity and proportionality. It is desirable to clarify that matter and to envisage that the « early warning mechanism » should apply to subsidiarity, proportionality and even the legal basis in so far as the scrutiny tackles problems that are inextricably linked to these three notions.

3. The quality of the relations between the French Senate and the different European institutions improved progressively and seem today to be satisfactory. A lot of visits of Senators to Brussels are organised.

As regards the procedures, the Senate considers that the average time used by the European Commission to answer to « reasoned opinions » and « political opinions » is far too long.
It is obvious that « trilogues » make the EU decision-making process less transparent. But, in any way, national parliaments have better chances to be influent if they send opinions at the very beginning of the decision-making process.

The role of COSAC is at the same time to foster the inter-parliamentary co-operation and to allow a dialogue between the representatives of the European institutions and members of all national parliaments. COSAC seems to fulfill well this role today. The assessment of IPEX is also positive.

Many people think that inter-parliamentary co-operation should be rationalized. Priority should be given to co-operation mechanisms that have a direct or indirect legal basis in the treaties : COSAC, the inter-parliamentary Conference pursuant to Article 13 of the TSCG, the CFSP Conference.

A better organized inter-parliamentary co-operation is also desirable in the field of justice and home affairs, in particular with the perspective of the association (as foreseen by the treaties) of national parliaments to the scrutiny of Europol’s activities and the evaluation of Eurojust’s activities.

4. The level of engagement of national parliaments in European affairs and their capacity to influence their respective governments are obviously different from one State to another, but it seems that there is a positive trend from a global point of view. Encouraging the diffusion of best practices is part of COSAC’s role. It does not seem desirable, in that perspective, to support a particular model. The role played by the network of the national parliaments representatives in Brussels is considered to be very useful.

5. As put in our answer to question 2, the field of the scrutiny of subsidiarity should be clarified in the sense of extending it to proportionality and legal basis. As regards economic and financial matters, the Conference pursuant to Article 13 of the TSCG, which first meeting will be held next month, will have to fulfill thoroughly his role.

27 September 2013
Simon Sutour, President of the European Affairs Committee, André Gattolin, Richard Yung, Éric Bocquet, Catherine Tasca, Joëlle Garriaud-Maylam and Collette Mélot, Members of the European Affairs Committee, Sénat, France—(QQ 142-146)

Evidence Session No. 11  Heard in Public  Questions 142 - 146

THURSDAY 9 JANUARY 2014

Members present

Lord Boswell of Aynho (Chairman)
Lord Bowness
Lord Foulkes of Cumnock
Lord Harrison
Lord Maclennan of Rogart
Lord Wilson of Tillyorn

Examination of Witnesses

Simon Sutour, President of the European Affairs Committee, André Gattolin, Richard Yung, Éric Bocquet, Catherine Tasca, Joëlle Garriaud-Maylam and Collette Mélot, Members of the European Affairs Committee, French Senate

Q115 The Chairman: Monsieur le Président et Sénateurs, je tiens compte toujours des mots de Churchill: “Prenez garde, je vais parler français”. If I am allowed, I would prefer to speak in English, but it is to express our great thanks to you for the honour of this reception and for the opportunity of discussing these matters, which are, I think, of common interest. Perhaps I may make two points before I introduce my team. First, we are already very grateful for the engagement of the Senate. You have already sent us a very helpful written note with your comments, which I have read again this morning. It is an extremely useful piece of work. It is not even, dare I say, too long; it is something that I can work with. My other comment relates to activity taking place in this building as we speak. You are debating the possibility of a transatlantic free trade area, which is very interesting. One of the Sub-Committees of my Committee is carrying out an inquiry into that subject, but this is the first time that the two planets of interest in this have come into conjunction. We ought to do more of this, I think. If we do not understand the positions and the problems, it is more
difficult to get our national Governments into the right frameworks to make their representations to the Commission and others and to get the outcome that we want.

I shall say a brief word about our inquiry. We established it last summer. We have been taking evidence from experts, political practitioners and others both in Britain and in other countries of the European Union. We saw the European Parliament yesterday. We will shortly begin to prepare our report and will produce that before the European Parliament elections later this spring, in March or April. We have no prescription and we shall offer no precise prescription. We want to offer some analysis and some menu of possibilities for future co-operation, both at the formal level—in the question of yellow cards and the question of the work of COSAC—and in the possibilities for better informal exchanges in developing thinking together, particularly at an early stage in the development of European policy.

If I may, I will present the members of our group and we will ask you a few questions that might help to influence our thinking for the inquiry. I begin—and there is no particular political configuration here—with, on my far right, Lord Bowness, who is a Conservative. Next is Lord Wilson, who is a former very distinguished diplomatic official. Then we have Lord Maclennan, who is a Liberal Democrat. Like Lord Wilson, I do not have a political affiliation now. Lord Bowness and Lord Maclennan are from the governing coalition and Lord Foulkes and Lord Harrison are from the socialist party.

Lord Foulkes of Cumnock: The next Government.

The Chairman: All I would say, not least as a former Member of the lower House, is that we have a different perspective—I think that you also have this in your Senate—because there is no guaranteed majority on any one issue. The Government lost yesterday by—

Lord Foulkes of Cumnock: 137.

The Chairman: It was a complete defeat on a particular issue in the upper House. It was something to do with anti-social behaviour, was it not? But I think that the spirit of co-operation and accommodation that influences the House of Lords influences our report. It also influences our attitudes towards the European Union. I think that I can say that my colleagues may have packed their suitcases to return to London tonight, but they have not packed their suitcases to leave the European Union.

Perhaps we may then, Mr President, ask some questions. It is your answers that are really of interest. I will ask the first. It has been said that there is a democratic deficit and a lack of democratic legitimacy in Europe. You would not have to be a specialist to know that there is a degree of distress among our peoples and our citizens about current events. This has been a very tough time for all our countries. We are interested in your view as to whether an increasing role for national parliaments within the European Union would assist the operation of the Union. As you consider that, may I put the dilemma? Some people might say that if we were to have a bigger role, that would further delay the process of making necessary decisions. On the other hand, if we could get—to use an American phrase—buy-in, where there was the involvement of the national parliaments, would the business of making difficult decisions be more legitimate and perhaps easier? That is the dilemma.

Simon Sutour: (Interpretation) Thank you for that first question. We have been joined by our colleague Mme Joëlle Garriaud-Maylam. She is a Senator representing French people living abroad and is a member of the UMP group. She has quite a lot of dealings in London this group. Who would like to speak on the role of national Parliaments?
Simon Sutour, President of the European Affairs Committee, André Gattolin, Richard Yung, Éric Bocquet, Catherine Tasca, Joëlle Garriaud-Maylam and Collette Mélot, Members of the European Affairs Committee, Sénat, France—(QQ 142-146)

**Catherine Tasca:** *(Interpretation)* I would like to answer that. There is obvious distress and concern among citizens of all European countries, but there is also a lack of confidence in the European Union, especially in the way in which representatives are elected. These concerns of the citizens are part of kind of anti-parliamentary movement that exists in Europe. This has a big impact on institutions. There is a big difference between the European opinions and those at national level. We have to try to address the situation, I feel. There are two possible perspectives. I would say that the second one that you presented—increasing and strengthening the role of national parliaments—would be the best one to choose. Interparliamentary co-operation would also be a good idea. It would help us to improve the legislative process. This needs to be done, since the differences between national opinions and the decisions taken at the European level are widening.

**Simon Sutour:** *(Interpretation)* My colleague will add to that.

**Richard Yung:** *(Interpretation)* It is clear that as we move towards more and more integration, more and more important decisions will be taken at European level. We have a problem co-ordinating the legitimacy of the European Parliament and the national parliament—there is a wide gap between the two. I have two examples. The first is the budget process, relating to the stability pact and so on, in which the UK participates. It is clear that the European Commission and European Council will have more and more clout in the future in terms of decisions that are made concerning national budgets. In this kind of system, the Commission can criticise the proposals and send them back to the specific country, saying that they do not agree with them and that they has to be revised. The main legitimate role of a parliament is to vote for the budget; that is the very role of parliament. So we have a situation where the national parliaments will be in a very ambiguous situation. We are trying to develop a conference concerning Article 13. This should provide certain mechanisms. The European Parliament is saying that it has a legitimate role on the European questions and that national parliaments have less of a role to play there. There are particular problems concerning the budget, and not just for the UK. There will also be many problems concerning banking union. The measures on banking union will be extremely important and we need to find a solution involving the role of national parliaments.

**The Chairman:** Thank you. I think we understand the dilemma more clearly now.

**Richard Yung:** *(Interpretation)* I feel that national parliaments need to work with the national parliamentary committees on European affairs and finance, in particular. We need to work more on the exchange of information with the Commission before any budgetary decisions are made. There needs to be a greater flow of information between national parliaments and the Commission and more exchanges between parliaments, as this is currently lacking. Today’s meeting is a good example of this.

**Simon Sutour:** *(In English)* I will give just one example. It has been very difficult for us here to have Mario Draghi, the President of the European Central Bank, come to speak to us. He is the boss of the whole financial system, so he, or some of his deputies, should be coming here.

**Lord Harrison:** He went to the Bundesbank. His deputy, Dr Constâncio, came before my Committee, but it is not going to happen all the time. I am astonished that it has not happened here in France, a major country. I think that this cuts to the quick of what we are here to understand. How can we, as national parliaments, combine in an effective way, in terms of resources and time—we are not time-rich—and in terms of consulting 28 member states, as well as those states consulting the Commission or, in some cases, the European
Central Bank? The essence of it is: how do we do it, so that we improve and make up what may be that democratic deficit?

**Q116 The Chairman:** Can I perhaps bounce two ideas off you? The first, which arises from these exchanges, is that we might look together or collectively at means of ensuring that we get better information from the Commission and otherwise. Some of that will come through the National Parliament Office and attachés from your diplomatic representation in Brussels, as does ours, but we need to be quite early in the process. We are shortening some of our questions to get a feel of your views.

The second point is in relation of your mention of Mr Draghi. I say as a side point that Britain, of course, is not a member of the euro area, so we have a further circle of diversity within the European Union. It would seem to me—we may wish to discuss this and find a view—that it would be unfortunate to worry about the bureaucratic control of the European Union and then to substitute control by the judges through a legalistic procedure, the yellow card or otherwise, rather than to insert a genuine political dialogue. There is a problem. We will need, particularly in the euro area, more controls in the way you identified, but if we do that are we going to find that we can control them only by putting the matter into the European Court of Justice, or should we be trying to get some political input to say, “This is not satisfactory”?

I will, if I may, add just one other point. Looking at the written evidence that you submitted to us, you make the point that subsidiarity, which is a legal concept, becomes a political concept about whether such a position is acceptable to our citizens. Is that a line of argument that you find attractive?

**Simon Sutour:** (Interpretation) I would like to say something at this point. Let me continue with some more introductions. This is André Gattolin, who is a Senator at Hauts-de-Seine. It is the constituency of Mr Sarkozy. He is from the Ecology Party.

**André Gattolin:** I am very sorry to be late, but I was in the hemicycle to speak a few minutes ago.

**Simon Sutour:** (Interpretation) I would like to talk about subsidiarity to start with. That is not how we see things. To look at this issue, we have an informal group. In fact, we had a meeting this morning. There is one representative from each political group and I am in charge of that: I am the Chair. Every two weeks, we meet to examine and scrutinise all the European texts that we see. We decide to carry out an in-depth examination or to examine these documents on the basis of the subsidiarity principle. That means from the French standpoint things can be done better at national level. If these measures were to be taken at European level, the results would be less effective, so it would be better to do this at the national level. Perhaps my colleague, Mr Bocquet, can speak about this.

**Éric Bocquet:** (Interpretation) The idea of the European Union is a wonderful idea, but it has two major defects. This is my opinion; I am not expressing the opinion of the Senate majority. The two major defects concern economic choices made in the European Union and unfortunately the democratic deficit. This is the way I think citizens perceive the situation.

I will give three examples. The first is the latest European treaty on stability, co-ordination and governance. This was adopted by the French Parliament at the end of 2012 and has significant consequences for the life of French people. Our party regretted the fact that this treaty was not put to public debate before it was voted on. Let me go back to 2005 and refer to the European constitution, which in France generated an awful lot of debate. A vote
Simon Sutour, President of the European Affairs Committee, André Gattolin, Richard Yung, Éric Bocquet, Catherine Tasca, Joëlle Garriaud-Maylam and Collette Mélot, Members of the European Affairs Committee, Sénat, France—(QQ 142-146)

was taken by the Deputies and Senators on the text, and it was adopted by an 87% majority. When the text went to a referendum the citizens rejected it to the tune of 55%. This means that we cannot continue to make decisions without the input of citizens.

My second point—I do not have the exact figure in my head—is that roughly 60% of laws voted on in the French parliament are simply a transposition of laws and directives that are made at a EU level.

My third point concerns the budget process. France submits its budgetary procedure to the Commission before it is even looked at in France. The Commission makes recommendations to various countries before the parliamentarians themselves have actually discussed it and agreed it. The parliamentarians themselves have moved further and further away from the responsibility for budgetary matters, so you can just imagine what the citizens feel in view of that. Lord Boswell used a key term, as I see it, in this context, and that is co-operation. I regret the fact that the European Union is being built on the basis of competition. Let me go back to what I said initially: the EU is a great idea but it can have dire consequences if European citizens feel that it is just being imposed on them.

Q117 Lord Maclennan of Rogart: I wonder, having heard these critiques, what procedures the Senate would regard as appropriate to implement the changes that are required. With 28 member states, consultation informally might take a very long time and might not end up with a consensus. Having been present as a member of the convention that the last speaker referred to, my sense is that a convention would pull together in a consensus the views of the national parliaments and possibly give us the opportunity to construct responses. I wonder whether that concept would be acceptable.

Catherine Tasca: (Interpretation) Lord Boswell initially referred to information and there are things that need to be done on that front, because we have many European institutions to deal with, with many rules and regulations, and indeed processes that are very weighty. If we want information to circulate and if we want democratic opinions to be formed on European issues, the information should not just go through the channels of the EU institutions. We need to think about creating more occasions and opportunities for informal meetings where parliamentarians can get together—perhaps not from all 28 countries but from the countries that are interested in a particular point. The EU institutions are extremely rigid and we need to find a way of getting around that rigidity.

Simon Sutour: (Interpretation) I agree with what Mme Tasca said. We need to increase our exchanges of information and the number of meetings. We can do that through COSAC, but not all the members of our committees participate in those COSAC meetings. There are, however, four COSAC meetings a year. We had the larger COSAC meeting and a smaller one as well. We should introduce more of these informal meetings. As Mme Tasca said, this would allow us to move forward on many issues, even though we might not be able to go as far as we would wish. The Swedish are always there to remind us of this.

I want to give a concrete response to the question that was asked. I think personally that the initiative proposed by the Netherlands is very good and is something that I identify with. We should have the possibility to carry out the scrutiny process effectively using the yellow and the orange cards. As we have already mentioned, this is a posteriori scrutiny. We need to have the right to introduce initiatives in Europe. This concerns European legislation coming from one, two or several national parliaments. We should have this role of being allowed to present initiatives. The European institutions, of course, are new to their respective roles, but we should at least have the right to do this.
Simon Sutour, President of the European Affairs Committee, André Gattolin, Richard Yung, Éric Bocquet, Catherine Tasca, Joëlle Garriaud-Maylam and Collette Mélot, Members of the European Affairs Committee, Sénat, France—(QQ 142-146)

**Joëlle Garriaud-Maylam: (Interpretation)** As parliamentarians, especially from the UK, France and Germany, we have a special responsibility to take the lead on this democratic deficit. It is our responsibility to give a positive image of the EU to the people. I speak from experience because, as I said, I spent a lot of time in the UK and I was the Chair of a council that represented French people living abroad. I suffered greatly from having to read these very negative articles in the press every day about the European Union. Let me give an example. When the Maastricht treaty was in the offing, let us say, the European Parliament asked me to organise a press conference. I found it very hard to get any journalists to come to it. Of course, some of them came because champagne was on offer. What they said in the press was extremely negative. We need to work on the information process and the information that we give to the public, otherwise we will get very negative reactions from the citizens. The only thing they really discern is the negative articles in the press. We have a particular responsibility to play here as French and UK parliamentarians. I also think that UK parliamentarians have not been sufficiently involved in the EU process. This needs to change. Perhaps we can do this through informal meetings between UK and French parliamentarians, because obviously we cannot include everybody in those more informal meetings.

**Collette Mélot: (Interpretation)** We as parliamentarians are responsible for the image that we give of the European Union. When we have elections we do not talk enough about European issues. This is something that we witnessed recently during the presidential elections in France. We did not talk enough about these European issues, so we cannot ask European citizens to give their opinion on them if they are not sufficiently informed. We need to work more on improving that.

**The Chairman:** President, two reflections at this point. The first is that we already have a very active and successful collaboration between parliaments in relation to defence matters. That may be an example to reflect on—I notice that some French colleagues are nodding at this. My second point is very brief. We need to reflect, when sometimes, for example, the press take a negative view of tourism by parliamentarians, that not all these meetings have to take place physically; some of them can now be done through information technology virtually. Perhaps we should get into the habit of just e-mailing or videoconferencing each other. Some of our work for this inquiry with three national parliaments has been done by videoconference, for example.

**Q118 Lord Foulkes of Cumnock:** The Chairman has almost stolen my thunder, because I was going to mention that. In the past two years, I have been involved in three meetings with Members of the Senate on defence co-operation, and they have been really useful. We are also looking at the structure of our second Chamber, because our non-elected arrangement cannot continue for ever. I find very useful information from the French Senate about your indirect elections and your grands électeurs, which has been very helpful. By an amazing coincidence, while your Chamber is discussing the transatlantic treaty, in London now our Sub-Committee is also doing that in my absence.

The conclusion—I want to follow up what you and the Chairman said—is that the Dutch initiative is very interesting. Cold water was poured on it by the Members of the European Parliament whom we met yesterday. You can understand why. I hope that our Committee will pursue it. In order to do that, you need informal meetings to get together to decide what the initiative is. We should do that because we are talking about politics and the European Union is too bureaucratic. There is not enough politics in it, and not enough politicians taking the initiative. My friend on the left is a socialist like me, and he says, “How?” That is not beyond our wit. First, our Chairman, Lord Boswell, spoke about the new
Simon Sutour, President of the European Affairs Committee, André Gattolin, Richard Yung, Éric Bocquet, Catherine Tasca, Joëlle Garriaud-Maylam and Collette Mélot, Members of the European Affairs Committee, Sénat, France—(QQ 142-146)
technology, which I have here: I can tell you what is happening in my Committee at the moment. There is also videoconferencing—a whole range of things. There must also be opportunities for us to get together more. It is so easy for us, particularly between London and Paris, between Berlin and Paris and between Berlin and London, to get together, and we should do so more informally, and more often. I was supposed to ask questions about something else, but this is much more interesting.

Catherine Tasca: (Interpretation) I have a question. Both our parliaments have two Chambers: they are bicameral. I would like to know how in the UK you exchange information and how your two Chambers co-operate with other on European issues.

Q119 The Chairman: I shall give you a formal answer and I shall also give you an informal answer. The formal answer is that if a matter requires United Kingdom legislation, for example a treaty change, that will be debated as part of the normal process of legislation in the British Parliament. We have machinery in place for consultation on scrutiny matters. Our staffs work together on that technical level. We have a political dialogue with the House of Commons and the British Members of the European Parliament of all parties perhaps twice a year formally.

The informal comment is really summed up in what Lord Harrison said. There is a difference of emphasis. Without forming a final view, it would be true to say that our House is more generally sympathetic to Europe. Certainly those who comment in the lower House are less sympathetic to Europe. This sometimes makes collaboration difficult, but it does not typically damage the personal relationships, so you can still do this. There will be technical issues on which we work very closely, particularly where they relate to scrutiny and we are not satisfied with the response from our Government. We might then work together to try to get this changed.

Can I ask our French colleagues how much association they have with their own Members of the European Parliament? I think there is sometimes the impression in Britain that our Members of the European Parliament are in exile. They are in Brussels and they do not connect very well with the parliamentary system. I see some nods from our French colleagues. Is it a general view that part of this process must be to try to work more closely with the Members of the European Parliament, not necessarily in one country but maybe in more than one?

Simon Sutour: (Interpretation) I do not think so. I would like to say something in respect of the MEPs legislating within this exclusive remit over European affairs, whatever party they come from. We see this regularly. We see it at COSAC: the MEPs want to impose their will, as it were, particularly with regard to Article 13 of the treaty concerning financial stability. Their opinion was that national parliaments have nothing to say on this and that everything in that respect should be decided at the European Parliament level. We, as parliamentarians, have the same type of meetings as you three times a year. These are meetings between select committees, the Senate and the Assembly. We work very well with the committee from the National Assembly and we invite MEPs to attend those meetings. There are about 80 of them in total, but only three or four tend to turn up.

I am afraid that we have to move on to another meeting now, but we will have informal drinks at the end if you want to continue this discussion on a more informal basis.

Richard Yung: (Interpretation) A proposal has just been made to solve the many problems that you raise, and that is to have a second Chamber at the level of the European Parliament on the model of the Bundesrat. This would involve multinational parliaments and would be a
The Chairman: Thank you. I would like to express our thanks while we are still on the record. I am very grateful.
WEDNESDAY 8 JANUARY 2014

Members present

Lord Boswell of Aynho (Chairman)
Lord Bowness
Lord Foulkes of Cumnock
Lord Harrison
Lord Maclellan of Rogart
Lord Wilson of Tillyorn

Examination of Witness

Mr Ashley Fox MEP

Q115 The Chairman: We are now at full strength. We are very grateful to Ashley for coming. Can I formally call the Committee into session again and express our thanks to Ashley Fox MEP for coming to give evidence to us? It is a formal session of our inquiry into the role of national parliaments and we are very grateful for the time and commitment you have given. Is there anything you would like to say on the record before we kick off with some questions?

Ashley Fox: No, other than I am very pleased to help you.

The Chairman: We have a range of questions that we are intending to ask people, at least within the same general format to get the different perspectives. If I could kick off, I think there is some suspicion—and we have certainly heard from some witnesses—that the treaty of Lisbon gave only the appearance of bringing greater democratic legitimacy to EU affairs. A parallel issue, although it obviously plays into this, is that fact that, for reasons that do not really concern this inquiry, the whole system, and even possibly the future of the EU, is being more challenged because of the economic crisis that happened historically over the preceding 50 years. There is a feeling that it may be a rather weak reed democratically, if I can shorten it like that. At the same time the tests or the weight it has to bear as this thin reed are aggravated. For the record, could you give us an assessment of your view as to the real impacts that Lisbon has had for the European Parliament and for national parliaments
and their electorates, and to some extent, if you want to, although we will develop it later, the relationship between the EU and the national parliaments?

**Ashley Fox:** First of all, the treaty of Lisbon grants more power to the EU, and within the constitutional set-up it provides a lot more power to the European Parliament, co-decision on nearly everything, and the power to stop various things as well. Within the treaty of Lisbon we had this yellow and orange card procedure, which I think is what you were referring to when you said “the appearance of democracy”.

**The Chairman:** There could be an argument that that is put in there for people to point to and say, “Are we not democratic?”, when it might not really be effective in calling Executives to account.

**Ashley Fox:** Yes, and I think the yellow and orange card system is completely ineffective. If I am correct, I think the yellow card has been properly invoked only once, on the public prosecutor, and the Commission decided to ignore that.

**The Chairman:** Under Monti II it did, so there are two altogether.

**Ashley Fox:** You are correct. The problem is, first of all, that parliamentarians in national parliaments have plenty to do without scrutinising EU legislation, and most politicians in national parliaments are not terribly interested in what is going on over here, so the scrutiny of our legislation by national parliaments is not done particularly well. The method for national parliaments to put a yellow or an orange card is cumbersome. You have to have this reasoned opinion, and one-third of chambers have to raise the yellow card eight weeks, I think, from publication. That is a remarkably short period of time, because we know how slowly parliaments work. If you were cynical and you were the Commission and you wanted to avoid a yellow card, you would probably bring out your proposal in the middle of July just as the recesses were starting. It is not difficult to do.

I gave evidence to an all-party working group in the House of Commons on this subject, and my suggestion was that you could improve the yellow-card system by saying that when three countries have raised a yellow card, two things should happen. One is that the Commission should be obliged to write to everyone a second time saying that this has happened. The second is that the time period to respond should be doubled from eight to 16 weeks. To expect a third of chambers to respond in eight weeks is almost impossible. The fact that it has happened twice in four and a half, nearly five, years shows how inadequate the system is.

**Q116 The Chairman:** Thank you. There are two points to make on that. One is that it is increasingly clear to us there is a distinction between your role as an MEP, where you wake up in the morning and you think about matters European, and, as you indicated, the fact that it is quite difficult for national parliamentarians to focus on European matters. In a sense we meet this issue in the upper House because we have specialist committees within the EU framework that are well represented here. But particularly in the Commons and in other legislatures, there is a debate about whether you mainstream in your Select Committees or whether you keep EU matters within a frame of reference of a specialist EU Committee. Do you feel it would make a difference if there was more mainstreaming into the Select Committee work done in Westminster and its counterparts? That is one question.

Secondly, do you feel that this lack of symmetry between your role and that of the national parliamentarian is concerning, or does it not really matter? How do we tackle that?

**Ashley Fox:** I will deal with the first question first. By use of the word “mainstreaming” I assume you mean that each House of Commons Select Committee—and I am using the Commons as an example—would have a European responsibility to scrutinise what Europe
is doing within its area. If that worked, that would be ideal, but the danger is that Europe comes as the last item on the bottom of a crowded agenda and people are not very interested in it. In fact, it does not get done adequately at all. That is the counterargument. Your Lordships’ House does a good job compared with the different chambers around Europe. I do not think the House of Commons does such a good job, and other chambers around Europe are even less interested. Some chambers have not produced one reasoned opinion in four and a half years. I find it very difficult to believe that if you are taking your duty seriously you have not found anything to query in four and a half years. Different chambers adopt different approaches. I think the House of Lords has a good reputation in this place. The Bundestag also takes its responsibilities seriously, but other chambers do not, which makes it very difficult to reach that one-third threshold.

The Chairman: Is the fact that we are, with the best will in the world, part-timers on Europe, as against you here, something that one can easily meet? Is it best dealt with informally by just getting into political dialogue rather than by changing the machinery?

Ashley Fox: Probably, yes. The difficulty is that most politicians in Britain are not interested in Europe, and those who are tend to be obsessed with it. Perhaps that does not apply to Members around this table but it applies to Members of the Commons. When Europe is discussed in Britain, it tends to be that Europe is responsible for some dreadful problem, and that is the story.

There is also enormous confusion as to what Europe means. I am constantly being told that I am responsible for the European Court of Human Rights. The two subjects are conflated all the time, either deliberately or through ignorance. I am not answering your question, but I am finding it difficult to answer.

The Chairman: That is helpful in a sense. Again, this is not an inquiry into media, and I am not suggesting that we should extend it. Do you sense that one of the difficulties is that this debate is framed by the media in a particular way that makes it quite difficult for either party, whether MEPs or national parliaments.

Ashley Fox: I think that is a very fair point.

Q117 Lord Harrison: My fear is that it is more through ignorance than some form of conspiracy, but you rightly point up the problem that we have just illustrated in your conversation with the Chairman.

Recently the Committee I chair, which is the Economic and Financial Affairs Committee of Lord Boswell’s Select Committee, had Syed Kamall along with Roger Helmer and Sharon Bowles come before us as part of the regular exchange that we have with MEPs on the report that we will publish at the end of this month or in February on genuine economic and monetary union.

What I wanted to test with you is that in the European Parliament as you sit there and act on our behalf, do you take into account the opinions of national parliaments, either as they are expressed in the dialogue that exists typically between MEPs and the House of Lords, and do they have the effect of changing your view, changing the policy, possibly even changing the legislation that then emerges? Please draw on your experience in your engagement with the Commons and the Lords. Can you give an example of where something from another national parliament, the Portuguese Parliament or the Latvian Parliament, impinged on Europe and you sat up and said, “Goodness me, that is a very telling
point and I wish not only to raise that in debating the change de vue but to do something about it.”?

Ashley Fox: I am going to give you an honest answer that you probably will not like. When we are legislating, a lot of our guidance will come from the British Government and from the Conservative part of it. If there is a different opinion from Parliament, that tends to get ignored.

Lord Harrison: Which parliament are we talking about now?

Ashley Fox: The UK Parliament. We do receive reports from non-British chambers. I will admit that I have never sat down and read one of them, but my advisers tell me that they look at them. If they support our view they are pleaded in evidence, and if they do not they are ignored. The truthful answer is that I do not think they play a very great role in framing legislation, because on any piece of legislation we are bombarded by lobbyists, UKRep and the UK Government, and the two bits of the coalition will tell their MEPs here what they are trying to achieve.

Lord Harrison: You would be surprised how receptive I am to truthful answers.

Ashley Fox: If I can carry on in that vein, if we have a Lib Dem Minister telling us, “Do X”, we will check that Conservative colleagues agree with him. I have no doubt that the same is true of our Lib Dem colleagues.

Lord Harrison: Thank you very much.

The Chairman: That is really helpful. To be clear, can I just pick up one point from that? We appreciate that the national parliament involvement is not normally on a group basis. Indeed, our national Parliament representation in Brussels is a professional one, whereas I think the Bundestag is unique in having party groups involved. You are saying that the messages from party groups, which presumably are also in touch with like-minded parties, are pretty clear to you. You get them.

Ashley Fox: Yes.

Q118 Lord Foulkes of Cumnock: Mr Fox, we might explore other aspects of the two bits of the coalition in the answer to my question. It has been suggested in various quarters that national parliaments should be given a role in making suggestions for initiatives. What do you think of that?

Ashley Fox: I am very sceptical about that.

Lord Foulkes of Cumnock: Why?

Ashley Fox: First of all, the European Parliament does not have the right to initiate legislation, and I think that is a good thing, too. My view is that we have far too much European legislation. By saying that only the Commission can initiate it acts as a brake on the amount of stuff that emerges from the machine. If we allowed Members here to initiate legislation, we would have 10-minute rule Bills every 10 minutes. Then, because we do not have a Government here, you would get people forging alliances, such as, “If you can get the signatures to push my Bill, I will do the same for you”. You would get vast quantities of legislation spewing out of Brussels, which in my view would be a very bad thing. I like the fact that the Commission has a brake on initiating legislation.

It has been suggested that national parliaments should be allowed to propose that some European legislation be repealed, consolidated or amended. The difficulty with this is that we often hear the Commission saying, “We have five directives. We are going to reform them
into one directive, and this will slim things down”. But invariably what happens is that it takes
the scope of the five and puts that into one bigger directive, and here in the Council it swells
even further. What started as a slimming-down exercise ends in more legislation. It then
goes to Whitehall, which doubles or trebles it in volume, and what started off with the best
of intentions of being less government turns out to be more government.

I like the fact that only the Commission can initiate. That also says to me that this is an
organisation that is a collection of nation states and is not a single body, a single state, which
I think you would approach if you allowed the European Parliament to start proposing
legislation.

Lord Foulkes of Cumnock: It is interesting that you come to the same conclusion as our
previous witness from an entirely different point of view, because what you want to do is to
keep the amount of legislation down. What I understand Mr Duff wanted to do was to
increase the power of the Commission. Why do you see the Commission as being the body
with the sole responsibility for initiating legislation, apart from just wanting to restrict it?
What is the logic behind it?

Ashley Fox: I suppose I am pretty conservative in nature, and that is how the treaties were
initially set up. I do view the Commission as the guardian of the treaties. I think that the
legislation it proposes should be in line with those treaties, and in my view that should be far
more to do with the single market and promoting free trade and a lot less to do with lots of
other spurious matters that have been bolted on to the European project. I think it is more
likely that we will stray from what I see as the central mission of the EU if you grant this
place the right to initiate legislation, because politicians being what they are will want to
headline back home.

We have something called written declarations, which are the same as Early Day Motions.
They are an utter nonsense that achieves nothing, but people are always wasting time saying,
“Will you sign my written declaration?” Imagine if you could initiate a Bill with 70 or 80
signatures. This would be multiplied tenfold.

Lord Foulkes of Cumnock: In Britain, as you know, we have Private Member’s Bills, and
David Steel changed the law on abortion through a Private Member’s Bill. On Friday we have
a Private Member’s Bill that is being taken up by Lord Dobbs, having been initiated in the
House of Commons, for a referendum on the future of Europe. These are initiatives by
elected Members in the case of the House of Commons. Why should the elected
parliaments of each member state not have the right to take initiatives? Obviously there
would be some constraints and they would have to persuade and convince a whole range of
people and institutions.

Ashley Fox: You make a very reasonable point, and that point is there to be made. The
“but” is that I do not like this place having any more power than it already has. I wish it had
rather less power.

Lord Foulkes of Cumnock: Yes, I can see where you are coming from.

Q119 Lord Maclennan of Rogart: There has been an increase in the interparliamentary
meetings between national parliaments and the European Parliament. In an earlier answer
you indicated that you personally and your colleagues were not very interested in what was
being discussed nationally in the parliaments, but do these interparliamentary meetings have
any effect on the deliberations of the European Parliament?

Ashley Fox: I think in truth no. They are a very nice social event.
Lord Maclennan of Rogart: Is that partly because there is no connection between the thinking of your colleagues and the thinking of the national parliaments? If we are going to have a greater consensus and understanding of what is being done—you drew attention to the lack of knowledge—would it not be better for these events to have rather more impact and be better informed, and perhaps even to be better prepared with information about what sort of subjects and what the attitudes are being exchanged, before these interparliamentary meetings?

Ashley Fox: When the European Parliament legislates, by the time we get to the Commission proposal that we are looking at, you have already had two or three or four years of Green Papers, deliberations and inquiries to get to that stage. One of the things I have learnt here is the importance that when you see something starting, the genesis of a project, you need to get in early. The Commission might issue a Green Paper and the Parliament will respond to it. For example, I was the rapporteur on online gaming; it is important for my constituency, which includes Gibraltar, so I got in early and I was the rapporteur for that report. The Commission might then come forward with another paper and ask for more responses. Then it will consult the Council and go back again. Finally we might get a piece of legislation. Only at this point do national parliaments ever involve themselves. The Government and the civil service may have been involved in that process, and of course the lobbyists will have been involved from the very beginning. It is very difficult for the national parliaments to come in when the legislation is issued and you have eight weeks to comment, and then to say, “By the way, we have a new point”. The trouble is that point might have been considered and discounted two years ago, and the response of the Parliament and the Commission is, “Come on, have you not been listening? This was discussed in great depth two years ago”.

The Chairman: But it would be neither conceptually improper nor impractical. To put it the other way, would you welcome it if the national parliaments, or one or two experts who are interested personally, engaged themselves earlier? They might well wish to collaborate with you as interested MEPs in trying to affect the process at the earlier stages that you indicated. That is not derogatory of the European Parliament or inherently difficult.

Ashley Fox: Not at all. It would be very useful, to be quite honest. Let me give you an example. There is a piece of legislation called Solvency II, which has taken about 10 years to grind its way through this place. It was the first dossier to land on my desk in July 2009 and it is just concluding. A Member of Parliament made a representation to me in the autumn just before the final trilogue and asked whether he could discuss amendments with me. I refused to see him. It was a complete waste of everyone’s time, because he clearly had absolutely no knowledge as to how the process went. The fact was that at the end of a 10-year process he was going to say, “But what about this, this, this and this”. We were literally dotting “i”s and crossing “t”s. That highlighted to me the fundamental misconception that he thought he could come along at the end of a 10-year process and contribute to the debate.

It would be useful if national politicians and committees engaged a lot earlier in the process, and you would have more credibility as a result. If you have contributed to the Green Paper, for example, and then you turn up at a later stage, Members will remember that you said something and you put a point of view. Perhaps this explains why national parliaments have so little weight; it is because they come in so late in the day.

The Chairman: I give you for consideration the thought that one of our specialist sub-committees on home affairs is going to do work on the Rome Programme, the next justice and home affairs proposals. It is being put to us that that is quite constructive and I think, by inference, rather innovatory in that they are getting in at the very early stages of
Mr Ashley Fox MEP—(QQ 115-124)

Commission thinking rather waiting for a set of things to be presented and then objecting to it. Is that your mindset: that you feel that we would do more good if we were up early in the process, formally or informally, and working with you towards hammering something out?

**Ashley Fox:** Very much so.

**Lord Harrison:** Could I just add to that? The Committee that I chair, Economic and Financial Affairs, has recently had a briefing from the Commission on the Green Paper on shadow banking, which we found absolutely fascinating. It is an unusual practice for us to consider a Green Paper, but following what you are saying it would perhaps be a good follow-up to engage with some of our MEPs on the subject so that we intrude our thinking at an early stage.

**Ashley Fox:** Very much so, yes.

**Q120 Lord Bowness:** Mr Fox, the United Kingdom, and to a lesser extent Denmark and Ireland, have opted out of certain things. I have particularly in mind police and criminal justice matters. Given that that is our position—we have the same position with regard to the euro—we nevertheless participate in all the interparliamentary meetings on those subjects. Is that sustainable in the long term, given our position? Not just that, but how do you see your position and the position of your UK colleagues in dealing with these matters within the Parliament?

**Ashley Fox:** I think it is as sustainable as Scottish Members of Parliament voting on English matters in the House of Commons. You can come up with a theoretical objection as to why they should or they should not, but British MEPs do vote on these matters. The House considers all Members to be equal irrespective of which states decide to opt in or opt out of various pieces of legislation.

Longer term I would be very happy to see a situation in which, if power were repatriated to the United Kingdom in certain subject areas, we were excluded from voting on it, just as I would be very happy to see Scottish MPs prohibited from voting on education in England. But that is a pretty big constitutional question that I guess would be dealt with at the next convention, whenever that might be—I am guessing some time after 2015. I would be perfectly comfortable with that idea.

**Lord Bowness:** By analogy, you would extend that to the position of national parliaments participating in interparliamentary meetings?

**Ashley Fox:** Yes.

**Q121 Lord Wilson of Tillyorn:** Could I deal with the question of First Reading deals, which we have heard a certain amount about? You were making the point about getting involved early. That is absolutely fine. Even when we get involved now, we are giving advice to our own Ministers and the process goes up. Then it gets to the discussion between the Council, the Commission and the Parliament. There seems sometimes to be the equivalent of a smoke-filled room—I am sure you are not allowed to have a smoke-filled room because you cannot have a smoke—where deals are then done. At that point none of the rest of the mechanism has come into operation at all. Is that happening? Is it a problem area, and what might be done about it?

**Ashley Fox:** Yes. You could describe it as a problem, but I am not sure how else you resolve the situation. In the United Kingdom when there is a clash between the two chambers, you play ping-pong until the House of Lords gives way. In the United States you have a reconciliation committee and in Europe we have what is called a trilogue, which is a ghastly
word. It is a smoked-filled room. You have the Commission, you have the Council, which at
the moment would be the Greeks, and you have the rapporteur and the shadow
rapporteurs from each group. In the desire to get a First Reading agreement—I am not
saying that is a desire I share—because people want to get their legislation through the
process, deals are done. That is the way business is done, and it is not transparent and
people do horse trade. The Parliament will meet before the trilogue session and they will
say, “A and B are red line issues. There will not be a deal unless we get A and B. C and D
are important but we will give way, and D, E and F are really irrelevant but we will pretend
they are important and they will give way on them during the negotiations”. I assume that
the Council goes through a similar process.

The difficulty, of course, is that the British Government might have a red line position that it
makes clear and then the Council in office, the Minister who is representing the Council,
realises that a deal cannot be done that takes that into account. But actually he knows that
by shuffling the votes around he can get a qualified majority that ignores a certain nation
state. That is what happens, and that is why you do get unsatisfactory deals emerging
sometimes.

Q122 The Chairman: The other bit of this, as far as our perspective would be, and I
would just like your comment on it, is that the process you have described very clearly
almost by definition totally excludes the interaction with national parliaments. It is in a
smoke-filled room to which we are not invited. Albeit that we have formal measures of
control that are expressed formally through our control of national Ministers—because we
have scrutiny and so forth, not least when there is a fast-moving situation and people are in a
room as this is negotiating and the Minister is on his own but he is dealing with rapporteurs
and others—it is very difficult for national parliaments, even if they were interested in the
way you have described, that they typically are not, to get engaged in that process. It is
playing into the impression that this is being done behind closed doors by a lot of people
who are not relating to the democratic process. Would that be fair?

Ashley Fox: That is fair.

The Chairman: Is there any way in which you could if not remediate it at least mitigate it?

Ashley Fox: I am not an expert in Danish politics, but I understand that when Danish
Ministers negotiate they specifically have a mandate either from Parliament or for the
relevant Committee.

The Chairman: This could apply to trilogues as well?

Ashley Fox: It absolutely could, and you could mandate your Minister that when they are in
the Council of Ministers they may only agree to A, B and C. That would mean that the
Greek Minister would know, when the British Minister says, “This is my mandate”, that if he
goes outside of that, the British will vote against it when he comes back. There could be a
system of mandates, but I think that is the best you are going to get to hold your Ministers
to account.

Lord Wilson of Tillyorn: Just to pin down what you were saying about the process as far
as the European Parliament is concerned. In setting down the European Parliament red lines,
wobbly lines not real lines, is that the committee in the European Parliament dealing X
subject? It is presumably not the whole plenary sessions saying this. It is a committee doing
this.

Ashley Fox: It is not even the committee. It is the rapporteur with the shadow rapporteurs.
There are seven political groups in the Parliament.
The Chairman: There are eight players from the EP in this sort of process: one plus seven shadow rapporteurs?

Ashley Fox: It will be the chairman, who will be from one party, plus seven. Actually, it is never seven because the two smallest groups, the GUE group, to which in the United Kingdom only Sinn Fein belongs, and the EFD, which is the UKIP group, are very small. They do not have enough manpower to attend all the meetings. UKIP almost takes pride in not attending many of these meetings. The other five groups do attend almost all the meetings.

The Chairman: So it will be chairman plus five.

Ashley Fox: Chairman plus five would be normal.

The Chairman: One of whom would be the designated rapporteur and the other five the shadow rapporteurs.

Ashley Fox: Yes.

Lord Wilson of Tillyorn: Just to continue, if I may, would that group not have already fed in its views to the European Commission, and indeed from the Commission to the Council, at an earlier stage in formulating the legislation?

Ashley Fox: Yes. By the time we get to trilogue this proposal has gone through, let us say, the Economic and Monetary Affairs Committee, and we have voted to establish the Parliament position. The legislation has then gone to plenary and the plenary has voted on amendments. Then we draw back. We do not take the final vote, but we say, “Go away and negotiate with the Council, and if you can come up with a satisfactory agreement we will then take our final vote”. It is already known where the majorities lie in the committee and in plenary. But, of course, you might have had five or six issues where the majority was fairly small. That clearly would give those in the negotiating room much more room for manoeuvre, whereas if every issue was passed by a majority of 200 or 300, it is going to be more difficult to move, although not impossible.

The Chairman: Do you ever envisage a situation in which the national parliament might, even as a tactic or a bluff, be enlisted as a way of ensuring that the trilogue goes better? In other words, if people were in contact with their national parliamentarians—as often happens with Ministers, they say, “Please give me a rough time so I can take this to Council”—could you see that informal incorporation of national parliament views as part of the process?

Ashley Fox: In theory it could be. In practice, though, I cannot see how it would work, because if you are going to form a blocking minority in Council to try to change the Council’s position, you are going to need probably five states, one of which is a big one. To be honest, if Ms Merkel and Mr Cameron did not want something to happen, it would not happen anyway, because between them they have sufficient clout to stop something. I assume that the pair of them are not in agreement, because that is why we are here.

The Chairman: Lord Harrison. This will have to be the last word perhaps.

Q123 Lord Harrison: I wonder whether we could turn this on its head. Your criticism of the process of the First Reading was that there was a lack of transparency and I think we would all agree with you about that. There are methods of dealing with that. Different approaches could be published. Could you throw some light on our practice? Is there not a central absurdity when we involve ourselves in the ping-pong process? There is most definitely a lack of transparency, because we know that behind the arras people are arranging deals. Our form of reconciliation or conciliation—I have been in that room as a
rapporteur in the past—is a better method in many ways than the very obscure method of ping-pong where, as you rightly put it, the House of Lords relents. Do you think from your experience of five years in that instance and in several others—because whatever else the European Parliament is, it is still relatively new and still open to new ways of dealing with politics—that we might learn those new ways in the House of Lords, which has been functioning for 1,000 years?

The Chairman: While you are cogitating on that, Lord Bowness had a point. This is definitely the last one.

Q124 Lord Bowness: Personally, I would not expect national parliaments to be involved in the trilogue. The thing that concerns me is the follow-through of our scrutiny role. They are not necessarily the big political issues that Mr Cameron and Ms Merkel may be involved in. You talk about amendments. Parliament makes amendments and they goes off. In some of the matters, for example police and criminal justice matters, relatively small amendments that are technical can change the possible implementation of something quite dramatically from when we saw it in the original scrutiny. My concern is whether you have any suggestions as to whether there could be some sort of protocol or arrangement whereby we know about these amendments in good time? We would have to respond very quickly.

Ashley Fox: You mean amendments in trilogue?

Lord Bowness: I mean when Parliament makes the amendments and before it goes off into this Third Reading deal. It is the catching up with that process, scrutinising the changes that you have perfectly legitimately made, and commenting upon them which I think we find difficult.

The Chairman: We are on to two procedural issues, one in our own House and one in yours, so if we could wrap up on that.

Ashley Fox: Could I deal with that point first, because that is clearest in my mind? All the amendments that are tabled in committee will go on the website. Provided that you have some clever IT person who knows where to look, you have access to that and you can comment upon it.

The Chairman: That is in trilogue as well, is it?

Ashley Fox: No, just in committee. The same will happen in plenary, but when you get to trilogue you will have a dozen people in a room and they will be crossing out words and saying, “What happens if we said ‘but it should’ instead of ‘it may’?”. There will be a discussion, “No, that is not good enough”. It really is jotting things down on pieces of paper.

Lord Bowness: I appreciate that, but it is catching up with the amendments.

Ashley Fox: The answer is, no, you cannot influence that other than through the mandate to a Minister and him making sure that his mandate is clear in effect to the President in office.

Coming to Lord Harrison’s point, the roles of the House of Commons, the House of Lords and this place are completely different. In the House of Commons you have a Government that can almost all the time enforce their will. That means that it is a very different negotiating process, in the knowledge that if the Government lost an important piece of legislation they may have lost the confidence of the Commons.

We are completely different here because we do not sustain a Government, no one needs the confidence of us—except for the Commission—and everyone knows that deals have to be made on every single issue. Therefore, I might do a deal with you now, even if it is for
nothing in return, because I know you are a good chap and on the next piece of legislation you will owe me one. There is far more deal making in this place because of the lack of any majority, and we know there will not be a majority after May.

The Chairman: On that note, on behalf of the Committee I thank you very much, Ashley Fox, for your attendance, for your very thoughtful insights and for the good deal of frankness that you have shared with us. It has been very helpful for this Committee and is greatly appreciated. Thank you very much indeed.

Ashley Fox: Thank you for listening to me.
Katarzyna Granat, European University Institute (EUI), Italy—Written evidence

Memorandum on the Role of National Parliaments in the European Union

1. I welcome this chance to comment on the important issues concerning the role of national parliaments in the European Union (EU). Below I address some questions regarding the formal role of national parliaments and the interactions between EU institutions and national parliaments mentioned in the call for evidence.

2. I will assess the participation of the national parliaments and the engagement between the EU institution and national parliaments from the perspective of the policing of the subsidiarity principle. Where the impact of national parliaments seems limited, as interpreted on the basis of Commission responses, increasing the visibility of the reasoned opinions in the European Parliament (EP) may allow for the greater influence of national legislative chambers on EU legislation.

The Formal Role of National Parliaments

3. Since entry into force of the Lisbon Treaty, national parliaments have increasingly provided input on the EU level legislative process through the issuing of reasoned opinions under Protocol No. 2. Commission reports on ‘Subsidiarity and Proportionality’ highlight this tendency. An inquiry into the contents of the reasoned opinions of national parliaments indicates that the monitoring of the subsidiarity principle takes into account not only subsidiarity violations, but also the correctness of the legal basis of proposals, their conformity with the proportionality principle and assessment of the merits of Commission proposals.

4. National parliaments very often assess the legal basis of Commission proposals as incorrect. In a number of cases the legislative chambers have established that some draft legislative acts go beyond the aspired Treaty objective or, in fact, pursue another objective, different from the one enshrined in the legal basis provision. With regard to some of the Commission draft legislative proposals, national parliaments opine that the area, which the Commission attempts to regulate, remains within the exclusive competence of member states.

5. The scrutiny of the proportionality principle, similarly, is a common part of the subsidiarity control under Protocol No. 2. The assessments of national parliaments concentrate usually on the necessity of the proposed measure to achieve the objectives of the Treaties, which, next to suitability and stricto senso balancing, is one of the standard components of the proportionality principle test.

6. Besides the legal basis and proportionality of proposals, national parliaments

---

110 The examples of reasoned opinions, Commission replies and EP documents provided in this evidence intend to signalise the problem, but are not exhaustive, unless stated differently.
112 Reasoned opinion of the Romanian Senatul (30.05.2011) and of the Italian Senato (25.05.2011) on COM (2011) 127.
114 Reasoned opinion of the Polish Sejm of 13.05.2011 on COM (2011) 121.
frequently review the merits of Commission proposals, conformity with fundamental rights, choice of the type of legal act (directive or regulation) or the validity of the delegations to adopt a delegated or implementing act.

7. Such a wide scope of reasoned opinions may be rejected based on a textual interpretation of Protocol No.2, lack of a co-legislating role for national parliaments at the EU level foreseen by the Treaty drafters and a comparatively improved capability of EU institutions, the European Parliament, Council and Court of Justice to assess issues other than subsidiarity. These arguments speak in favour of a narrowly designed, subsidiarity violation scrutiny of legislative proposals under Protocol No.2. A narrow understanding of subsidiarity monitoring will also help to avoid situations where the number of reasoned opinions is sufficient to trigger a ‘yellow’ card, but a subsidiarity breach is not proved, as in the recent case of the Commission proposal on the right to strike.

8. Nonetheless, the activism of parliamentary chambers clearly indicates a willingness to influence the legislative process, in a way that is more visible than the so-called ‘Barroso initiative’ concerning political dialogue with national parliaments.

9. The experience of the first ‘yellow card’ and the views of national parliaments expressed in the 2013 COSAC Report, show that cooperation between parliamentary chambers is necessary to reach Protocol No.2 thresholds. This could be accomplished through an informal dialogue between the presidents of the chambers or more formally, by improving IPEX through timely electronic publication of reasoned opinions, including English translations, and introducing certain ‘warnings’ (e.g. e-mail) in cases where a significant number of opinions have been issued.

Dialogue and Scrutiny of EU Policies

The European Commission

10. In December 2009 the Commission obliged itself to reply within the political dialogue to reasoned opinions of national parliaments in cases where the votes did not reach a ‘yellow’ or ‘orange’ card threshold.

11. The average response time of the Commission to reasoned opinions issued on draft legislative proposals forwarded to national parliaments since the entry into force of the Lisbon Treaty until the end of 2012 is 197 days (approximately 6.5 months).

---

120 For a full account of these arguments see: F.Fabbrini, K.Granat, 50 Common Market Law Review, 115, at 122.
121 See the reply of the Commission of 12.09.2012 to the reasoned opinions on COM (2012) 130.
123 In 2010 – 136 days, in 2011 – 216 days, in 2012 – 206 days. The dates of the reasoned opinions and replies were based on the information available on IPEX and the EU Commission website concerning relations with national parliaments. Unfortunately, some of the replies are not uploaded to the Commission website.
However, it should be noted that for a number of cases, the Commission simply sent a ‘template’, an identical reply to all national parliaments concerned.\textsuperscript{124}

12. When providing the replies, the Commission attempts to respond to the criticism of national parliaments, which includes explaining purported misunderstandings of proposals by parliaments.\textsuperscript{125} Moreover, the Commission tends to remain firm on its initial position, deciding not to amend proposals according to the viewpoint of national parliaments in any of the replies to reasoned opinions.\textsuperscript{126}

13. Despite the voluntary commitment of the Commission to reply to national parliaments, but with no legal obligation to accommodate such views by amending proposals, the timing and the content of replies indicate that the impact of national parliaments on the EU legislative process remains limited.

The European Parliament

14. In general, the EP becomes involved in the subsidiarity review procedure under Protocol No.2 only if an ‘orange’ card is triggered. Outside of this procedure, the visibility of national parliaments in the EP remains rather marginal, especially when seen from the point of view of the EP reports and plenary debates.

15. The reports of EP committees only formally take into account the reasoned opinions of national parliaments, citing them in the preamble, but not referring directly to any of the problems signalled in these opinions.\textsuperscript{127} However, EP plenary debates on Commission proposals are more important to national parliaments.\textsuperscript{128} During these sittings, MEPs stress the views of national parliaments on the violations of the subsidiarity principle, often to reinforce their own negative view of a Commission proposal. Nonetheless, the number of EP debates engaging with the opinions of national parliaments is also limited.

16. A direct dialogue and exchange with EP rapporteurs working on a specific draft legislative act could hence increase the visibility of national parliaments and potentially also the impact of reasoned opinions in cases where the ‘yellow’ or ‘orange’ card have not been triggered. Similarly, forwarding reasoned opinions directly to MEPs from the member state of a reasoned opinion may allow national parliaments to be more audible at the EU level. Quite frequently these MEPs accentuate the views of their ‘home’ parliaments.

27 September 2013

\textsuperscript{126} In fact, only in a few cases the Commission shows some openness to the propositions of national parliaments, but without a declaration to amend the proposal. For example, see Commission reply of 13.12.2012 to the Swedish Riksdag on COM (2011) 895-896.
Professor Norbert Lammert, President of the Bundestag, Germany—Written evidence

In your letter of 18 July 2013 you informed me about your Committee's intention to undertake an inquiry into the role of national parliaments in the European Union. I wish you much success with this wide-ranging and important initiative and look forward with interest to the results of your inquiry.

The German Bundestag's parliamentary participation in EU affairs was a key issue during this electoral term, which is now drawing to a close. In 2009, the Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union (EUZBBG) was completely revised in the context of the ratification of the Treaty of Lisbon. At the same time, an Act on the Exercise by the Bundestag and by the Bundesrat of their Responsibility for Integration in Matters concerning the European Union (IntVG) was adopted.

It again became necessary to supplement and revise the EUZBBG in the light of a thorough evaluation and newly developed mechanisms at European level in the context of the financial and economic crisis, and decisions which led to further rights of participation for the Bundestag. In this context, many of the questions you pose were discussed by the committees and in the plenary.

The new version of the Bundestag's rights of participation entered into force on 5 July 2013. Please find enclosed translations of the Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union (EUZBBG), and the Act on the Exercise by the Bundestag and by the Bundesrat of their Responsibility for Integration in Matters concerning the European Union (IntVG), which has remained in force without amendment [not printed].

Your questions, which you also sent to the Chairman of the Committee on the Affairs of the European Union, Gunther Krichbaum, have been forwarded to the members of the Committee. I hope you will understand, however, if the response from the Members should prove to be somewhat lower than expected, given the ongoing preparations for the forthcoming Bundestag elections on 22 September 2013.

At the same time, I am confident that there will be an opportunity to discuss specific issues at the forthcoming COSAC conferences.

September 2013
National parliaments in the EU framework

1. Why should national parliaments have a role in the EU framework? What role should national parliaments play in a) shaping, and b) scrutinising, EU decision making? In answering this question you may wish to consider: a. Is there widespread agreement on what this role should be?

National Parliaments’ involvement in the EU decision making process is essential for ensuring the democratic legitimacy of the European architecture. This involvement consists in early information and consultation regarding legislative proposals or other important decisions, as a first step, engagement in a dialogue with their respective government and the European Parliament, and finally in scrutinizing decisions and controlling the executive bodies during the implementation procedure.

b. Do national parliaments have access to sufficient information and the requisite influence at an EU level to play the role that you suggest? Whose responsibility is it to ensure that they have the information they need?

There has been important progress regarding the flow of information by the European institutions, not only towards parliaments but towards the citizens as well. The Lisbon Treaty directly involves National Parliaments into the Union’s political process, by establishing their right to direct information by EU’s institutions, therefore leading to their independence from governments. The use of internet has also enabled the exchange of information between parliaments. { It is up to each National Parliament to engage its respective government to act accordingly to its demands, concerning transparency and openness. } 

Formal role of national parliaments

2. How is the formal role of national parliaments under the Treaties working in practice? In answering this question you may wish to consider: a. What impact have the Maastricht, Amsterdam and Lisbon Treaties had on interactions between national parliaments and EU institutions?

The formal role of national parliament has been substantially enhanced under the Treaties, from the Maastricht Treaty until nowadays, both in terms of exercising parliamentary scrutiny over European legislation as well as in terms of effectiveness of interparliamentary cooperation.

b. What is your assessment of the existing yellow and orange card procedures? Are national parliaments making good use of these?

Practically speaking, the “early warning mechanism” during the EU legislative process is welcomed as giving the possibility to take account of the views of all national parliaments, in addition to those of Government. These procedures are mainly exercised as supportive to the national governments’ positions, since governments and parliamentary majority are linked.
c. Is there a well-developed, common understanding of subsidiarity? If not, is there a need to develop one?

The definition of subsidiarity is very clearly stated in the Treaties. However, many parliaments tend to incorporate their position regarding the substance of each legislative proposal in their reasoning, when they submit a reasoned opinion. This is normal and understandable, as invoking the subsidiarity breach is the only way that they can react against a proposal. The minimum of 1/3 which has been set by the Protocol 2 ensures that there is no abuse of the provision.

d. How effectively is proportionality scrutinised by national parliaments?

Proportionality is always scrutinized along with the subsidiarity principle. Even though it can not be invoked in a reasoned opinion, it is often argued during the procedure of the so-called “political dialogue with the European Commission”.

e. Should national parliaments have a greater, or different, role in the development and scrutiny of EU legislation?

National Parliaments’ positions regarding the substance of a legislative proposal should gain more gravity. The existing political dialogue procedure is very lengthy (the time gap between the submission of an opinion and the received response is usually very wide) and does not guarantee that opinions are taken into account. Therefore, in the event of a future treaty revision, consideration of a provision similar to the yellow and orange card procedure that would apply to all the aspects of a legislative proposal could be a possible idea. (for example distinctive minimum votes for each field: subsidiarity principle, proportionality principle and substance of the proposal).

Dialogue and scrutiny of EU policies

3. What is your assessment of the level and quality of engagement between EU institutions and national parliaments, and between national parliaments? We invite you to offer specific examples. In answering this question you may wish to consider: a. What assessment do you make of the adequacy of the level of dialogue between the Commission and national parliaments regarding legislative proposals? What influence, if any, do national parliament opinions have on the legislative process?

b. How effective is engagement between national parliaments and the European Parliament? Could it be improved?

Interparliamentary dialogue has been enhanced over the recent years, but it is mostly based in meetings organized either in EP or in the national Parliament holding the presidency. Given the fact that such a form of interaction is very costly, other forms and communication channels could be improved as well; we would consider positive, for example, a better organization of mutual communication. Currently, National Parliaments are welcome to forward their opinions and contributions to the competent committees of the European Parliament, yet, they do not receive any feedback from the European Parliament before the reports are finalized.

c. What effect are procedural trends, such as increased agreement on legislation at first reading, having on the ability of national parliaments to scrutinise EU decision making?
d. What should be the role of COSAC (the Conference of Parliamentary Committees for Union Affairs)? Does it require any changes to make it more effective?

Both the scope and role of COSAC have been reduced as a result of the two newly established interparliamentary Conferences on CFSP/CSDP and economic governance. Therefore, a reassessment of its scope and role is considered very useful, under the new circumstances, without overlooking the fact that it remains the forum that brings together committees which have a coordinative role in their Parliaments’ scrutiny of EU affairs procedure.

e. What is your assessment of other mechanisms (such as Joint Parliamentary Meetings, Joint Committee Meetings and IPEX) for co-operation between national parliaments and EU institutions; and should any other mechanisms be established?

The already complicated interparliamentary cooperation structure constitutes a real challenge for national parliaments as pursuing a more substantial involvement, which needs to be addressed in order to achieve a balanced way of function. For example, JPMs and JCMs should be convened only when there are issues of vital interest to be discussed.

Capacity of national parliaments

4. How effective are national parliaments at engaging with European affairs? In answering this question you may wish to consider: a. Are national parliamentarians sufficiently engaged with detailed European issues? Are national parliaments as effective at political dialogue with EU institutions as they are at holding their own governments to account?

b. Can you give specific examples of Member States that are good at building co-operation and co-ordination between national parliaments? What do they do well? Should other countries learn lessons from this good practice?

c. Is there political will, and resource, for increased interparliamentary co-operation?

d. What role does the network of national parliament representatives in Brussels play? Should the network be further developed?

The network of National Representatives has proved to be very useful, especially for Parliaments participating in the presiding Trio (our case), as needing a continuous communication channel with several offices in Brussels. Further development could be examined on the basis of emerging needs.

Other possible changes

5. In what other ways should the role of national parliaments in the European Union be changed or enhanced? Which of these suggestions would require treaty change and which would not? In answering these questions you may wish to consider whether there are any specific policy areas (such as financial and economic policy) which are particularly relevant.

A Treaty revision is not considered necessary for the time being. We should first examine and make best use of the full possibilities and potential of the current treaties.

September 2013
Oskar Josef Gstrein and Darren Harvey—Written evidence

This paper is a response to a call for evidence by the House of Lords of the Parliament of the United Kingdom concerning the role of national parliaments in the European Union. It covers mainly the formal role of national parliaments as well as the dialogue and scrutiny of EU policies by these institutions. All statements reflect the personal opinion of the authors and are not linked to their professional activities or the views of their employer.

A. What is your assessment of the existing yellow card and orange card procedures? Are national parliaments making good use of these?

1. Despite the rejection of the idea to give the member states' parliaments a position within the legislative triangle of the EU by introducing a “red card procedure”, their role was heightened to a potentially large extent by the Lisbon Treaty with the setting up of a so-called “Early Warning System” (EWS) in protocol no. 2. Although theoretically ground-breaking and exhibiting considerable potential to alter the balance of legislative power in the EU in favor of national parliaments, the results in practice since the coming into force of the Lisbon Treaty in 2009 have been disappointing.

2. When analyzing the “Annual report of the European Commission on relations between the European Commission and national parliaments” and the “Annual report on subsidiarity and proportionality”, since 2010 the preliminary answer to this question must be negative. As is stated in the aforementioned documents, the “yellow-card” procedure has so far only been triggered once since its introduction.

3. Commenting on the inadequacy of the current yellow and orange card procedures, several general difficulties can be highlighted:

i.) Incentive Problems: The reluctance of majoritarian parliaments to challenge their government’s position on EU affairs and the perception that there are little electoral benefits to be gained from engaging in EU affairs.

ii.) Problems in the conception and vision of political measures: These manifest themselves in a significant number of politicians and political parties who face severe problems when aiming to transform their political concepts and goals onto the European scale. For instance, it will be clear for an MP who is a member of the British Labour Party what the basic pillars of his party’s social policy are. However, since this policy is based on national considerations and aims for national solutions, it fails to integrate into a larger European context. Additionally, the European level is...
the framework in which economic entities active on the UK market operate. For them, the internal market of the EU is the main point of reference, not the national economy. Hence, a gap in political action and social reality becomes visible. This is only to a small extent an issue of conflicting interests between the Union and individual member states. It is to a much larger extent the result of a failure to create modern, coherent and sound national political concepts accounting for the consequences of being in a single market. Such political visions will only face the actual challenges if - in their effect - they reach out across national horizons and offer solutions for the European level, the level at which these socio-economic phenomena are created.

iii.) Logistical Problems: The short eight week deadline for submissions and the high volume of legislative proposals to scrutinize combined with the lack of effective mechanisms to coordinate the national parliaments’ actions as required to initiate the procedure. This will be discussed in more detail below.

iv.) Weakness inherent in the subsidiarity review: The mechanism only offers an opportunity for “ex-ante” control. The lack of a “red card” for national parliament’s reasoned opinions to stop the legislative procedure results in the existing Protocol no. 2 procedure being nothing more than a mere symbolic gesture by providing national parliaments solely with the opportunity to deliver a non-binding opinion. The only way to obtain effective protection against a finalized piece of EU legislation remains a time-consuming procedure before the ECJ. And even if the judges in Luxembourg were to support the claim that the respective act violates the principle of subsidiarity, this would most likely not remedy the problem since the measure would have already caused significant damage from the day of its enforcement. Furthermore, it has to be pointed out at this stage that the principle of subsidiarity’s legal dimension is fairly unclear since there is no comprehensive legal definition. Clarification of this ambiguity can only come from the ECJ as the court is the sole institution competent to do so under Art. 19 par. 1 TEU.

4. According to the most recent Commission report, the total number of opinions received from national Parliaments in 2012 rose to 663; this represented an increase of 7 % as compared with 2011 (622), but a much smaller increase than in previous years (55 % in 2010, 60 % in 2011). However, of these 663 only 70 were in the form of reasoned opinions under the EWS in protocol no. 2. Worse still, in a European Union consisting of 27 (now 28) member states with 40 national parliamentary chambers (on accounts of there being a mixture of unicameral and bicameral national parliaments) 15 such chambers failed to provide a single reasoned opinion on proposed EU legislation during 2012. Evidently, therefore, there would appear to be a fundamental disconnect between national parliaments and the European legislative process with democratically elected representatives of member states routinely failing to exercise their right of ensuring proposed EU legislation complies with the principle of subsidiarity. Moreover, the large decrease in the

---

137 Cf. Art. 8 of Protocol no. 2
139 Ibid.
140 Ibid. p. 9
growth rate of measures taken annually by national parliaments can be interpreted as a realisation of the fact that their efforts in previous years have been generally ineffective. Linked to this lack of engagement with the current EWS is the aforementioned problem of logistics. It has proved exceptionally difficult to coordinate the various national parliaments to act in concert and achieve the voting thresholds required for a yellow or orange card\textsuperscript{141} and this is because each parliament tends to work slowly, according to its own timetable, and according to its own unique set of procedures.\textsuperscript{142}

5. That being said, certain networks and informal bodies for national parliaments to coordinate their subsidiarity related concerns do exist within the current structure of EU affairs and these could be utilised far more effectively. It seems evident that the exchange of views in bodies like COSAC and the network of national parliament representatives (NPRs) improve the situation and lead to a certain common understanding on what the subsidiarity principle means in general. However, it is also clear that none of the existing structures, in their current setup, are capable of delivering the type of effective coordination required to assist the chambers of national parliaments in using their Protocol 2 competences on a case by case basis and thus render the mechanism more effective.\textsuperscript{143}

6. That being said, the potential for effective action within the current setup was amply demonstrated by the exceptionally high level of inter-parliamentary dialogue and cooperation that preceded the first - and to date only - issuance of a yellow card to the EU by national parliaments.\textsuperscript{144} In this regard, from a procedural perspective at least, the manner in which national parliaments managed to first collectively engage with, and then actively oppose, the colloquially named “Monti II” regulation leads one to be cautiously optimistic about an increased number of yellow or orange cards in future.

7. Substantively however, huge questions remain as to the precise scope to be afforded to national parliaments when conducting a review of proposed EU legislation’s compliance with the principle of subsidiarity under Protocol no. 2 and this constitutes a significant challenge to the proper functioning of the mechanism.

B. Is there a well-developed, common understanding of subsidiarity? If not, is there a need to develop one?

8. Despite being recognised in the EU treaty framework since the Maastricht Treaty in 1993, the precise scope, content and limits to the principle of subsidiarity in EU law remain ambiguous. Accordingly, some have noted that it remains so far unclear what exactly national parliaments can refer to when claiming that the principle of


\textsuperscript{142} Cooper, “A yellow card for the striker: How national parliaments defeated EU strikes regulation” ARENA draft paper. Available at: www.euce.org/eusa/2013/papers/12g_cooper.pdf

\textsuperscript{143} COSAC, for instance, schedules its meetings of the national parliaments’ European Affairs Committees twice a year. Looking at the eight weeks national chambers do have to gather the votes necessary in order to trigger a yellow card procedure, it is very unlikely COSAC will be able to assist or coordinate the parliaments in a specific case.

\textsuperscript{144} For an overview of the communication and interaction between various national parliaments in the run up to the yellow card on Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services (COM(2012),130) cf. Cooper, supra fn. 7
subsidarity has been violated under the EWS. As Fabbrini and Granat succinctly put it “What should subsidiarity review comprise? Should national parliaments review only the strict question whether a legislative measure should be adopted by the EU or by the Member States? Or should national parliaments also consider the proportionality or necessity of the measure, the adequacy of its legal basis and its substance?”

9. Some scholars take the view that national parliaments, acting under Protocol no.2, should limit themselves to a narrow or restrictive review of the subsidiarity of an EU legislative proposal and should refrain from scrutinising wider concerns of legal basis, proportionality and necessity. Others hold the opinion that the power of scrutiny vested in national parliaments by Protocol no. 2 should provide for a broad based review of subsidiarity that would include an evaluation of the principle of conferral, legal basis and proportionality of proposed EU legislation. Indeed, from a legal point of view there are good arguments to support the view that each of these principles should work in combination with one another.

10. More problematic than the mere academic dispute, however, is that this unclear situation forms the basis of a lack of common understanding between the individual national legislators. Some, like the German Bundesrat, that represents the “Bundesländer” in the national parliament, are convinced that Protocol no. 2 enables it to review proposed legislative measures in such a broad manner that the term “subsidiarity” can be seen simply as a vague headline under which each and every aspect of an EU legislative proposal may be scrutinised. In contrast, other legislative bodies will probably be more restrictive when setting the scope for review.

11. This confusion over the exact boundaries of national parliament’s powers of subsidiarity review has led to incoherent and often widely divergent practice from parliaments when providing reasoned opinions under Protocol no. 2. If one considers the single instance in which a yellow card was issued so far, it is clear to see from the content of various national parliament’s submissions that a general consensus on how to correctly approach the subsidiarity review under Protocol no. 2 is lacking. In this case, several national parliaments challenged the legal basis, necessity and

---

145 Gstrein and Zalewska, p. 13
146 Fabbrini and Granat, “Yellow card, but no foul: The role of the national parliaments under the subsidiarity protocol and the Commission proposal for an EU regulation on the right to strike” Common Market Law Review, 50, 2013, p. 120, see also on the subject Nguyen, “Die Subsidiaritätsrüge des Deutschen Bundesrates gegen den Vorschlag der EU Kommission für eine Datenschutz-Grundverordnung”, ZEuS - Zeitschrift für europarechtliche Studien, no. 3/2012, p. 283, 293
147 Fabbrini and Granat, p. 121
149 Trstenjak and Beysen, Das Prinzip der Verhältnismäßigkeit in der Unionsrechtsordnung, „EuR Europarecht“, no. 3/2012, p. 267
150 Cf. Nguyen, p. 283, 293
151 See Fabbrini and Granat, fn. 18
152 Reasoned Opinion of the Finnish Eduskunta of 16th May 2012, Report of the Grand Committee, Su VM 1/2012 vp- M 2/2012 vp (courtesy translation); Avis de subsidiarité de la chamber des représentants de Belgique, 30th May 2012, DOC 53 2221/001; Reasoned opinion of the Portuguese Assembleia da Republica, 18th May 2012
153 The Maltese parliament, along with the Finnish Eduskunta claimed that the proposal was not necessary to achieve goals of EU action in the particular policy field, see reasoned opinion of the Maltese Kamra tad-Deputati, (courtesy translation) paras 1-2 and Reasoned Opinion of the Finnish Eduskunta supra fn. 24
even the content of the proposed legislation rather than embarking on an analysis of the principle of subsidiarity.

12. In order to improve this unsatisfactory situation, an agreement or a “common understanding” between the national legislators of the EU Member States is necessary. By defining a framework within which to conduct subsidiarity control the current patchwork approach would be replaced by a more coherent solution and as a result the position of national legislators would be dramatically improved. It is therefore “conditio sine qua non” to transform the procedure from its current status as a mere political gesture into an effective tool of political cooperation and control.

13. Member states have to express their consent to adhere to common principles or standards of review within the EWS and in so doing enhance the prospects of parliamentary coordination and cooperation in submitting national opinions. This would result in an amicably agreed and politically endorsed definition of how the subsidiarity review under Protocol no. 2 should operate. Technically, the agreement should take the form of an international treaty or a common declaration; the latter being more suitable due to its less invasive character.

14. Regarding the content of such a common understanding it seems advisable to modify or even commit in its entirety to the “Subsidiarity and Proportionality Assessment Grid”, a tool developed by the European Union’s Committee of Regions. This set of criteria does not only offer a sound basis for evaluation, it is also already being used by the Committee of Regions and the European Commission. Therefore, by committing to this set of criteria, national legislators would have a valuable basis upon which to launch their activities. Additionally, such a move would present the opportunity to create a circle of regional, national and supranational institutions using and developing the same set of criteria for subsidiarity review. Especially when looking at the fruitful development of the Committee of Regions “Subsidiarity Monitoring Network” and the evolution of its most recent initiative, the “Regional Parliamentary Exchange” (REGPEX), one submits that this is the correct manner in which to proceed.

C. What is the future of national parliaments in the EU?

15. Moving to consider the prospects of this review mechanism in the future, it is submitted that a common understanding of the type envisaged above is likely to become all the more necessary in light of renewed calls for a substantial change to the relationship between national parliaments and the EU legislative process. In the Netherlands, for example, Dutch Foreign Minister Frans Timmermans recently presented a letter summarising the outcome of a “subsidiarity review” carried out by...
the government. The letter unequivocally states that certain policy fields in which the EU currently has competence would be better left exclusively for the member states to deal with. Although not explicitly setting out how this is to be achieved, calls for some form of enhanced role for national parliaments in reviewing compliance with subsidiarity may be reasonably expected.\textsuperscript{159} In Britain, Foreign Secretary William Hague and his opposition counterpart Douglas Alexander have also expressed a desire to radically alter the current delineation of competences between the EU and national parliaments. In their view the current yellow card procedure should be upgraded to a red card or emergency brake procedure that would allow national parliaments to block such proposals.\textsuperscript{160}

16. Regardless of how these initiatives play out in the future there can be no doubt that increased levels of attention being paid to the relationship between the EU and national parliaments will necessitate a proper understanding of how the principle of subsidiarity is to operate in practical terms. However, this can not only refer to the general understanding of subsidiarity (as addressed above). In order to improve the actual cooperation of European legislators on drafts of the European Commission, the already existing networks such as the Inter-parliamentary Exchange Platform (IPEX)\textsuperscript{161} have to be upgraded. Once again borrowing the principle approach from the Committee of Regions and its Subsidiarity Monitoring Network, national parliaments should develop their activities further and commonly appoint a Rapporteur for monitoring a specific proposal of the European Commission. Through this, the process of subsidiarity review for a single act would become clearer and more easily manageable.

17. These rapporteurs, who should be highly qualified MPs with their main duties in one member state, would have the function of analysing the commission’s proposal and gather opinions and statements of all member states’ legislative assemblies in order to find common ground for action. Rapporteurs should be chosen through a standardised procedure in a common forum, most appropriately IPEX. They should start their activities as early as possible in the draft legislative process since they will have a limited amount of time to work on the reports; especially considering the eight week deadline parliaments have to meet in order to provide their opinions to the European Union. It may be necessary to set up additional supporting mechanisms on the side of the European Commission. Their appointment should be in accordance with certain criteria such as: the importance of the specific policy area of the proposal for the member state where the MPs come from and maybe also the region the MP represents; his or her professional skills and relation to the topic; the general division of such tasks between the different member states in order to maintain a necessary balance etc. It seems appropriate to have a non-enumerative set of criteria as a guideline for choosing the rapporteurs, leaving the committee of appointment a certain margin of appreciation in order to react to special circumstances that might arise in individual cases.

\textsuperscript{161} http://www.ipex.eu
18. Based on their reports - which would be drafted with support from a permanent expert committee at IPEX, specifically set up for this procedure - national legislators would then decide whether or not to take action having considered the recommendations of the rapporteur. Depending on the political sensitivity of the issue, the use of an increased number of rapporteurs is certainly possible. However, the overall number should be limited to three rapporteurs, since more contributors would undermine the main objective of introducing such a mechanism: namely the streamlining of the process by providing a clear and highly qualified opinion on the topic.

19. In summary, it has to be clearly acknowledged that legislative procedures on the EU level will never be “as close” to the European citizen as their national equivalents. More importantly, however, it is questionable if understanding the issue of “democratic legitimacy” in this way is appropriate, since it is not the purpose of European institutions to replace those already existing at the national level. Clearly, it is the task of European legislation to solve European problems. Nothing more and nothing less. Therefore, it is wrong to include national parliaments in the process of European legislation as such. However, what is necessary is an improved procedure in order to clarify the sphere for national and European legislation. It is time to transform the principle of subsidiarity from a political token gesture into a legally feasible concept. The intention of Protocol no. 2 of the Treaty of Lisbon was to clarify the dimension of subsidiarity – transforming it from a gambling table of politics into a legal principle with the power to harmonize the scope of action of legislators in Europe for the common good. It is time to live up to this commitment.

September 2013
The European Council plays an increasingly important role in the governance of the European Union. Especially in the Euro crisis the heads of state or government have taken decisions in a fast and secretive mode in the European Council that have reaching implications for European societies. The democratic control of this EU institution becomes an ever more relevant question.

This evidence presents the main results of the study “Democratic Control in the member states of the European Council and the Euro zone summits” submitted to the European Parliament (March 2013). Through expert surveys we collected data on the frequency of committee and plenary sessions in the lower houses of 27 EU member states in the time period from March 2011 to March 2012. The data shows that national parliaments involve these parliamentary bodies in different combinations ex-ante and ex-post to European Council meetings. Based on this variation, we identify seven models of parliamentary control: the “limited control model”, the “Europe as usual” model, the “expert model”, the “public forum”, the “government accountability” model, the “policy maker”, and “full Europeanisation”. The differences between member states are rooted in their visions of what the role of a parliament in a democracy should be.

On that basis, we develop recommendations on how to improve the democratic control of the European Council through national parliaments practices, the cooperation with the government, and the interaction with the European Parliament. It is essential to combine room for manoeuvre of the head of state or government with deeply informed oversight by national parliaments.

Within national parliaments, transparency and openness could be enhanced for meetings in committee and mere declarations of the government could become politically more salient and upgraded by following the question time pattern. Practices of national governments should allow for timely and complete information as well as for an inclusion of the chair of the European affairs committee. Finally, the first steps towards a genuine multi-level parliamentary cooperation has been taken with the creation of the Inter-parliamentary Conference on Economic and Financial Governance (first meeting in Vilnius from 16 to 18 October 2013), but the links between the national parliaments and the European Parliament should be strengthened further.

A. The control of the European Council by national parliaments

1. The European Council plays an increasingly important role in the governance of the European Union. Especially in the Euro crisis the heads of state or government have decided in a fast and secretive mode in the European Council on far reaching implications for European societies. The democratic control of this EU institution becomes an ever more relevant question.

National parliaments & European Councils: an increasing awareness
Even if national parliaments have originally focused their involvement in EU affairs on the ordinary legislative process, we find evidences of an increasing awareness of the significance of the European Council. In a majority of member states, there are formal rules explicitly mentioning the control of the national parliament over the European Council. In all cases these rules are focused on securing information about the summits. In some cases, they also allow parliaments to give opinions and even mandates, but there are very few specific rules about Euro summits. Only looking at formal rules is, however, not enough for analysing the real parliamentary involvement, as we know that some prerogatives can be under-used. In order to assess the activities of national parliaments related to European Council and Euro summits, we have looked at the floor and committees debates related to them between March 2011 and March 2012 in all 27 member states.

Table 1: Frequency of committee and plenary debates before and after European Council meetings in the time period of March 2011 to March 2012

<table>
<thead>
<tr>
<th>Member State</th>
<th>Ex-ante committee debate</th>
<th>Ex-ante plenary debate</th>
<th>Ex-post committee debate</th>
<th>Ex-post plenary debate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>7</td>
<td>1</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Belgium</td>
<td>7</td>
<td>0</td>
<td>9</td>
<td>0</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Cyprus</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Czech Rep</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Denmark</td>
<td>8</td>
<td>3</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Estonia</td>
<td>9</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Finland</td>
<td>9</td>
<td>1</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>France</td>
<td>1</td>
<td>5</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Germany</td>
<td>8</td>
<td>4</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>Greece</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Hungary</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>Ireland</td>
<td>0</td>
<td>7</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>Italy</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Latvia</td>
<td>6</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Lithuania</td>
<td>7</td>
<td>0</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Malta</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Netherlands</td>
<td>0</td>
<td>9</td>
<td>0</td>
<td>2</td>
</tr>
</tbody>
</table>

The Chairman of the Standing Committee on European Affairs from the House of Representatives in Malta has written to the Chairman to clarify that the Maltese Prime Minister did report to the House of Representatives on 11 Council Meetings in the period March 2011 to March 2012.
3. Generally speaking, parliaments that are active before European Council meetings are the ones that have obtained important prerogatives in EU affairs in general. Yet, there are differences between ex-ante control that takes place in plenary and ex-ante control that takes place in committee. The three countries with the highest frequency of ex-ante plenary debates, the Netherlands, Ireland, and France, do not hold committee debates before the summits. On the other hand, in Estonia, Finland, Portugal, Sweden, Belgium, Lithuania, Slovakia, Latvia and Italy the debates are held at committee level without regular involvement of the plenary. In Denmark and Germany, there are both plenary debates and frequent debates in the committees. According to the information of this quantitative overview for the time period between March 2011 and March 2012, Romania, Malta, Greece and the UK are the countries which are poorly involved in the preparation of European Council meetings.

4. Regarding especially the committee meetings, in all cases, it is the European affairs committees, in their different variations, which hold the main responsibility for the control of the European Council at committee level. In several parliaments, however, the finance or budget committees have become increasingly involved since the Euro crisis. The foreign affairs committees are often responsible for security issues of the European Council. But in general, European affairs committees are the most active bodies – before and after European Council meetings.

5. Several parliaments have shifted their focus to the ex-ante control of European Council meetings in order to influence the government position prior to binding agreements by the head of state or government at the EU-level. Some parliaments still control their Prime Ministers after the summits in order to assure that the government complied to its obligations and, for opposition parties, in order to voice criticism. The overall frequency of plenary debates after a summit is even higher than ex-ante. Again there is no clear-cut model of common scrutiny standards in all parliaments but the procedures vary significantly. We do not find a correlation between the ex-post involvement in the control of European Council meetings and the general rights and/or activities of the houses regarding EU affairs.

6. Among the countries with a high frequency of plenary debates prior to European Council meetings, it is interesting to see that only Ireland and Denmark also hold regular ex-post plenary debates. In France and Germany, ex-post debates are confined to the committee level. And the Netherlands only hold ex-post debates in exceptional cases. Within those three parliaments, the lack of public floor debate after the summits is
7. In addition to the level of activities before and after the European Council, the following common trends can also be identified:

- a personal and increasing involvement of the Prime Ministers in the activities of national parliaments;
- less ex-post control and more ex-ante control;
- higher publicity around parliamentary activities related to the European Council – even when at the level of committees;
- greater involvement of European affairs committees over other committees;
- a new regularity in the control of European summits.

Seven types of parliamentary control

8. On the basis of the data presented, seven different models can be distinguished according to three criteria: timing, locus, and significance of parliamentary control. The models differ not only in the level of involvement but also in the purpose of parliamentary control: influence, public debate, expert discussion or government accountability. The following table offers a synthesis of the data on the ex-post and ex-ante involvement in committees and in plenary. Each member state has been located according to the number of meetings and plenary sessions held from March 2011 to March 2012.

Table 2: Parliamentary body involved in ex-ante and ex-post scrutiny of the European Council
Claudia Heftler, University of Cologne, Valentin Kreilinger, Jacques Delors Institute, Olivier Rozenberg, Centre d’études européennes, Sciences Po (Paris), and Wolfgang Wessels, University of Cologne—Written evidence

<table>
<thead>
<tr>
<th>EX-ANTE</th>
<th>REDUCED INVOLVEMENT</th>
<th>COMMITTEE</th>
<th>PLENARY</th>
<th>INVOLVEMENT BOTH IN COMMITTEES AND PLENARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>EX-POST</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>REDUCED INVOLVEMENT</td>
<td>LIMITED CONTROL MODEL</td>
<td>“EUROPE AS USUAL”</td>
<td>Netherlands</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hungary Luxembourg Romania</td>
<td>Czech Republic Estonia Italy Latvia Poland Slovakia</td>
<td></td>
<td></td>
</tr>
<tr>
<td>COMMITTEE</td>
<td></td>
<td>CYPRUS</td>
<td>EXPERT MODEL</td>
<td>France</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Belgium Finland Lithuania</td>
<td></td>
</tr>
<tr>
<td>PLENARY</td>
<td>GOVERNMENT ACCOUNTABILITY</td>
<td>Austria Sweden</td>
<td>PUBLIC FORUM</td>
<td>Ireland</td>
</tr>
<tr>
<td></td>
<td>Bulgaria Malta Spain</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>INVOLVEMENT BOTH IN COMMITTEES AND PLENARY</td>
<td>Greece</td>
<td>Portugal</td>
<td>FULL EUROPEANISATION</td>
<td>Denmark</td>
</tr>
</tbody>
</table>

Source: Report on Democratic Control in the member states of the European Council and the Euro zone summits.

9. Seven different models can be identified from this table:

- In the limited control model, the parliament is not active regarding European Council meetings either because the parliament has reduced rights in EU affairs in general (Luxembourg and Romania up to now) or the majorities in Parliament tend to consider that the European Council should remain the only prerogative of their Prime Minister (Hungary).
- In the “Europe as usual” model, national parliaments tend to follow incrementally the path that was taken for EU legislation that is ex-ante control realised by a specialised committee. As a result, MPs are less interested in the outcomes of the European Council and the involvement of the plenary is limited. The idea that this pattern of parliamentary control is rooted in the way those houses deal with ordinary draft EU legislation is confirmed by the fact that those parliaments are among the most Europeanised in terms of rights and/or European affairs committees meetings.

- In the expert model, European affairs committees are active both before and after the summits, but the involvement of the floor is reduced. This model is based on expertise, since specialised members are in charge of the control.

- Opposed to the expert model is the public forum model with plenary sessions before and after EU summits. The Irish case is the only example for it, following a recent and informal commitment made by the Taoiseach. As illustrated by this example, a public discussion in a non-expert setting can also constitute a strategy of self-promotion for the government.

- The government accountability model can be found when the involvement before a European Council meeting is limited and debates take place in the plenary afterwards. The main focus of the parliamentary involvement is to discuss the outcomes of the meeting and especially the line adopted by the Prime Minister. The opposition can particularly take the opportunity of those debates to voice concerns. Political systems that follow the Westminster model are well represented in this category. The fact that those last parliaments do not have strong mandating powers confirms that their main aim is politics rather than policy.

- The policy maker model is rather opposite to the government accountability one since the main focus of the parliamentary activity is put on influencing the government before the summit rather than contesting its choice after. Both committee meetings and floor sessions can help for that purpose as indicated by the German example. Expert meetings are still needed after the summit in order to check the positions upheld by the Chancellor.

- Finally, the Danish case illustrates perfectly the example of full Europeanisation as it offers a mix of expertise and publicity, both before and after European Council meetings.

B. Considerations for Recommendation

10. The following recommendations for a better involvement of national parliaments in the control of the European Council propose to stimulate the Europeanisation of national parliaments, meaning an increased awareness in national parliaments of both the issues at stake and of the way the European Council negotiates, thus allowing some room for manoeuvre for their Prime Minister, combined with deeply informed oversight. Recommendations have been grouped into three sets: the activities within national parliaments, the practices within national governments and the enhancement of multilevel parliamentary cooperation.

Activities within national parliaments
11. Ensure transparency and openness of parliamentary meetings (including European affairs committees) and increase the awareness of their activities. As there are strong justifications for the confidentiality of European Council meetings, the transparency of the national parliaments’ activities appears as a way to counter-balance the secrecy of the European Council meetings. Granting access to the European affairs committees meetings in person and via the internet would open up the meetings of national parliamentary oversight of the European Council and Euro summits and increase the interest of the general public and the media. The example of the public meetings of the European affairs committee of the Danish parliament underlines the fact that publicity is also an incentive for MPs to engage in European activities, given the possible press coverage.

12. Oblige Prime Ministers to be present – after or before the debates on the summits, be they ordinary or extraordinary. The survey has confirmed that the physical involvement of the Prime Minister, as in the Netherlands, enhances the political salience of the debates. The holding of the debates on the floor or in committees appears to be less crucial in that perspective than the Prime Minister’s presence – if they are public. Yet, this solution is not sufficient in itself as there are three member states represented by their heads of state in the European Council. The Irish case also offers an example where parliamentary meetings are poorly attended despite the Taoiseach’s involvement.

13. Provide for the government to respond to MPs during parliamentary debates – and not just to deliver a speech. Parliamentary debates fulfil both praising and blaming functions. It is important for the accountability process that Prime Ministers do not just enjoy the first aspect without enduring the second one. A few case studies show that the salience of the debate suffers from the fact that some Prime Ministers leave the debate after having delivered their speech. In that respect, a procedure of questions and answers based on the question time pattern appears to be particularly efficient.

14. Guarantee and protect a specific role for the opposition. A privileged role could be given to parliamentary opposition during debates, by giving disproportional speaking time and/or by allowing opposition leaders to speak first after the government representative. The recommendation is based on negative examples, like France, where opposition leaders take the floor after no less than one hour of speeches, once the Prime Minister, committees’ chairs and majority leaders have spoken. A more diverse speaking order could lead to a more politicised debate.

Practices within national governments

15. Transmit all EU draft texts before the summits, including draft versions of the European Council conclusions but also other types of official texts. Given the recent tendency towards the participation of the European Council in the EU legislative process, it is a democratic requisite that national parliaments can consult the draft texts under discussions. This does not mean, of course, that any kind of papers should be sent to them as the bargaining requires a certain degree of discretion. As, since the entry-into-force of the Lisbon Treaty, European Commission documents are directly sent to national parliaments without the intermediary of governmental administrations, a similar system could be imagined for the European Council with the General Secretariat of the Council sending some documents directly to all national parliaments or contributing to a website like IPEX where the documents are available (within a restricted section of the website).
Claudia Hefftler, University of Cologne, Valentin Kreilinger, Jacques Delors Institute, Olivier Rozenberg, Centre d’études européennes, Sciences Po (Paris), and Wolfgang Wessels, University of Cologne—Written evidence

16. Notify European affairs committees about developments during the last days before the summits. The timing issue is crucial for ex-ante control of the European Council. A session organised too early (more than ten days before a European Council) is often irrelevant due to the lack of accuracy of the information and the lack of interest from journalists. Yet, it is often difficult to organise a session of control just before a European Council. As the last days are generally crucial for preparing a European Council, informal practices of communication between national government and parliament should be developed to overcome this problem of planning the formal agendas.

17. Secure parliamentary information and consultation when new treaties are under preparation. Information and consultation mentioned before should especially apply when European Council meetings are discussing new treaties like the EFSF Treaty, the ESM Treaty and the TSCG that have all been concluded outside the framework of the EU treaties. Instead of reducing the role of national parliaments to giving their consent once the treaty is to be ratified according to national constitutional requirements, national parliaments could be kept informed following the practice established in Germany by the June 2012 judgment of the German Federal Constitutional Court on the ESM Treaty negotiations which essentially says, that the same information obligations apply to these treaties as to any treaty modification of the EU treaties.

18. Allow the chair of the EU affairs committee to participate in internal governmental meetings preparing a session of the European Council (with no official role and with the obligation of confidentiality). The difficulty for national governments to integrate the views and priorities of their parliament partly derives from the fact they are first concerned with finding a common position between the different ministerial departments. Therefore, the presence of MPs in ministerial internal meetings could be decisive. Of course, such a procedure does not mean that MPs should take decisions, like defining the national position before a European Council which is a unique prerogative of the national government in most of the member states. Yet, one can expect anticipatory effects from the parliamentary presence in governmental meetings and therefore a better concern for parliamentary views. In return, a better understanding of the governmental viewpoints can result from such cooperation on the side of the parliament. Regarding the obligation of confidentiality, existing systems of confidential association of the parliament are working efficiently both at national and European level for the control over secret services or military interventions.

19. Invite the chair of the EU affairs committee to participate in the national delegation during the European Council (with no presence in the room, no official role and with the obligation of confidentiality). This recommendation, which was originally formulated by the Commissioner Michel Barnier, is close to the previous one and shares the same objectives: informal influence and learning process. Such a practice is already followed, both at national and EU level, for many international negotiations, with for instance MEPs joining the European Commission delegation to international trade rounds. Given the problem of motivations within many parliaments, enabling some MPs to join a national delegation could also be understood as an incentive for them to engage in EU affairs.

Enhancing multilevel parliamentary cooperation

20. Deepen the link between national parliaments and the European Parliament. Representatives of national parliaments could be invited by the European Parliament to participate in EP plenary debates before and after European Council meetings. Likewise,
national parliaments – or at least those who do not do it already – could invite members of the European Parliament to participate in the national debates that take place around European Council meetings. Beyond the sending of invitations, both the EP and national parliaments could be invited to modify their rules of procedure to allow/encourage parliamentarians from the other assembly to participate in their own debates related to European Council meetings. As already some opportunities exist, national parliaments need to pursue an active strategy of inviting colleagues from other Member states.

21. Deepen the relations within European Political Parties. The pre-summit meetings of the European Political Parties could have a specific parliamentary dimension, for instance through the chairs of European affairs committees or of budget committees from the same political family. The parliamentary control of the European Council is organised according to a national logic only: each parliament controls its government rather than the European Council globally. Those kinds of meetings could help national MPs to adopt a broader perspective.

22. Strengthen the new inter-parliamentary conference on Economic and Financial Governance. The new conference does not meet two basic elements necessary for the smooth functioning of such a conference: a clear composition and a comprehensive definition of powers and competences. There is only a vague reference to the Inter-Parliamentary Conference for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP), composed of 6 members per national parliament and 16 MEPs, for a total number of 178 parliamentarians. Three measures should be taken:

• In order to respond to the lack of control of the Presidents of the European Council / Euro Summit and of the Euro Group, they should be regularly invited to set out the outlines and strategies of the budgetary and economic issues of the European Union.

• The Inter-Parliamentary Conference should be allowed to adopt non-binding conclusions by consensus and to meet directly before European Council meetings to allow the Conference to give input on the agenda of the summits.

• The national parliamentary delegations for the conference should be composed proportionally to political composition of the assemblies and should systematically include, both the Chairs of the European affairs committees and of the budget and/or finance committees.

27 September 2013
Dr Anna-Lena Högenauer, Maastricht University and Professor Christine Neuhold, on behalf of the OPAL research team Maastricht University—Written evidence

1. This evidence relates primarily to Question 4 on the capacity of national parliaments to engage in European Affairs scrutiny. Our responses are based inter alia on research conducted as part of the OPAL project “Observatory of Parliaments after the Lisbon Treaty” (http://www.opal-europe.org/). The project is a collaboration of the Fondation Nationale des Sciences Politiques (Paris), Cologne University, Cambridge University and Maastricht University. The views expressed here represent the position of the research team of Maastricht University, which examines in particular the role of parliamentary administrations and officials in supporting parliaments in the scrutiny of EU affairs.

2. Our evidence is based on both qualitative and quantitative data. Between September 2010 and June 2013 semi-structured interviews were conducted with committee clerks and MPs from eleven member states. This has been supplemented by way of interviews with the representatives of national parliaments in Brussels from 20 Member States. In addition written replies to a questionnaire were received from 21 legislative chambers.

The internal role of administrators

3. European Affairs are often perceived to be complex and legalistic, especially in the form of subsidiarity control under the Early Warning Mechanism. A well-organized parliamentary administration greatly facilitates both a more active and a more informed engagement in European Union politics. Our research shows that the provision of procedural advice is one of the key responsibilities of the European Affairs staff of all 26 chambers for which we received information. All of the administrations thus play an important role in informing Members of Parliament of the options available (e.g. scrutiny reserve, Early Warning Mechanism, the political dialogue) and as regards to the deadlines and legal requirements.

4. In addition, European Affairs staff in most chambers plays an important role as advisor to committees. About three quarters of the chambers under scrutiny ask their staff to filter European documents and preselect those that could be relevant to the member state/parliament. This selection is subsequently subject to political control. It is important that parliaments define the criteria for selection comprehensively and engage in an active dialogue with their administrations, both to make the filtering procedure more effective and also because this first filtering could – to some extent – influence the agenda of the parliament.

5. Staff can also play an important part in identifying “gold-plating”, the practice of government to add additional elements to transposition legislation. This practice has already been criticized by various British select committees (e.g. www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/writev/euscrutiny/m10.htm). The Dutch parliament has therefore instructed its EU staff to monitor and identify instances of gold-plating so that parliament is aware which parts of a transposition law are mandatory and which ones can be amended.163

6. The support function of the parliamentary administration is particularly important when sectoral committees are involved in European affairs scrutiny. Sectoral Committees begin to play a more prominent role in this process as parliaments try to mobilize their expertise on

---

the substance of policies. The increased information flow and the new opportunities for engagement in EU politics that have emerged over the last decade have thus triggered a trend away from scrutiny that is solely (or even primarily) located in the European Affairs Committee. However, while sectoral committees tend to have a better understanding of the substance of policies, they tend to be less experienced when it comes to scrutinizing EU law. Also, the risk of committees being overwhelmed by the large number of (often technical) European documents increases. Procedural advice, pre-selection of documents and assistance with the drafting of responses could facilitate an active and effective engagement on these bodies.164

The external coordination function of the representatives of national parliaments in Brussels

7. Another important function of parliamentary staff is to ensure day-to-day coordination of European affairs scrutiny across national parliaments. At the moment, regular and frequent coordination directly between national parliaments either on the level of committee staff or politicians is limited. The network of representatives of national parliaments in Brussels can therefore be seen as a “hub for coordination” that not only contributes to the exchange of best practices when it comes to exerting parliamentary control but ensures the exchange of information across parliamentary chambers. As the national parliamentary representatives meet on a weekly basis, they are the one set of actors that are best placed to ensure coordination under the tight deadlines of the Early Warning Mechanism; as reflected inter alia when the first yellow card was issued. IPEX also facilitates such coordination, but written information is easily overlooked or in some cases also outdated, whereas direct communication allows parliaments to highlight and explain particularly important points.

8. Overall the tasks of the parliamentary representatives in Brussels can be summarized as follows:

a. A link between the EU arena and the domestic level by way of alerting Members of Parliament to issues that are negotiated at the European level;

b. A representational function: Facilitating working visits of MPs to Brussels and bringing MPs into contact with representatives of the EU institutions.

c. A bridge-building function across national parliaments: Within the Monday Morning Meetings, for example, parliamentary representatives exchange first-hand information across national parliaments by informing each other about the respective stance of a national parliament towards a Commission proposal, in some instances even before the Commission comes up with a formal proposal. This can contribute to the coordination of positions among parliaments.

9. These insights have inter alia been discussed at a Monday Morning Meeting of these representatives on 6 May 2013.

Conclusions

10. Our empirical insights into parliamentary scrutiny and the role of parliamentary administrations in the scrutiny of EU affairs thus highlight the fact that parliamentary administrators play an important role, especially as regards information provision, filtering and analysis. An active dialogue with staff about their tasks and their potential to support

committees may allow the chambers to identify further room for assistance, for instance in comparing European legislation to transposition legislation to identify instances of gold-plating.

11. On this basis, we would suggest strengthening or at least maintaining the network of parliamentary representatives in Brussels as the main mechanism that currently allows parliaments to inform each other of their activities and positions regularly and frequently. In light of their role in the effective operation of the Early Warning Mechanism, it might be advisable to give them an official mandate to monitor the submission of reasoned opinions and discuss progress towards a yellow or orange card. When an issue is particularly salient for the United Kingdom, the House of Lords or House of Commons could consider sending a template for a (reasoned) opinion to their representative in Brussels for distribution to other parliaments, as this may facilitate activity on the part of parliaments with fewer resources.

12. We would further recommend giving sectoral committees a greater role in the control of the government in EU affairs and the scrutiny of EU documents in order to benefit from their expertise on the substantive impact of European legislation on, for example, environmental, transport, asylum and fiscal policies. In this context, a review of the organization and tasks of EU staff may be necessary, as sectoral committees will require procedural assistance. It may be necessary to discuss, for instance, whether assistance should come from a central EU staff unit or whether committees should have their own staff member responsible for European affairs.

26 September 2013
Julian M. Hörner, London School of Economics and Political Science—Written evidence

1. My evidence to the committee focuses on the divergence between the formal powers of national parliaments in European Union Affairs according to both EU Treaties and national provisions and their actual activity in this regard.

2. Throughout the European Union, the formal powers of national parliaments have been increased significantly in the last decade, most notably with the establishment of European Affairs Committees. The formal powers of these committees and parliaments in general have been strengthened further as a reaction to the new competences attributed to national parliaments in the Treaty of Lisbon.

3. Irrespective of the recent strengthening of the formal powers of national parliaments throughout the European Union, pronounced differences between the parliaments of different EU member states continue to exist. At the one side of the spectrum, the parliament of Denmark possesses a strict mandating right regarding the position of the government in European Council negotiations. At the opposite end of the spectrum, the parliaments of Ireland and Greece have rather weak formal powers. The parliaments of most member states fall between these two extremes.165

4. Political scientists have argued that the formal powers of national parliaments and their actual activity are not necessarily congruent.166 Such a discrepancy between formal and informal practices is widespread and thus does not represent a new finding, but the implications of this discrepancy for EU scrutiny are highly significant. In other words, parliaments with strong formal powers are not necessarily the most effective or even the most active in the scrutiny of EU Affairs.

5. Parliaments often lack the time, resources and most importantly the political will to make full use of their formal powers and to devote significant attention to the selection and discussion of EU documents.

6. My own research at the London School of Economics and Political Science has shown that the formal powers of national parliaments and their activity in EU affairs, in the form of (1) parliamentary debates on Europe in the plenary and (2) resolutions and memoranda on EU Affairs are not correlated.167 This implies that the parliaments with the strongest formal powers are not necessarily the most active ones, and vice versa.

7. With regard to debates on Europe in the plenary, which is said to fulfil an important function of communicating European Union issues to the citizens,168 the Parliament of the

---

United Kingdom turned out to be one of the least active of the seven West European parliaments analysed in the time period from 1992 until the present. The share of words used in the debates which were related to Europe was the second lowest with 2.6%. Note that only first chambers were analysed in the study, so this figure relates to the House of Commons only. EU issues are debated more frequently in Germany and Ireland. With regard to the number of resolutions and memoranda on Europe, a similar pattern can be expected.

8. As mentioned above, formal powers of parliaments do not seem to predict their activity in EU affairs. Instead, the most important factors contributing to parliamentary activity in EU affairs seem to be (1) public opinion in the European Union, (2) the presence of parties which are willing to make Europe a major plank of their programme and (3) the internal coherence of political parties on the issue of Europe.

9. Whereas a rather sceptical attitude of the electorate on the European Union usually leads to an increased on parliamentary activity with regard to the Europe, this effect is reversed when political parties are divided on the issue of Europe.

10. As a consequence, parliaments tend to become less active in EU affairs and formal powers remain unused, leading to less public debate and information on Europe on behalf of the citizen and a laxer control of the government in EU affairs. This in turn means that the parliaments fail to fulfil their role of democratically controlling the activity of the government and educating the public in this regard.

11. The further increase of formal powers of national parliaments and even the increase of resources and manpower for scrutiny of EU affairs might thus not necessarily lead to more activity of national parliaments. In general, it has to be noted that the activity of national parliaments is foremost dependent on the respective political context.

12. Copying best practices of other parliaments with regard to best practices is thus only possible to a limited extent. An institutional arrangement which leads to active scrutiny in one country might be ineffective or even counterproductive in another country. For example, the strong position of the European Affairs Committee of the Folketing is a product of the minority governments found frequently in Denmark.

13. A possible recommendation would be to set aside a particular time slot for the discussion of EU matters in Parliament, and to debate the contents of European Council meeting ex ante. This would lead to better visibility of EU affairs on behalf of the citizen and would enable a more stringent control of the government. The solution to current inadequacies in the parliamentary scrutiny of EU affairs might thus involve strengthening Parliament’s communicative role via debates and assigned time, rather than the instigation of new powers. These changes could also be undertaken more quickly and easily, and indeed more cheaply, than changes involving an increase in formal powers and resources of Parliament with regard to EU affairs.

26 September 2013
Dr Ariella Huff, University of Cambridge—Written evidence

1. This submission relates primarily to Question 3 on dialogue and scrutiny of particular EU policies. It addresses the role of national parliaments in scrutiny and oversight of EU foreign and security policy, and offers some insights into the challenges faced by both the UK Parliament and other national parliaments in scrutinising this atypical and often fast-moving policy area. It also poses some suggestions as to how these problems might be mitigated both at national level and through inter-parliamentary cooperation.

2. Dr Ariella Huff is a postdoctoral researcher at the Department of Politics and International Studies, University of Cambridge. The evidence presented here draws *inter alia* on research undertaken for the Observatory of Parliaments After Lisbon (OPAL) project, funded by the ESRC and the Research Councils of the Netherlands, France and Germany.

Problems of scrutiny of EU foreign, security and defence policy

3. The EU’s Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP) occupy a somewhat unique legal space. Although the Treaty of Lisbon introduced a number of measures designed to strengthen CFSP and CSDP’s EU-level infrastructure, such as the creation of the European External Action Service (EEAS) and the granting of legal personality to the Union, their core decision-making processes remain, at least in theory, intergovernmental. This is especially true in the case of CSDP, where the Treaty explicitly preserves the requirement for unanimity in decision-making (Art. 31 TEU).

4. In this context, parliamentary scrutiny of CFSP and CSDP also retains an intergovernmental character, with national parliaments remaining responsible for overseeing their respective governments’ actions and decisions. Meanwhile, the European Parliament is relatively excluded from policy-making and control in this field, compared to its status as a co-legislator under the Ordinary Legislative Procedure. However, although many governments and parliaments alike wish to maintain the intergovernmental character of CFSP and CSDP scrutiny, there remain several obstacles to effective scrutiny by individual national parliaments acting alone.

5. Owing to their protected status as intergovernmental policy areas, the Treaties explicitly prevent the use of any legislative acts in CFSP and CSDP (Art. 31 TEU). Paradoxically, one practical consequence of this has been to limit the flow of documents and information that national parliaments can access in order to scrutinise decisions made at the EU level. There is wide variety among parliaments with respect to the quantity and quality of documents received on CFSP issues, especially relative to the volume of Commission documents and draft legislation which all parliaments now receive automatically (Art. 1, Protocol no. 1, TFEU). Although virtually all EU national parliaments receive public documents such as Council Joint Actions – i.e. records of decisions already taken – only 21 of 40 chambers in the EU-27 enjoy access to Council Working Group documents, and only 22 of 40 have regular access to COREPER documents.\(^{169}\) Research conducted by

\(^{169}\) COSAC 17th Bi-annual report, April 2012, p. 10
OPAL suggests that, in many countries, much of the important and timely information on evolving CFSP/CSDP issues flows through informal channels, particularly within parties or through individual MPs’ civil service and military contacts. MPs without such access can therefore be deprived of the information necessary to hold their ministers accountable in the short term, and to gain a broader perspective on the long-term direction of EU foreign policy.

6. This information imbalance is exacerbated by the opacity and complexity of the bargaining and negotiation processes within the Council of Ministers, which makes it difficult for national parliaments to scrutinise the actions of their own government ministers. Even parliaments with the ability to issue ex ante, binding mandates to ministers may struggle to keep abreast of developments as they occur, particularly if they lack access to internal Council documents – and the final decision taken may take place in a policy context substantially different from that in which the mandate was issued. In the UK Parliament, where ministers are not obliged to appear before MPs in advance of Council meetings, decision-making processes are subject to even less sustained scrutiny and are usually presented only in a post hoc, indeed often ad hoc, manner.

7. Moreover, even in some chambers enjoying good access to information, my research suggests that CFSP and CSDP can be in danger of falling between two procedural stools: the European Affairs Committee may focus on scrutinising draft legislation, while the Foreign Affairs Committee may lack sufficient expertise on EU policy-making processes to oversee ministers effectively. In some parliaments where no Committee bears formal responsibility for systematic CFSP scrutiny, my research suggests that such scrutiny can be extremely limited in scope and quality unless a particular MP or Committee Chair takes a personal interest in the subject.

8. Urgency also constitutes a major problem for national parliamentary scrutiny of CFSP, and indeed of foreign policy more generally. MPs from parliaments across Europe, including Germany, the Netherlands and Poland, have expressed concern that the speed with which decisions are taken makes it difficult to conduct effective scrutiny in a timely manner, especially during periods of parliamentary recess. This issue is starkly illustrated by the number of Scrutiny Reserve overrides emanating from the Foreign and Commonwealth Office: 48 for the House of Lords in 2012, representing 74% of the total.170

9. Finally, although the intergovernmental structures of CFSP decision-making have been largely preserved by Lisbon, there remains a broader debate as to whether agenda-setting and policy-making in CFSP can be considered fully intergovernmental and, by extension, whether national parliamentary scrutiny of government ministers can ensure sufficient democratic oversight. Brussels-based institutions such as the EEAS, including the Political and Security Committee (PSC) and the High Representative for Foreign and Security Policy, play critical roles in determining the agenda of CFSP and in shaping and implementing Council decisions. However, these institutions are largely shielded from national parliamentary oversight. National parliaments lack

regular and systematic access to Brussels-based officials (with the exception of national ambassadors, in some cases). Moreover, the opaque formal and informal internal processes of the EEAS do not lend themselves well to external scrutiny.

**Recommendations: overcoming obstacles at national and inter-parliamentary level**

10. Although the difficulties outlined above are significant, there are concrete steps that parliaments can take at national level to mitigate their effects.

a. Ensuring that a particular committee has full responsibility for CFSP scrutiny, and is tasked specifically with overseeing the policy on a regular and systematic basis, can increase both the quantity and quality of scrutiny. Foreign policy experts are, on the whole, better equipped to scrutinise EU foreign and security policy than their counterparts in EACs, particularly if they are well-supported by staff with EU expertise. FACs can take a long-term view of policy, and can ensure that policies undertaken within the CFSP/CSDP framework cohere with, and add value to, national foreign policy priorities. The House of Lords EU Sub-Committee system provides an ideal-type model for this, since Sub-Committee C by definition has both EU and general foreign affairs expertise; however, even a more typical EAC/FAC system such as that in the House of Commons can potentially increase the efficacy and impact of scrutiny by tasking the FAC with formal, systematic responsibility for this policy field.

b. To help ameliorate the problem of timeliness, government ministers should be required to appear before Parliament, or a relevant Committee, before Council meetings to discuss the agenda and to answer questions on the government’s negotiating positions – as is already the case in many EU parliaments. A special session should also be held in advance of parliamentary recess, at which ministers should explain items that are likely to be addressed during the recess (and thus, in the UK context, may require scrutiny overrides). Although certain foreign policy situations demand urgent action, many of the decisions taken under CFSP/CSDP – such as the renewal of mission mandates – are known to be imminent months in advance of Council meetings. Furthermore, these decisions often relate to ongoing international situations; 13 of the 33 scrutiny overrides issued by the FCO in the first half of 2012, for example, related to the continuing unrest in Syria. Thus, regular ministerial hearings both before and immediately after recess periods can ensure that the overall shape and direction of EU foreign policy is subject to long-term parliamentary oversight, even if some decisions must be taken too quickly for individual scrutiny.

11. Inter-parliamentary cooperation (IPC) also offers significant potential added value for national parliaments. In addition to enabling national parliaments to oversee developments at the European level more effectively by providing greater access to Brussels institutions, IPC can also empower parliaments relative to their own governments by reducing information asymmetry.
a. However, the protracted negotiations surrounding the establishment of the new Inter-parliamentary Conference for CFSP and CSDP demonstrate certain tensions with respect to the structure, format and organisation of IPC in this field. In particular, the parliaments of a number of countries – including the UK, as well as Ireland and many Nordic states – objected to the expansion of the European Parliament’s role in this field. In public documents as well as private interviews, MPs from these parliaments often characterise the expansion of the EP’s role as the infringement of a supranational body into a field that should, in their view, remain intergovernmental.

b. Yet the argument can be made that supranational elements such as the EEAS already exist in CFSP/CSDP governance, and that a moderate expansion of the EP’s role in IPC should therefore be seen as beneficial to national parliaments. The EP has far greater access to EEAS officials and the High Representative than national parliaments. The EP also has considerable resources at its disposal, and has proven effective and pro-active in gaining access to sensitive documents and information. Finally, the EP is well situated to scrutinise CFSP/CSDP in the broader context of the EU’s external relations; although it is excluded from policy-making in CFSP/CSDP, the EP plays a far more substantial role in other ‘external relations’ issues like trade agreements, international development (which enjoys a budget exponentially larger than that of CFSP), and civilian CSDP. Now that the question of representation at this new Conference has been resolved, members of national parliamentary delegations should endeavour to see the EP’s role as complementary to their own, and to take advantage of the EP’s access to officials, information and resources through both formal and informal channels.

c. In addition to the general Conference, parliaments should also enhance existing bilateral and small-group cooperation, particularly with respect to defence. In recent years, as defence budgets have been cut across Europe, the overall trend in EU defence cooperation has been toward bilateral and small-group initiatives, including for example the 2010 Anglo-French Treaty and extensive Belgian-Dutch naval cooperation. Effective scrutiny of such initiatives demands cooperation between involved parliaments, as the British and French, for example, have already demonstrated with regular bilateral meetings. This type of cooperation should be maintained and expanded, as it offers the chance for more focused and in-depth scrutiny of joint initiatives than the broader Conference, and for building both formal and informal channels for information-sharing.

27 September 2013
THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION: ISSUES OF FLEXIBILITY AND DIFFERENTIATION

Summary:

• This paper focuses on the role played by national parliaments in the operation of the Early Warning System (EWS) – the check on subsidiarity compliance which allows national parliaments to deliver a ‘yellow’ or ‘orange’ card warning to the European Commission. More specifically it considers intervention by national parliaments in the EWS despite the fact their governments have chosen to opt out (or not to opt in) to the legislative measures under consideration. It is argued that the subsidiarity test as currently constructed does fully not accommodate considerations which may lie in situations of flexible or differentiated integration.

• The Lisbon Protocol (No 2) on Subsidiarity permits national parliaments to engage in the Early Warning System independently of their national government’s participation in the legislative process. Given recent steps to initiate an alternative ‘Euro-zone’ only formation in the European Parliament to deal with Euro-zone issues, an analogous argument based in democratic legitimacy could be used to attempt to restrict role of national parliaments to those legislative measures that their state governments have chosen to be bound by.

• Arguments for and against the restriction of national parliaments’ role under the EWS where their state is not going to be bound by the outcomes of the legislative process are presented. It is recommended that whilst a case could be made for national parliament’s voting rights to be removed, a more convincing argument sees them continue to play the full role ascribed to them under the Lisbon Treaty. Any circumscription and reordering of institutional roles so as to exclude non-participating state representatives (including from national parliaments) should be resisted.

Evidence:

This evidence relates to aspects of Questions 1, 2 and 5 of the European Scrutiny Committee’s Call for Evidence, ie, why should national parliaments have a role in the EU framework; what role should they play; how is the formal role of national parliaments working in practice, and how should the role of national parliaments be changed or enhanced?

National parliaments in the EU framework

1. There is widespread agreement that national parliaments – individually the cornerstone of any constitutional democracy - may be able to provide an effective and convincing way of shoring up the democratic legitimacy gaps which are perceived to exist within the EU order. With the EU’s political and legal framework having privileged the position of central governments, national parliaments may be considered to have been sidelined and marginalized, and their democratic legitimating function not adequately fulfilled by the European Parliament. Despite imaginative scholarly attempts to present the Union as
demanding and deserving models of legitimation which break with traditional ideas of representative democracy, the latter’s appeal has continued to survive.

2. The effective embedding of national parliaments in the legislative processes of the EU provides a third route through which representative democracy may be exercised in the EU framework. This route, which has been in a state of ongoing development and deepening over the most recent Treaty reforms - stands alongside citizens’ direct representation through the European Parliament, and their indirect representation through their national governments in the Council, where these governments are answerable to the representatives in their own national parliaments (Article 10(2) TEU). With their new power to exercise subsidiarity review introduced formally through the Treaty of Lisbon, national parliaments have been seen by one commentator as forming one collective actor, a ‘virtual third chamber’ which can ‘make a claim of autonomous representative legitimacy’ (Cooper, 2012, 6). The more mainstream view would question the extent to which the national parliaments, when exercising their subsidiarity review, could together constitute any more than a collective in the most loose terms. Nonetheless, as most well established form of political representation for their respective peoples, national parliaments should be seen as a critical source of legitimation for the EU order.

Subsidiarity Review

3. The Early Warning System (EWS) provisions of the Lisbon Treaty (Protocol No. 2) have brought an additional layer of rights and responsibilities for national parliaments – the right to exercise a ‘vote’ on legislative proposals through reasoned opinion where it is believed there has been an infringement of the principle of subsidiarity. This opens an additional channel for national parliaments to engage with EU policy processes. Other ways include the more established channel, of oversight and scrutiny of their governments’ actions; as well as growing forms of direct engagement with actors beyond the state, including political dialogue with the Commission; contact with other parliaments, directly and through COSAC, and with the European Parliament.

4. Processes of scrutiny (of national governments) and political dialogue (with the Commission) are not restricted in terms of the matters which may be appropriate for national parliaments to raise for discussion. The EWS meanwhile specifically focuses on, and is limited to the issue of subsidiarity – in shorthand, asking the question whether the Union has sought to legislate on a matter than can (and should) be appropriately and effectively handled by Member States acting independently? National parliaments should have a particularly sharp focus on this question, as ‘it is to be presumed that national (and where appropriate subnational) parliaments will take a stricter view on the conditions for applying a principle the very purpose of which is to protect the prerogatives of those levels of public authority’ (Rosas and Armati, 2012, 30).

5. Whilst justiciable before the European Courts, it is generally accepted that creating and operating the subsidiarity principle as a strict legal test has been problematic. Determination of whether something is ‘sufficiently’ achieved at Member State level, and whether it may be ‘better’ achieved by EU action has not translated easily into legal tests. More problematically, the test as it currently stands has not developed to capture the reality of increased flexible or differentiated integration. With opportunities for groups of states to participate in legislation under the enhanced cooperation procedure, or, for example, with the opt-in system in place for the UK in the field of Justice and Home Affairs, the question is more complicated that simply whether something can be sufficiently addressed at nation
state level (or below), or at Union level. The ‘Union’ level could include all Member States together, or alternatively a grouping of them – currently under enhanced cooperation, for example, of at least nine or more. If subsidiarity is a question of identifying the most appropriate level for legislative intervention to take place for the legislation’s objectives to be met, then ‘whole Union’ is at the apex of the range of alternatives, with groupings of States could be conceived as a level below this, and below that, the nation state. In this regard it is instructive to look at the example of proposals for the European Patent with unitary character. Regulations establishing the patent and its linguistic regime were proposed following Council approval to use the enhanced cooperation mechanism. All states apart from Italy and Spain decided to participate in enhanced cooperation. The Parliaments of both Italy and Spain raised the only reasoned opinions made under the EWS against these proposals (Italy Chamber of Deputies 2011, Spain Cortes Generales 2011). Much of their opinions focus on the inability of legislation coming from enhanced cooperation to achieve its proposed objectives. However, it proved incredibly difficult to convey this preference for whole Union action over state groupings through the concept and language of subsidiarity. Indeed, the parliaments sought to mount a challenge on enhanced cooperation (which cannot take place in areas of exclusive competence) by arguing the legal base for a European patent, Article 118 TFEU) was an area of exclusive competence, but in so doing, essentially ruled out the application of the principle of subsidiarity, and the scope of subsidiarity review, as the principle applies only in areas of shared competence, Article 5(3) TEU).

6. For national parliaments, the most important function of the subsidiarity principle will be as a brake to enable them to engage to protect their prerogatives, but they may well have important contributions to make to the question of whether action can be effectively realized by a group of states, or whether a whole Union response is required to achieve the legislation’s objectives. Whilst this could be conveyed through political dialogue, it seems unnecessarily complex to run different versions of subsidiarity considerations through two different routes, and a broader concept of subsidiarity along these lines is therefore advocated.

Institutional Arrangements Accommodating Flexibility and Differentiation in EU Legislation

7. The Treaties now provide greater than ever opportunities for flexibility and differentiation for Member States in secondary legislation (such as opt outs and transitional periods). Whilst these procedures will result in legislative outcomes that will bind only some (and sometimes a minority) of states, the institutional framework remains by and large that used for the adoption of ‘ordinary’ whole-Union legislation. Thus, there are no special formations of the European Parliament involved in enhanced cooperation with representatives of only the participating states, nor does the college of Commissioners have alternative groupings depending on the identity of participating states. That this is the case in respect to these collective, ‘supranational’ institutions is rather unsurprising – given the interests they are designed to represent and the functions they fulfill, there is a strong case for institutional indivisibility. The system has been described as one which ‘allows Europe to accommodate diversity and adopt laws with limited geographic scope without political exclusion and rupture’ (Thym, 2005, 1746).

8. This norm of institutional indivisibility does not however extend to the Council, the intergovernmental decision making institution. States that are not participating in the legislative outputs of enhanced cooperation, or who hold the option under the Treaties to opt in to measures and who are not taking that up, are excluded from voting. However, they
are not excluded from seeking to influence and shape the proposal, as they are permitted to
be involved in deliberations leading to the adoption of the final measure. In one sector
however, there are also restrictions on non-participating States’ attendance at meetings – i.e.
the Eurozone.

9. This exceptionalism in relation to Eurozone governance structures may in time extend
beyond intergovernmental Council. A joint statement from the governments of France and
Germany (May 2013) called inter alia for a specific Euro-zone only formation of the
European Parliament to be created, in the shape of ‘dedicated structures specific to the Euro
area to be set up within the European Parliament …to ensure adequate democratic control
and legitimacy of European decision making’. The proposal has not been universally
welcomed. The erection of sharp divisions across the European Parliament along national
lines appears a step backwards given its supposed representation of the Union’s citizens
(Article 14(2) TEU) not of ‘the peoples of the states’ (former Article 189 TEC). If the idea
does gain traction, however, it may call into question not just the role of the European
Parliament as a collective in other areas of flexible and differentiated integration, but also the
proper place of national parliaments. If MEPs elected by States outside the eurozone (or
other area of flexible/differentiated integration) are not to be permitted to participate in
democratic control of activities, what additional or better claims do national parliaments
from non participating states have to be included? Should national parliaments be excluded
from exercising the right to participate and ‘vote’ through the EWS on measures that are
not going to apply to their state? How should the EU answer this particular version of the
West Lothian question?

Redefining the scope of National Parliament’s exercise of the EWS mechanism in areas of
Flexible Integration?

10. Recent examples may be provided of national parliaments raising reasoned opinions
under the EWS on measures which they will not apply domestically, as their state has chosen
not to participate. Under enhanced cooperation, the example Spain and Italy’s opinions on
the European Patent was considered above. The Swedish Parliament (Sweden, 2013)
meanwhile issued a reasoned opinion against the 2013 proposal for a Financial Transaction
Tax under enhanced cooperation – the only parliament to do so, despite significant political
opposition to the measure (and reflecting the sometimes very limited engagement with the
subsidarity principle in some reasoned opinions). Finally, the UK’s first reasoned opinion
came in an area subject to the UK’s (unexercised) opt in – that of immigration, and the
proposal for a Directive on the conditions of entry and residence for seasonal workers. In
such cases, is it consistent with democratic legitimacy to allow these parliaments to exercise
a vote that could block the way to the adoption of the legislation for those who do wish to
participate? If we draw analogies with national governments in Council in such situations,
then it may be appropriate to remove any right to vote – particularly if there is any move
(albeit unlikely) towards the introduction of a more significant brake than the existing yellow
and orange cards – i.e. the red card, suggested by the UK Foreign Minister, which would
require the proposal to be withdrawn by the Commission. As with non- participating
Council members being able to deliberate on measures (apart from under the Eurozone),
political dialogue could still be maintained between national parliaments and the
Commission.

11. The better view in my opinion is however not to limit the role of national parliaments in
this way. To date, they have been treated in the same way as the collective supranational
institutions, with no division being raised along national lines in terms of rights and responsibilities of those who are ‘in’ and those who are ‘out’ of a measure. The argument may of course be made that national parliaments individually are more akin to national governments than supranational actors - although one may recall here Cooper’s vision of national parliaments as an autonomous, collective actor, the ‘virtual third chamber’.

Regardless of whether a supranationalist or intergovernmentalist vision is favoured, national parliaments obviously perform different functions to national governments in the EU order. Votes in Council may be seen as the act of a sovereign state representative agreeing to be bound by a quasi-international legal norm. The ‘votes’ national parliaments cast under the EWS are nothing of this nature, and there is no reason to limit them in the way the state representative in Council is limited in cases of non participation. Instead, individually, and collectively, national parliaments can provide a different voice from national governments, as part of an effective subsidiarity review, and critically, a powerful legitimating function, so needed by the EU order.

12. There are also very significant practical reasons why no national parliament should be excluded. After all, opt outs may become opt ins – an initially non-participating state may chose to start participating in the measure whilst it is still being formulated. As was seen in two examples from the UK (the Proposal on Seasonal Workers (COM(2010) 379) and on Researchers, Students, Pupils, Trainees, Volunteers and Au pairs (COM(2013) 151), the timescales for the UK to opt in may extend beyond the window for Parliament to conduct its subsidiarity review. In these circumstances, clearly Parliaments should be afforded full rights of participation in the EWS. Equally, non participating states may choose to sign up to legislation after it has come into force, and national parliaments will otherwise have been denied the opportunity for full involvement in its adoption.

13. Finally, and as a practical consideration that extends across all policy fields including the Eurozone, quite simply measures adopted by the ‘ins’ may have considerable impacts on the ‘outs’. This is seen starkly in the attempted extraterritorial reach of the proposed Financial Transaction Tax, a factor which is given considerable emphasis by the Swedish parliament in its reasoned opinion. The governance structures of the Union should enable full and effective involvement of all interested parties, ensuring the concerns of the ‘outs’ can be fed in. In the absence of any red card absolute veto, a majority of non-participants amongst the national parliaments can at most instigate a review of proposals. This would not then necessarily halt the process for those who may wish to proceed under enhanced cooperation (and thus not infringe Article 327 TFEU, ‘those Member States shall not impede its implementation by the participating Member States’), but gives a parallel right to be involved in the shaping of the measure to non participating parliaments as held by non –participating governments. Thus, in terms of national parliaments’ involvement in measures where their state has opted out, the recommendation is strongly for the continuation of the status quo.

References:


France and Germany (2013), Together for a Stronger Europe of Stability and Growth
http://www.bundesregierung.de/Content/DE/_Anlagen/2013/05/2013-05-30-dt-frz-
erklaerung-englisch.pdf?__blob=publicationFile&v=3

Italian Chamber of Deputies, (2011) Reasoned Opinion on Proposals for European Patent
Regulations http://www.ipex.eu/IPEXL-WEB/scrutiny/COM20110216/itcam.do


Regulations, http://www.ipex.eu/IPEXL-WEB/scrutiny/CNS20110094/escor.do and
http://www.ipex.eu/IPEXL-WEB/scrutiny/COM20110215/escor.do


Thym, D. (2005) “United in Diversity’: The Integration of Enhanced Cooperation into the

2 October 2013
TUESDAY 19 NOVEMBER 2013

Members present
Lord Boswell of Aynho (Chairman)
Lord Bowness
Baroness Corston
Lord Dear
Baroness Eccles of Moulton
Lord Hannay of Chiswick
Lord Maclennan of Rogart
Baroness O’Cathain
Earl of Sandwich
Baroness Scott of Needham Market
Lord Tomlinson
Lord Tugendhat
Lord Wilson of Tillyorn

Witness

Mr Dominic Hannigan TD, Chairman, Committee on European Union Affairs, Houses of the Oireachtas (Irish Parliament), Ireland

Q68  The Chairman: On behalf of the EU Select Committee of the House of Lords, I would like to welcome Dominic Hannigan on behalf of the Oireachtas, the Irish Parliament, and to say I have had many contacts with him at COSAC and otherwise. We have talked about the role of national parliaments and he is very well aware of the inquiry that we are currently undertaking. I do not propose to lead with my chin with the first question, if you will forgive me for that. He has heard quite a few of my own views, but we would like to have both the sharing of interests with this Committee and any frank comments he can make.
Mr Dominic Hannigan TD, Chairman, Committee on European Union Affairs, Houses of the Oireachtas (Irish Parliament), Ireland—(QQ 68-75)

We have about 30 minutes for this public evidence session and we will try to be as succinct as we can, but I would like, for the record, to remind him this is a formal evidence session in public. We will be recording it. We will send a transcript for correction of any factual errors, but we will also be publishing an uncorrected transcript at an early stage.

It would be very remiss indeed if I did not express at the start the gratitude of our Committee for his involvement tonight and also for the constant involvement and the dialogue we have with you at COSAC and other meetings on these important issues, which I think we are all, if I may put it this way, feeling our way towards a more active conclusion.

That is enough from me, but if I may, I will ask Baroness Scott to put the first question on behalf of our Committee.

Baroness Scott of Needham Market: Thank you. Good evening. If I have understood correctly, I believe that the committee you chair deals with the sort of over-arching strategic EU issues and that it is the committees that shadow departments who deal with the more detailed scrutiny. Of course, here we have a rather different model, where we have bespoke European Union Committees. With your perspective from COSAC, you will have seen both systems in operation across the Union, and I wonder whether you could say something about the advantages and disadvantages of each way of carrying out scrutiny.

Mr Hannigan: Good afternoon. Firstly, can I just start off and say how delighted I am to take part in these proceedings. Secondly, can I just check that you can hear me okay?

Baroness Scott of Needham Market: Yes.

The Chairman: Yes, fine, no problem.

Mr Hannigan: Excellent. I have to warn you that our House is sitting today and we are expecting a vote in half an hour. I have been excused, so I do not have to leave, but you will hear a loud bell going off in the background for probably about four minutes at some stage during my proceedings, so bear with me when that happens. I do not have to leave, we will just continue on as normal, if that is okay.

Q69 The Chairman: That is great, thank you.

Mr Hannigan: In relation to the Baroness’s question, yes, we operate a different system here. We introduced a system called mainstreaming two and a half years ago, and the purpose of that was to send to the relevant committees the legislation that was best dealt with at that committee. My committee is a small enough committee. We are not experts in every field, unlike yourselves, so we would tend to send legislation on transport to the transport committee, on environment to the environmental committee. That means that the legislation can be addressed and dealt with by the experts who sit in those committees.

My committee is much more strategic. For instance, last week we had a presentation from the Minister of European Affairs in advance of the General Affairs Council. That will be a regular meeting that we have. We have meetings in relation to the Annual Growth Survey in relation to the committee’s work plans—that type of strategic level. We led the debate here in Ireland two years ago on the issue of the Fiscal Compact Treaty, so it is at that level that we deal with European issues.

Does it work? I think it has many advantages. It means that the legislation is best dealt with by those experts in the field. There are some disadvantages. I think perhaps the decentralisation that we introduced may have gone a bit too far, so the question of feedback from the relevant committees to our committee could be improved. But overall, we think
Mr Dominic Hannigan TD, Chairman, Committee on European Union Affairs, Houses of the Oireachtas (Irish Parliament), Ireland—(QQ 68-75)

that two and a half years into the mainstreaming process, the results speak for themselves. We think it is a better system now than it was.

Baroness Eccles of Moulton: Mr Hannigan, there was one thing. You were talking about the expert committees that are attached to each of your departments. Who are the people who sit on the committees? Our committees here—we are not experts, we are Members of Parliament and we have a certain shared knowledge of the world, but who are your experts?

Mr Hannigan: The people who sit on the committees, like in the House of Lords, are politicians, so when I say “experts” I mean the politicians on the transport committee would be people with an interest in transport affairs—people with a knowledge of transport affairs—who will gravitate towards that committee and therefore would have a greater knowledge and awareness of the issues facing that sector.

Our second House, the Senate, is made up of various panels, reflecting various areas of expertise—for instance, the agricultural panel, the industrial and commercial panel—and generally those Senators would come from that type of background. The educational panel would largely be made up of people who had been in some way involved in the educational field, so when I say “expert” I mean Senators from those panels would generally be represented on the committees, and the TDs, the members of the lower House, would gravitate to those committees where they had most knowledge and interest. They would be of course supported by civil servants behind the scenes—by policy advisers who would provide the expert advice, where appropriate.

Q70 Lord Hannay of Chiswick: Could we turn to the financial crisis? Since 2008, the events of the financial crisis have highlighted the importance of democratic accountability and legitimacy within the EU. I imagine you would agree, but perhaps you could say so, that national parliaments have a role to play in this respect. How might this impact on future inter-parliamentary co-operation and the development of the role of national parliaments?

For example, do you have views on the model that that Mr Fabius produced at Vilnius, which would have only the eurozone member state parliaments working together collectively; and on other people’s views that have been expressed, suggesting that many of these matters involve all 28 member states, and that given these processes will be consultative and not decision-making there is no reason at all why they should not take place on a 28-member basis?

Mr Hannigan: Yes, there has been a concern about the rise of inter-governmentalism over the last number of years since the advent of the financial crisis. At the start, it was largely represented by meetings between President Sarkozy and Chancellor Merkel, and many of the other smaller countries would have been concerned that decisions seemed to be taken at certain levels and certainly did not include national parliaments of the member states. That is something that has been addressed, to a certain degree. We have seen improvements over the recent past. The advent of the European semester does provide opportunities for national parliaments to have more of a role, and that is something that we are discussing at the moment through organisations such as COSAC, through the Article 13 conference that was held just two months ago now in Vilnius.

Interestingly, you questioned whether or not it should be just eurozone countries represented at the Article 13 conference, the oversight conference for the semester. At the Article 13 conference, you were represented, and I think that is the model we have to follow. I think that we need to include all 28 member states, regardless of whether they are in/out of the eurozone, regardless of whether they are in/out of the Fiscal Compact. It is essential that we include all member states to make sure that their roles, their worries, their
concerns are also reflected in our negotiations and in our discussions. As we move forward, whether or not it is going to be a COSAC or a changed Article 13 conference or a CFSP conference or whatever, whatever conference we decide on to deal with the issues of the European semester—the eurozone governance issues—I do think that it needs to be more inclusive than just the eurozone member states.

Do not forget, in terms of so far, of course Ireland’s involvement in the semester has been limited because we have been in the bail-out, which we are about to exit, so up until now our discussions in relation to the semester have largely been around one recommendation by the Commission, which was, “Carry out the programme”. We exit the programme in four weeks’ time, so next year is our first real engagement with the European semester process.

Q71 Lord Wilson of Tillyorn: It would be very interesting: do you think you could tell us how you see the role of your own parliament as having developed in EU affairs during the last few years? That would be particularly since the signing of the Lisbon Treaty.

Mr Hannigan: Of course the Lisbon Treaty gave us the yellow card procedures. We have used the yellow card at this stage just on two occasions. We have been slow adopters of it, but having said that, I think across the Union that criticism could also be levelled at other countries as well. We have issued at this stage four reasoned opinions on legislation, including things like the new CCCTB, the European Public Prosecutor’s Office and the single market for electronic communications. Mind you, two of them have been issued in the last couple of months, so I think we are getting used to the ability of issuing yellow cards—of publishing reasoned opinions. I do not think it is something we are on top of yet; it is something we are getting better at.

Looking at how we might improve the situation, one thing that has struck us is the need to ensure that parliaments across the Union work more in unison in relation to the issuance of yellow cards, so some sort of a system whereby national parliamentarians can alert each other when concerns exist in parliaments. That might be a useful thing. I know your previous contributor today was René from the Netherlands. Now, I did not get a chance to listen in to what he said, so I may be repeating what he said, but we had a very interesting bilateral just last week here in Dublin with René and with his committee. The issue of how parliaments can work together in relation to the yellow cards and the issuance of yellow cards was raised, and I think that is something that we could work on, looking at how we can contact each other, how we can pass on information between key members of the committees to ensure that we all know what each other is doing and work in unison. I think that is something that we could work on.

The Chairman: Can I follow that with a specific question? The national parliaments all have representative officers in Brussels and they meet as a collective on a regular weekly basis, typically. Do you see this business about collaboration at principal level, either as elected Members or at least at national parliamentarian level, as supplementary to that? What is the value added through doing more than merely staff meetings in Brussels to be alert as to what is going on?

Mr Hannigan: Yes, we have excellent representatives in Brussels who work very closely with the representatives from other countries. They do a great job, but I do think it needs to be not just supplemented; we do need to see engagement between parliamentarians too. COSAC is a wonderful opportunity for us to meet throughout the day or also in the evenings as well to talk to each other about the concerns that we each face in our member
parliaments—the concerns that we are faced with at a European level as well. So COSAC, for one, is a very useful tool, but I think we need to look at bilaterals as well.

I know Lord Boswell has been in front of my committee in the past to discuss issues such as the Fiscal Compact. We have had representatives from many European parliaments here in Dublin over the last number of years talking about issues in relation to the future of Europe, in relation to EMU. I think these bilaterals are extremely useful, because it means that firstly we get to know each other at a personal level, but that then allows us to understand more the nature of people’s concerns and what each party is seeking to achieve in the European projects. I think bilaterals work very well for us. We see them as an essential part of the process, not supplementing any other mechanism, but essential in their own right.

Q72 Baroness O’Cathain: Good afternoon, Mr Hannigan. Following on this discussion about the yellow cards, I think it is on two levels. When we have an issue with which we have a problem, we do not know who to contact in member states because we do not have regular conversations with them or are in a relationship with them over a period of time. That is the job of COSAC, which is fairly formal. On the point that has been made about alerting each other if there is an issue, in my particular committee, we had an issue about women on boards. We alerted the Netherlands Government and we had a very good video conference-link session with them. It made us realise here that we have more in common with member states than we had thought, yet there does not seem to be an open access, if you like, to each of these parliaments.

When you said that you have been slow adopters of the yellow card, I think it could be—in our case, anyway—that we have just given up on it. I believe there have been some 300 yellow cards issued and absolutely no notice taken by the Commission. In a case like that, you just say, “There has to be a better way”. Is the better way just getting more involved with people like you?

Mr Hannigan: Yes, I share your frustration in relation to the response from the Commission during the whole yellow card procedure, and it is something that COSAC picked up in the June conclusions and sent on to Vice-President Šefčovič. I understand that they are looking at ways of improving the response to the yellow card procedure.

But to get back to the fundamentals of your question, I think perhaps one way would be through chairs of the European Union committees being the central point of contact for these issues, regardless of whether you mainstream or not. In my country, if my transport committee have a problem, then they raise it initially through the transport chair, who would then feed it on to me and I would then feed it on to my fellow EU chairs through the member states. That is a very clear and transparent way of communicating between the member states in a timely manner.

I know that other countries are also keen on exploring how this might work. It could potentially be one solution to ensuring that we are very well aware of what is going on in other countries.

Baroness O’Cathain: Can I just pursue that for one moment? Referring again to our position about women on boards, we did not know the people to talk to. If it came up again or another subject, should we have a whole raft of people on the emails, or know them and just alert them that this is an issue we think is not clever or that this is an issue we do think that we should support? We seem to be operating in little silos, if you know what I mean. How do we get through that? We do not need masses of copying each other on emails, but we need to involve every member state, because otherwise it will be seen as the western,
eastern, northern, or the southern alliance. If we did communicate we would grow to trust each other, and when a Directive came through we would know exactly who might be interested and then alert people. I think it can be done, but we just do not have the right way of doing it.

**Mr Hannigan**: Potentially one way is through the chairs. We could also try to utilise the COSAC Secretariat in Brussels more effectively so that it goes through there and they then target the information to those people who need it most.

**Baroness O’Cathain**: That is a very good idea.

**Mr Hannigan**: That might be a way around it, but you are right, I think we all suffer from getting too much information about things—things that sometimes are not of great concern to us or of great relevance to us—so the last thing we want to do is just create more email trails for people who do not need to see these emails. We have to be targeted and effective, there is no doubt about that.

**The Chairman**: Yes. As I think I may well have been the target of your interest here, I must say I echo that, but we are grateful for the point.

Q73 **Lord Tugendhat**: How effective do you think your Parliament has been in shaping and influencing decision-making at an EU level and are there any examples that you feel able to offer to demonstrate a degree of effectiveness?

**Mr Hannigan**: As I said, we are just getting up to speed with the use of the yellow card, but I give you one example of something that we are trying to do at the moment, and that is in relation to the Commission’s recent publication about how we include the social dimension, so looking at indicators such as long-term unemployment, disposable household income—how we include those indicators in the European semester. My committee, just starting tomorrow, is calling in a number of organisations who would have an interest in this field, such as the Irish Unemployment Association, the National Women’s Council and the Poverty Network to get their views on the type of social indicators—the social measures—that we should be looking at at a European level.

You will be familiar with the macroeconomic indicators that were brought in as part of the six-pack, things like house prices and the like. Those are all very well, but we are looking at how we can ensure that there is a social dimension included in the analysis, so we will be talking to the constituents, if you like, from across Irish society and NGOs from throughout the country over the next couple of weeks. From that, we will be issuing political contributions to the Commission, hopefully this side of Christmas, which will hopefully then influence their final choice of the type of indicators to include in the social dimension, but also what do we do with those indicators, how do we measure them, what kind of encouragement, what kind of fines are brought in should a country fail to meet those benchmark levels? That is just one example of the type of work that the committee is doing to try to influence and shape future legislation.

**The Chairman**: On that point, I would like to bring in Lord Hannay to ask a bit more about the process of influencing the Commission.

**Lord Hannay of Chiswick**: Yes. I shall follow up your point on where it seems to me you are indeed trying to get in upstream of Commission decision-making. The invitation that Commissioner Šefčovič gave us all in Vilnius to be more active in intervening when the Commission is at the consultative phase and before it has made proposals—do you think that is practical? Do you think that your parliament could be more active in that way with the resources you have or do you think that it is just a Commission defensive reaction,
Mr Dominic Hannigan TD, Chairman, Committee on European Union Affairs, Houses of the Oireachtas (Irish Parliament), Ireland—(QQ 68-75)

designed to put us on the back foot and show that we cannot do that? I wondered what your views were.

Mr Hannigan: We would welcome it in the spirit that the invitation was issued. The big question of course is that resources to enable us to have a greater involvement in the process would require additional help from staff. I am sure many countries have an issue in relation to exactly how much time and staff they can devote to this, so that would be a constraint from our side of things. One of the interesting discussions that we had at the COSAC plenary in Vilnius was also the suggestion made by some parliaments about the right of initiative to be with national parliaments. It was something that was raised by Eva Kjer Hansen, our Danish colleague, among others.

I know that that did not receive universal support from the floor, particularly the European Parliament Members, I think it is fair to say—and I do not wish to misquote them—that they would have been less than favourably disposed towards that particular idea. But for many of us, the right of an initiative would be seen as a way of ensuring that even more democratic legitimacy was given to national parliaments. So we all agree that we need more involvement.

As Maroš Šefčovič said, getting in earlier is one way of achieving that. So too is the right of initiative. The question though is whether or not various independent parliaments have sufficient resources to enable them to do that.

Q74 The Chairman: Thank you. Bearing in mind that you are immediate past president of COSAC, can I perhaps begin to draw this session to a close by asking you to reflect on two things that I think have come out from your evidence so far? The first one is the question of setting priorities, when you said, “We do not want just to add to yet more emails”. We need to have some mechanism that sorts out what the priorities are that national parliaments may wish to express.

The second is the question of the mechanism in which we can best take these forward. You have suggested a number of approaches. One is the COSAC one, and we are asking you, not least because you are the immediate past chair of COSAC, whether that is the best vehicle for some of this. You have also mentioned the possibility of better bilateral exchanges and possibly of initiatives, which need not necessarily be at 28, but could be at a smaller number. How do you see this process shaking down so that we can maximise our efforts?

Mr Hannigan: Yes, I think we need to see a mixture of mechanisms, if you like. Firstly, we do need to see more bilaterals, there is no doubt about that. I think we need to sort out what we are doing with the Article 13 conference and we need to sort out exactly who attends that and the ownership of the conference. You will be aware that the Article 13 conference in Vilnius two weeks before the COSAC plenary was fraught with tension in relation to who does what. There were arguments over whether or not the conference was meant to look at financial issues or fiscal issues and a large part of the debate was taken up discussing that particular question. The Article 13 conference has just started, but we do need to get to grips with exactly what its role is and what its membership is and we do not have an awful lot of time to do that, but we do need to sort it out certainly by the end, I would have thought, of the Greek presidency.

I would imagine that when it comes to issues such as the semester that an enhanced Article 13 COSAC would be the proper place to carry out discussions. I do not go along with the French idea of having a separate chamber to do this at a European level populated by national parliamentarians. I think that we can do it through a changed/improved COSAC in
conjunction with more bilaterals and in conjunction with more communication from the Commissioners themselves.

I know we have had reasonable success in obtaining Commissioners to appear in front of our committee over the last number of years, perhaps because we were about to have the presidency, but as long as national parliaments are happy to live with Commissioners appearing like I am today via video-link, that is one way of ensuring that we have better understanding and better liaison between the Commission and parliaments. We need to see those links improved, we need to see bilaterals improved and we need to sort out the whole issue of Article 13 and COSAC.

The Chairman: Fine. We are coming to the end of our half hour.

Q75 Lord Tugendhat: Can I just ask this question: over recent years the European Commission has become increasingly subservient to the European Parliament, and this has hampered its ability to act as the guardian of the overall European interest. Do you think that if national parliaments were playing a larger role by whatever means, this would add to the Commission’s freedom of action and enable it to regain some of the influence and prestige that it has lost in recent years?

Mr Hannigan: I have to tell you, I missed the last part of that, you faded out there. So from the “do you think” bit, could you just repeat that?

Lord Tugendhat: Do you think that if national parliaments were playing a larger role, this would enable the Commission to regain some of the influence and prestige that it has lost in recent years?

Mr Hannigan: Okay. I am not sure if it is a zero sum game. I think the Commission can obtain a bit more prestige and a bit more democratic legitimacy through issues such as how we choose the president. National parliaments need to be more involved because they are the coalface of European citizens. The reality is, whether you like it or not, Members of the European Parliament are largely unknown by our citizens. Our citizens do not have a clear understanding of what they do and if they have a problem in their lives, they are much more likely to go to national parliamentarians. Involving us more in the European project is in everybody’s interest: it increases democratic legitimacy, it makes sure that the European project reflects the views of our citizens.

I think that we need to reach out more to organisations such as the Committee of the Regions. They have a role that could be played that is often overlooked and I would like to see ways of encouraging them to get more involved with the debate at a national level to ensure that we have all players involved. I do not see this as a zero sum game. I think that we can all win by upping our game in relation to how we deal with the issues.

The Chairman: Thank you very much, Mr Hannigan. You have been very frank, you have been very challenging and you have been very engaged with our inquiry, and for all those, we are very grateful. I have the impression from what you have said that this is a dialogue that will not conclude this evening, but is part of a continuing dialogue both between ourselves and other national parliaments as to how we should take this forward. Your contribution has been invaluable to us and is greatly appreciated, so with those words, perhaps we can close the formal evidence session for this evening, after three video conferences that have helped to inform our inquiry. Thank you very much. The public session is now closed.
National parliaments in the EU framework

1. Why should national parliaments have a role in the EU framework?

The national parliaments (NP) have assumed a well established “double” role in the EU constitutional framework (at national and directly at EU level), which results from the combination of the EU Treaties, the National Constitutions and the principles developed by the Court of Justice and national constitutional courts.

The Treaty of Lisbon has expressly recognized such a double role the national parliaments in the European constitutional architecture, as a source of legitimacy together with the European Parliament (EP).

On the one hand, Article 10 TEU – which states that “the functioning of the Union shall be founded on representative democracy” – clarifies that citizens are “directly represented at Union level in the European Parliament” while Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.

On the other hand, Article 12 TEU recognizes the contribution of NP "to the proper functioning of the Union", recalling the provisions in that Treaty as well as in the Protocols which confer upon NP specific powers to intervene directly in European decision making.

By performing such tasks National Parliaments are in the best position for ensuring that EU policy shaping and decision making take into account the interests as well as the social and economic situation in their own countries.

What role should national parliaments play in a) shaping, and b) scrutinising, EU decision making? In answering this question you may wish to consider:

a. Is there widespread agreement on what this role should be?

b. Do national parliaments have access to sufficient information and the requisite influence at an EU level to play the role that you suggest? Whose responsibility is it to ensure that they have the information they need?

The Italian Chamber is aware that there is no widespread agreement - at a political and institutional level as well as among scholars - about the role of the National Parliaments.

From the Chamber’s view the National Parliaments can better perform their role and exploit their potential if they primarily contribute in shaping the substance of the EU policies and decision. To this end NP should be involved in defining the EU political priorities and objectives at a very early stage of the EU policy-making and decisions-making processes. This requires a more systematic and effective use of the general scrutiny (including the preparation of the European Council), of the political dialogue (especially in the pre-
Camera dei Deputati, Italy—Written evidence

legislative stage) and of the interparliamentary cooperation (by means of exchange of views with the representatives of EU Institutions).

For what concerns specifically the scrutiny and the political dialogue on draft legislative acts NP should focus on a better impact assessment of the EU draft legislation. To this end the initiatives taken by the EP in this field can be a good practice.

Conversely NP should not act merely as “watchdog” of the national competences against the EU legislative action and therefore should not consider the subsidiarity check as a priority.

In addition the Italian Chamber believes that National Parliaments, as representative Institutions should:

- reduce the gap between the EU and the citizens, by contributing to explain the goals, the results and the advantages of the European integration,

- promote a closer and enhanced EU integration in accordance to a federal approach;

Most National Parliament have already got sufficient information in order to fully perform their role. However it would be essential to improve the information flows – especially from the Governments - about the works of the “trialogues”, within the legislative procedure, as well as on the preparation of the European Council and EuroSummit.

Formal role of national parliaments

2. How is the formal role of national parliaments under the Treaties working in practice? In answering this question you may wish to consider:

a. What impact have the Maastricht, Amsterdam and Lisbon Treaties had on interactions between national parliaments and EU institutions?

b. What is your assessment of the existing yellow and orange card procedures? Are national parliaments making good use of these?

c. Is there a well-developed, common understanding of subsidiarity. If not, is there a need to develop one?

d. How effectively is proportionality scrutinised by national parliaments?

The Lisbon Treaty – as referred above - has recognized a dual role of the National Parliaments in the EU constitutional architecture (both at national level and directly at EU level).

The new powers conferred by the Treaty to the NP have promoted a dramatic increase in the EU-related activities of most assemblies (including the general scrutiny and the political dialogue).

This is an important result as it contributed to raise the awarennes of the EU in the political debate and policy making at national level. However a lot has to be done for allowing the National parliament to influence effectively the EU policy shaping and decision-making (see above).
The NP are mostly making a good use of the yellow and orange card procedures as a tool for increasing their influence on the EU decision-making instead of as an instrument for blocking the EU legislative initiatives.

Indeed most NP seem to adopt a broad interpretation of the EWS in order to raise important political issues in accordance to their role of political Institutions.

Therefore there is no shared understanding of the goals and of the scope of the EWS (some parliaments issue reasoned opinion based also on breaches of the legal basis; some other also on substantive or proportionality arguments; a few Parliaments tend to assess (strictly) the legal compliance of draft legislative act with subsidiarity).

The lack of a common understanding seems not to be a problem given the political and “subjective” nature of the EWS.

Within this framework, the legal assessment and the political consideration of principles of subsidiarity and proportionality are based on several common elements and are therefore strictly related. At the same time proportionality is linked even more closely with the assessment of the impact of the EU draft legislation on the national legal, economic and social system.

Therefore, the EU Affairs Committee of the Italian Chamber separates the outcome of the assessment of the two principles; it issues – as a rule – an opinion on proportionality together with the substantive aspects of a EU Draft legislative act within the framework of the general scrutiny and the political dialogue.

To this end the Committee follows such criteria:

- subsidiarity concerns the actual existence of preconditions for exercising (non exclusive) EU competences (if the EU can act and on which aspects of the policy field at stake).

- proportionality concerns the choice of the tools and potential impact of the EU action at national level (how the EU acts given the objective of its action).

e. Should national parliaments have a greater, or different, role in the development and scrutiny of EU legislation?

As referred above, National Parliaments can play a greater role if they perform more effectively the tasks and the rights already conferred by the Treaty and by the internal rules (see answer 2).

Dialogue and scrutiny of EU policies

3. What is your assessment of the level and quality of engagement between EU institutions and national parliaments, and between national parliaments? We invite you to offer specific examples. In answering this question you may wish to consider:

a. What assessment do you make of the adequacy of the level of dialogue between the Commission and national parliaments regarding legislative proposals? What influence, if any, do national parliament opinions have on the legislative process?
The political dialogue has promoted an impressive increase in the relations between the National Parliaments and the Commission. The quality of the dialogue should be significantly improved. In particular:

- the EC replies to the NP opinions should be more timely and focused on the argument raised by the NP. In addition the European Commissioners during their visits to the NP should be open to a more effective and outspoken exchange of views, also with reference to specific legislative proposals;

- the EC should give an overall feedback and assessment of the impact of NP opinions on the decision-making process, possibly considering some significant cases;

- a greater use of video conferencing with Commissioners should also be made.

b. How effective is engagement between national parliaments and the European Parliament? Could it be improved?

The dialogue between the European Parliament and national parliaments should be more concrete, by giving more visibility to the opinions expressed by the latter during consideration of EU draft legislation and documents.

To this end – as proposed in a letter sent in 2011 by (the previous) Speaker of the Italian Chamber, Mr. Fini, to Martin Schulz, President of the European Parliament - a brief overview of the remarks and observations made by national parliaments - pertaining to the substantive aspects of draft legislation and documents, and not only to those pertaining to breaches of the subsidiarity principle – should be included into the reports that the Committees of the European Parliament prepare for consideration in the Plenary. The opinions adopted by national parliaments would therefore become a significant element in the pre-legislative activities carried out by the European Parliament.

c. What effect are procedural trends, such as increased agreement on legislation at first reading, having on the ability of national parliaments to scrutinise EU decision making?

The first reading agreement can significantly affect the ability of NP to scrutinise timely and effectively the EU decision-making. Therefore NP should be provided by their respective Government with timely and regular information on the negotiating mandates conferred as well as on the works of the trialogues (in Italy a specific provision of LAW 234/2012 binds the Government to forward to the Chambers the reports/memorandum of the Permanent Representation to the EU concerning, among others, the trialogues).

d. What should be the role of COSAC (the Conference of Parliamentary Committees for Union Affairs)? Does it require any changes to make it more effective?

There is no need to formal changes to the role of COSAC as established in Protocol n. 1 and in the COSAC Rules of procedures. COSAC ought to better perform its current tasks by means of a more effective organization of its meetings. In particular COSAC should:

a) develop further the exchange of information and best practices regarding:

- the EU scrutiny procedures and practices;

- the criteria, methods and tools for assessment of the subsidiarity principles;
b) restrict its agenda on the main priorities and political strategies of the institutions of the European Union, examining the general orientations of the EU at an early stage. Conversely the COSAC agenda should not include items concerning sectorial policies and EU proposals, which are considered in other interparliamentary meetings. This could make possible to develop a real debate during the COSAC meetings by granting longer speaking times;

c) to achieve this goal, as expressly stated in the conclusions of the COSAC meeting in Madrid, the COSAC meeting in the first half of the year would have to focus on the European Commission's annual political strategy, and where possible, focus on the European Commission's work programme in the second half of the year.

The Italian Chamber thinks that COSAC (or its secretariat) should not be conferred any power to “coordinate” the monitoring of subsidiarity by national parliaments, in order to make it easier to reach the thresholds set for the early warning mechanism. This would be in contradiction with the conferral of the relevant responsibilities to the individual parliaments, which exercise them in accordance with their own procedures and powers. The Lisbon Treaty, moreover, gives no specific powers to COSAC over subsidiarity, having eliminated all previously existing references.

e. What is your assessment of other mechanisms (such as Joint Parliamentary Meetings, Joint Committee Meetings and IPEX) for co-operation between national parliaments and EU institutions; and should any other mechanisms be established?

There is no need to establish any new cooperation fora, but rather a more systematic and effective use of the existing instruments, namely those for exchanging information and assessments between Parliaments. To this end the Chamber suggests that:

- all the interparliamentary meetings (including COSAC) have a restricted agenda, including specific legislative proposals or issues, to be debated with the relevant European Commissioner and representative of the Council Presidency;

- it should be avoided any duplication in the agenda of the COSAC and of the meetings of sectorial committees as well as of the JPM and JCM. To this end the EUSC Troika, the EP and the relevant Presidency Parliaments should ensure a better coordination and planning of the Interparliamentary meetings;

- each meeting should be better prepared ex ante, by means of background notes, contributions and questionnaires;

- the full potential of IPEX must be exploited, ensuring that each Assembly provides timely information on their activities, accompanied by a summary or a translation in English or French, at least as far as the most important decisions are concerned. On the basis of the data uploaded in the IPEX website, the representatives in Brussels and the liaison officers could ensure a complementary exchange of information, particularly on informal aspects;

- it would also be useful to exploit all the possibilities offered by technological innovations in order to strengthen dialogue between Parliaments, beginning with teleconferencing.

Capacity of national parliaments
4. How effective are national parliaments at engaging with European affairs? In answering this question you may wish to consider:

a. Are national parliamentarians sufficiently engaged with detailed European issues? Are national parliaments as effective at political dialogue with EU institutions as they are at holding their own governments to account?

National Parliamentarians are not yet sufficiently engaged in detailed European issues even when they have a strong economic or social impact. In particular, the members of the sectoral committees should be more aware of the importance of a timely and effective scrutiny of the draft legislation and of prelegislative documents. As referred above NP should carry out impact assessment of the most important EU draft legislative acts.

The political dialogue has been up to now less effective of the EU parliamentary scrutiny at national level. This is a consequence of the fact that the scrutiny on its own Government is the most direct, important and effective channel the National Parliaments have for influencing the EU decision-making. In the Chamber’s view the political dialogue is a tool for enhancing the effectiveness of the political orientations adopted within the framework of the general scrutiny.

b. Can you give specific examples of Member States that are good at building co-operation and co-ordination between national parliaments? What do they do well? Should other countries learn lessons from this good practice?

c. Is there political will, and resource, for increased interparliamentary co-operation?

As referred above, the Italian Chamber considers that a closer interparliamentary cooperation should be developed within the framework of existing fora and tools (see also answer 3 e)). It is essential that the EP is included – on equal footing - in all the cooperation initiatives in compliance with Art. 9 of protocol 1, which states that “The European Parliament and national Parliaments shall together determine the organization and promotion of effective and regular interparliamentary cooperation within the Union”.

The Chamber has always aimed at improving the interparliamentary cooperation in order to enhance the role of each NP, according to its respective procedures and practices, by improving the exchange of information, views and best practices. Conversely, the Chamber has opposed any attempt to confer to new or existing interparliamentary fora or bodies the competence to express “collective” positions of the National Parliaments.

d. What role does the network of national parliament representatives in Brussels play? Should the network be further developed?

The NP Representatives in Brussels give an important contribution to the day by day (informal) exchange of information among the NP and the European Parliament, in accordance to the Guidelines on interparliamentary cooperation in the EU. There is no need to change or further formalize such role.

Other possible changes

5. In what other ways should the role of national parliaments in the European Union be changed or enhanced? Which of these suggestions would require treaty change and which
would not? In answering these questions you may wish to consider whether there are any specific policy areas (such as financial and economic policy) which are particularly relevant.

The priority for NP should be to fully exploit the potential of the existing tools at national and EU level. An enhancement of the role of the NP should be be considered within the framework of a revision of the Treaties aimed at achieving a political integration according to a federal approach.

25 September 2013
National Parliaments (NPs) are the main institutions for holding the European Council to account. Although the European Commission (EC) is accountable to the European Parliament (EP), the Council is not under the control of any political institution other than the NPs. Besides, the Council has increased its activities in recent years and, in particular since the economic crisis (2008 onwards), it has taken decisions on matters of huge relevance for the NPs and their constituents (Wessels and Rozenberg 2013). The involvement of NPs in EU affairs is necessary, therefore, to ensure and increase the democratic legitimacy of the EU. Most tasks of the European NPs are focused on scrutinising legislation rather than having a legislative role. For that reason, therefore, their task at EU level should be limited to scrutinising EU policies rather than shaping actual EU decisions. Due to the tight timetables of MPs and a lack of expertise, any other, more legislative, role for NPs in the EU is pragmatically not realistic.

Although most scholars consider the increased role for the NPs as a logical step in the EU integration process, academic literature regarding the role of NPs in the EU consists of different and often opposing theories. Many scholars are supportive of the new provisions in the Lisbon Treaty and consider them a positive step towards building more democratic legitimacy in the EU (Cooper 2006, Yevgenyeva 2009). Others, however, doubt whether the new provisions regarding the new powers of the NPs will actually work in practice, because of the tight timetable in place and the full domestic agendas of MPs (Raunio 2007, Dougan 2008). In recent years, scholars have become increasingly positive about the role of NPs in the EU and they are often described as active players that have used their institutional powers to control and influence the positions of national governments (Winzen 2012, Auel and Raunio 2012, Kiiver 2012).

The levels of control and influence vary considerably across parliaments within the EU. However, since 2006, the EC informs NPs directly on new legislative proposals. This direct communication has improved and equalized access to information for all NPs in the EU. Furthermore, the Lisbon Treaty has formalized this direct transfer of information. Although NPs still depend on their own governments for other types of information regarding EU policy, (e.g. governmental memoranda), the information gap has significantly decreased since they all now receive new proposals directly from Brussels.

2. The Formal Role of National Parliaments

Although it is very hard to measure the substantive impact of the formal roles played by NPs, as laid down in the several EU Treaties, one can argue that, informally, the new rules regarding the roles of NPs have increased NPs’ awareness of EU decision-making. For example, the Lisbon Treaty has institutionalized inter-parliamentary cooperation, which helps NPs to get insight into policy areas and to increase their expertise. MPs are increasingly pushing cooperation within COSAC in the directions that they consider most useful (Bengtson 2007). In addition, having access to reasoned opinions, which other NPs have submitted to the EC on new EU policies, can act as a stimulus to follow their example. In other words, inter-parliamentary cooperation can work as a catalyst to increase efforts to
influence EU policies, particularly for those NPs with weaker control and influence mechanisms (Kiiver 2012).

Another positive example of NPs learning from each other is the NPs in the new member states, which have all copied the famous and strong mandating model of European scrutiny of the Danish Folketing. There are few reasons to expect that the current Article 12 TEU and the Early Warning System (EWS) will lead to many ‘yellow cards’\(^\text{171}\). However, it is likely that the EWS might indirectly increase NPs’ influence. Even though the EWS is voluntary, NPs do have a more active role in controlling the EC, which ultimately could have a positive impact on the democratic legitimacy of the EU. The greater the awareness of NPs about this new mechanism and its impact, the more they will use this, and consequently the stronger their levels of influence will be.

Even though the principle of subsidiarity has been developed since the Treaty of Maastricht (1992), NPs still interpret the principle differently. Researchers, however, have established several clusters of arguments in which they agree that there is no justification for EU action (Kiiver 2012). Furthermore, based upon COSAC meeting documents, one can conclude that a majority of NPs consider not only the principle of subsidiarity but also the principle of proportionality when they scrutinise EU legislative proposals (COSAC 18th Bi-Annual Report).

Different EU barometers have shown a decline in trust in EU affairs and an increase in citizens’ feeling that the EU is too distant from them. Scholars generally accept that involving NPs in EU affairs contributes to the democratic legitimacy of the EU and might eventually lead to citizens’ increased awareness and support of the EU, as they feel better represented by their own NPs. However, I do believe that the current role as outlined in Lisbon Treaty suffices in terms of involving NPs, because increasing their role any further would not be realistic, taking into account the limited resources of many NPs. The NPs are responsible for holding their governments to account. With regard to controlling and authorizing the EC, that role should stay with the EP, which has more specialist expertise for dealing with EU dossiers. As Kiiver rightly points out: ‘we can’t expect that parliaments play a role at EU level, which they don’t even play at home’ (Kiiver 2012).

Rather than increasing NPs’ powers in EU decision-making, which would eventually paralyze EU decision-making, the most important and necessary change to the Treaty is to increase transparency within the Council. This would allow NPs to fulfill their scrutiny tasks properly. Despite changes that have taken place regarding the openness of EU legislative Council meetings, for example, many Council discussions still take place behind closed doors.

3. **Dialogue and Scrutiny of EU Policies**

The Lisbon Treaty introduced several measures to improve NPs’ influence on EU affairs via both the EC (with the EWS) and inter-parliamentary cooperation (IPC). Unfortunately, to date, there is little empirical evidence about the actual amount of IPC between NPs, because of the often informal character of the IPC. Many meetings are not organized through the NP, or by its European Affairs Committee (EAC), but rather between different party groups to discuss issues of cross-cutting interests. These types of meetings are of particular significance

\(^{171}\) So far, there has only been one ‘Yellow Card’, which was submitted after the EC proposal regarding the Right for Collective Action (better known as the Monti II proposal (2012)).
for opposition parties, as they often have easier access to information from other NPs, or from their sister-party represented in a neighbouring NP, rather than from their own government (Miklin 2013).

The exchange of information via COSAC has improved, however, mainly because most EACs now publicize their work on the internet. The IPEX is a good place for this. Again, the publication of reasoned opinions by NPs on this joint parliamentary website is one way for NPs to learn from each other, and it works as a catalyst for generating more reasoned opinions as well. In other words, horizontal cooperation between NPs has improved and has added value. Most NPs use IPEX for either looking at other reasoned opinions already issued or for getting help in drafting their own reasoned opinion (19th Bi-Annual Report COSAC).

Whereas COSAC consists mainly of the exchange of information and experience, several NPs have indicated that it would be even more beneficial if they would organize specialized working groups, so that NPs could work constructively together (18th Bi-Annual Report COSAC).

Vertical cooperation between NPs and the EP, however, has been more rigid and limited, mainly due to practical reasons like the full agendas of both MPs and MEPs. While information sharing between NPs can be useful, as they approach an issue from the same perspective, information from the EP is often identical to that of their national ministries or other EU Institutions (Raunio 2009).

The levels of contact between NPs and the EC varies between NPs, but in general, most NPs are satisfied with the amount of contact that they have with the EC, although some feel it should be better adapted to each NP’s need (18th Bi-Annual Report COSAC). However, most NPs are of the opinion that EC responses to NPs’ reasoned opinions are often in the form of standard letters, and they think that these should be focused more on the content of each individual reasoned opinion.

4. Capacity of National Parliaments

The levels of influence of the NPs on EU affairs do not only depend on their formal scrutiny rights but can also depend on other factors, like the political agenda. In other words, although an NP might have legal powers to influence and control its government in EU affairs, it might only use them in instances where it feels that the issue at stake is directly impacting on their interest (or the interests of their constituents). NPs’ levels of influence and control are not only a matter of fact decided by their formal representative status, therefore, but they fluctuate depending on the importance of the topic.

Furthermore, some of the NPs with the strongest formal powers in EU affairs, such as the Scandinavian members, are actively involved in scrutinizing EU affairs via their governments, but less so using the new powers in the Lisbon Treaty, as they simply do not need to. The involvement of MPs in EU affairs depends therefore on different, mostly domestic factors (like formal rules, the involvement of specialized committees, or EU salience). However, in general, one can argue that NPs have become active players in the last decade (not necessarily as a result of the Lisbon Treaty, although some NPs changed their Rules of Procedure after the Lisbon Treaty came into force). This increase in activity can be seen in the huge increase in exchange of information between NPs in the field of subsidiarity.
scrutiny on the IPEX website or via the National Parliament Representatives based in Brussels (according to MPs this is one of the most useful sources of information) (17th Bi-Annual Report COSAC).

5. Other Possible Changes

Because of my current research in this field, I feel confident about arguing that Treaty changes will not necessarily lead to greater influence or control mechanisms for NPs. Their levels of influence depend mainly on their domestic institutional rights and the salience of the EU topic. Any further changes to increase NPs’ EU activities, therefore, should happen at national level, in either the national Constitutions or the Rules of Procedure of the NP.

27 September 2013
1. The idea of involving national parliaments in EU decision making is a direct corollary of EU integration and of the resulting delegation of certain important powers from the Member States to the Union. It is commonly thought that national parliaments need to intervene because the European Parliament has not adequately taken over the tasks that were taken away from national parliaments. This is the core of what many commentators refer to as the democratic deficit. Yet, in my view, since citizens are only marginally and often reluctantly asked for their opinion through referendums, national parliaments are essentially the principals of EU integration because their approval is requisite for the EU to change the fundamental rules on which it is based.

2. As long as this does not contravene EU law, national parliaments are entitled to act within the EU framework even where there is no explicit provision for that in the Treaties. In other words, the Treaties on which the EU is founded are permissive of domestic parliamentary action rather than restrictive of it. One such provision calls on national parliaments to “contribute actively to the good functioning of the Union”. Several years ago, your Lordships rightly questioned whether the EU may oblige national parliaments to act, which resulted in the removal of the imperative form “shall” from this EU provision. However, emphasis should be on making national parliamentary contribution an active, ongoing and constructive process rather than allowing it to turn passive, sporadic and reactionary. This is thus an enabling provision and this interpretation should be adopted by national parliaments across the Union, because it widens the scope of action that they could undertake. This does not mean that they must act, but that they may act if they deem it necessary and appropriate to safeguard the rights and values espoused by the citizens who elect them. The goal of Lisbon Treaty provisions on national parliaments is indeed to “enhance their ability to express their views on draft legislative acts of the European Union”.

3. This in turn does not mean that an unelected parliamentary chamber, such as the House of Lords, is less competent to have a say in EU affairs. On the contrary, your Lordships set an example of how scrutiny of EU decision making should be conducted. The legitimacy of the House of Lords’ participation in EU matters does not lie in its electoral mandate but in its expertise, impartiality, as well as incisive and detailed analyses of the substance of EU policies even when they are not applicable to the UK. House of Lords thus have an EU-wide relevance. There is little advantage in having a parliamentary chamber that is directly elected but is passive in scrutinizing EU action. In my opinion, the fact that the UK Government’s constitutional link with the House of Lords is weaker than with the House of Commons is precisely what enables their Lordships to issue bolder and more rigorous pronouncements in EU affairs that do not necessarily follow the Government’s line and this is beneficial for the overall democratic process in which the plurality of opinion enriches the debate. It is this communicative function of sparking public debate on EU decisions that the House of Lords

172 I deliberately do not refer to the phrase “transfer of sovereignty”, as this is a lengthy debate that more often than not has little impact on day-to-day EU policy making. The debate mostly springs up during the processes of ratification of changes in primary EU law. Once EU Treaties have properly entered into force, the fact that the Union exercises public power becomes more important than how and why this has happened.

173 Article 12 TEU (emphasis added).

174 Recital 2 to Preamble to Protocol on the role of national parliaments in the European Union, annexed to the Treaty of Lisbon.
performs so well.

4. There is widespread agreement that national parliaments ought to act as controllers of their governments’ EU policies. Although outright and direct control over EU institutions is not constitutionally possible under EU law beyond the early warning mechanism, there is an increasing consensus among scholars that direct links between domestic parliamentarians and EU institutions are advantageous for the EU’s democratic legitimacy and accountability. One example concerns the European Council. This institution is at the peak of the EU institutional pyramid, given its composition, leadership competence and crisis-resolving capacity. Yet the European Council does not render account to any EU institution. Their members, in most cases Prime Ministers, are only politically accountable to their domestic parliaments.175 The situation is similar with the Council of Ministers and their members. Thus, there are certain functions that, in the current EU constitutional setting, only national parliaments can perform and political accountability of the most powerful executive EU actors is key among them.

5. Moreover, national parliaments, as gatekeepers of EU integration, should consider themselves empowered to ensure that the EU only exercises those powers that have been conferred on it by the Member States. The early warning mechanism is insufficient in this regard, because it only covers the principle of subsidiarity, but not that of conferral.176 This mechanism only allows pronouncement on whether the EU should exercise the competence it possesses to act in a field where decision-making power is shared between the Member States and the Union. The early warning mechanism covers neither exclusive nor supporting or complementing EU competences. These loopholes are to some extent remedied by the Barroso Initiative, whose main drawback is that, unlike the early warning mechanism, it is of an informal and entirely non-binding nature.177

6. Another reason why national parliaments should act within the EU framework beyond the explicit Treaty provisions is that much EU evolution has occurred incrementally in the form of a long step-by-step process of integration. Many institutional and substantive developments are the result of informal practices, which are more difficult to detect, grasp and follow than developments based on formal Treaty provisions. National parliaments should be cognizant of this state of affairs and ensure that these evolutionary changes in the EU setup do not escape their scrutiny radars.

7. In general, national parliaments have access to sufficient information. It is the Commission’s duty under EU law to provide national parliaments directly with consultation documents (e.g. green and white papers and communications), instruments of legislative planning (such as annual policy strategies and legislative and work programmes), and draft legislative acts.178 Other types of draft EU initiatives shall be forwarded to national parliaments by the European Parliament or the Council. However, it may happen that an EU institution wishes to keep an EU document secret (e.g. a draft mandate for negotiating an international agreement which the Union intends to conclude with a third party), which can

178 Articles 1 and 2 of Protocol on the role of national parliaments in the European Union, annexed to the Treaty of Lisbon.
be achieved by applying internal confidentiality labeling rules.\textsuperscript{179} This is why responsibility for timely access to relevant EU-related information cannot lie merely with EU institutions. It is in practice shared between EU institutions, national governments and national parliaments themselves. It should be highlighted that a national parliament, or a chamber of it, may use EU law provisions that guarantee access to EU documents to initiate actions before the Court of Justice in cases when information has not been provided or when it has been provided belatedly. For example, the Subsidiarity Protocol obliges the Commission to supply national parliaments with detailed statements containing information on the financial impact, qualitative and quantitative characteristics, and financial or administrative burdens of any given legislative proposal.\textsuperscript{180} If the Commission does not do so, national parliaments may be precluded from conducting their subsidiarity compliance tests and, not least in case of far-reaching proposals, this may prompt them to request the Government to start a court proceeding at the EU level.\textsuperscript{181}

\textbf{Formal role of national parliaments}

8. The Constitutional and Lisbon Treaties have had the greatest impact on establishing direct links between EU institutions and national parliaments, insofar as the former’s failure prompted the Commission to start a political dialogue with national parliaments (so-called Barroso Initiative) and the latter gave birth to the early warning mechanism.

9. Yellow and orange card procedures that are applicable within the early warning mechanism encompass only subsidiarity monitoring. Subsidiarity is a basic EU principle that enables national parliaments to send reasoned opinions to EU institutions where they deem that the Union should not exercise its competence to act in a field where the right of legislative action belongs equally to the Member States and to the Union (shared competence). This is rather restrictive and all other elements of a draft proposal (legal basis, proportionality, political desirability, feasibility, substance) should be assessed within the framework of the Barroso Initiative.

10. The one yellow card that has so far been issued regarding the draft Monti II Regulation left a somewhat bitter aftertaste once the sense of victory subsided.\textsuperscript{182} Although the Commission withdrew its proposal, the reasoning it stated for doing so is rather telling. Withdrawal was chosen not because of the national parliaments’ reasoned opinions, but because the proposal would not win sufficient support in the Council.\textsuperscript{183} There is indeed a significant degree of correlation between the national parliaments’ opposition to the proposal and the likelihood of their respective governments’ casting a negative vote in the Council. However, what matters most is that the Commission was concerned with the Council more than with national parliaments. This is because the Council is an institution at the same level of governance (i.e. EU level), but also because the Commission seemingly still does not give sufficient weight to the views expressed by domestic parliamentarians. This


\textsuperscript{180} Article 5 of Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty of Lisbon.


\textsuperscript{182} See an account on this first yellow card in: Fabbrini, Federico and Granat, Katarzyna. "Yellow card, but no foul": The role of the national parliaments under the subsidiarity protocol and the Commission proposal for an EU regulation on the right to strike,” \textit{Common Market Law Review}, Vol. 50, No. 1, 2013: 115–144.

means that the early warning mechanism has not yet grown into a powerful tool for direct parliamentary input in EU decision-making processes.

11. Given the deficiencies of the Barroso Initiative (informality, non-binding character) and of the early warning mechanism (high thresholds, difficult coordination, the possibility for the Commission to proceed with the proposal despite parliamentary opposition after providing reasons for it), it seems most appropriate for national parliaments to focus on scrutinizing EU policy rather than merely on policing subsidiarity compliance. As direct representatives of the electorates of the Member States, national parliaments have the legitimacy and should issue policy recommendations based on strong legal and political arguments for their stances.

**Dialogue and scrutiny of EU policies**

12. On the whole, direct relations between EU institutions and national parliaments are still in their infancy, although the UK Parliament has maintained occasional relations with EU institutions since the accession. Most of the contact between the Commission and the European Parliament, on the one hand, and national parliaments, on the other, occurs informally and on a bilateral basis and this has both positive and negative consequences. The main advantage is that EU institutions are more likely to make concessions to national parliaments if such a concession is not made in the form of hard law and if it could be revoked swiftly and without much political cost. The other side of the coin is that informal commitments are not binding and that their implementation depends entirely on the goodwill of the institutions involved.

13. The Barroso Initiative has so far been effective in waking certain parliamentary chambers from dormancy and in provoking them to engage in EU affairs more actively than before. Such is, for instance, the case with the Portuguese Assembly, which was a rather passive scrutineer before the Barroso Initiative, but has since become the most active one within this framework. Thanks to the Barroso Initiative, Portuguese MPs had an incentive and a channel through which to employ the then newly acquired rights of participation in EU affairs, which were enacted in 2006, almost coincidentally with the onset of the Initiative. The key benefit of Barroso’s political dialogue is enhanced and early access to information on EU policy making. The impact of parliamentary opinions is marginal, however. Chiefly, national parliament opinions inform the Commission’s policy shaping process and supply the Commission with positions held by various domestic political forces, which this EU institution can utilize to its advantage when negotiating and bargaining with the Council.

14. Yet another direct linkage between national parliaments and EU institutions is secured through common political party membership or affiliation. A good example of it is set by the French Parliament, especially its Lower House – the National Assembly. When the EU was reforming the telecoms sector, French MPs embarked on intensive lobbying at the EU level along the party lines, urging MEPs from the same party to promote solutions in the European Parliament that would prevent outcomes that were contrary to their preferences.

15. My doctoral research has shown that the nature of the engagement between the European Parliament and national parliaments is variable and depends on the nature of the

---


EU decision scrutinized.\textsuperscript{186} Their cooperation will also depend on the prevailing political forces in the respective chambers. Two examples illustrate this. The first concerns the Services Directive and the second the establishment of the European External Action Service (EEAS). While there was a considerable agreement between the European Parliament and the French Parliament on the desirability of the draft Services Directive, both chambers of the UK Parliament were opposed to the European Parliament’s position. Conversely, in the case of the EEAS the French MPs and senators were mainly against the European Parliament’s incursion in the area of foreign affairs, whereas neither the House of Lords nor the House of Commons found that particularly alarming. When it comes to sources of information for scrutiny, all four chambers (the French National Assembly and the Senate and the UK House of Commons and the House of Lords) went beyond Government information and sought additional clarifications, insight and evidence on both EU dossiers directly from MEPs and occasionally from Commission officials. The only instance when there was no direct liaison with EU institutions was the House of Commons’ appraisal of the creation of the EEAS, when MPs relied only on the information provided by the Government. Therefore, direct liaison between national parliaments and EU institutions is fairly frequent despite the absence of provisions in the Treaties permitting this. Liaison is maintained informally and the contents of discussions depend to a great extent on the political party preferences held by the respective parliaments at the EU and domestic levels. Such liaison facilitates fruitful consultations on parliamentary positions, which are explained and discussed. Interparliamentary meetings are sometimes also venues for crafting strategies for joint action and lobbying.

16. Frequent agreement on EU legislation at first reading is encouraged by a joint declaration adopted by the European Parliament, the Council and the Commission in 2007. Among other things, this declaration states that “the institutions shall cooperate in good faith with a view to reconciling their positions as far as possible so that, wherever possible, acts can be adopted at first reading.”\textsuperscript{187} As your Lordships have duly noted in one of the reports, this puts pressure on the ability of national parliaments to perform scrutiny in a timely fashion.\textsuperscript{188} An advantage of it is that this may force parliamentarians to become more proactive and move their scrutiny activities further upstream if they are to have any meaningful say on draft EU proposals.

17. Current appraisals of COSAC depict it primarily as a forum for information exchange. Its principal legacy lies in having organised subsidiarity checks,\textsuperscript{189} which have set the stage for the early warning mechanism. Since COSAC meets only twice a year and due to the non-binding nature of the contributions that it may adopt for the attention of EU institutions, it is not a framework within which much influence can be brought to bear on the EU decision-making process. Lord Tordoff, once a regular participant in COSAC meetings, has cited the generality of debates, uncoordinated preparation of discussion topics and the diversity of positions adopted by national parliamentary delegations as the main shortcomings of


COSAC.\textsuperscript{190} Yet a particular added value of COSAC lies not only in aiding the establishment of contacts between parliamentarians but also in the publication of biannual reports and national parliament replies to comprehensive questionnaires on a variety of topics of immediate relevance for scrutiny. These reports are a valuable source of information on the operation of domestic scrutiny practices across the Member States, as they contain reflections by the persons directly involved in the scrutiny business. This allows an indirect exchange of good practices, benchmarking and peer learning.

**Capacity of national parliaments**

18. The current state of affairs is that national parliaments are more effective at holding their own governments to account than at political dialogue with EU institutions. This is a direct consequence of the existing constitutional arrangements at the EU and domestic levels. However, the fact that scrutiny rights are in place does not automatically mean that they are utilized in practice by all parliamentary chambers.\textsuperscript{191} For instance, while the Danish Parliament has no formal mandating power but applies it in practice, the Austrian Parliament does possess this power formally but does not apply it in practice. Therefore, the existence and use of scrutiny rights depends on the specific politico-constitutional setting of each given Member State and if improvements in this regard are desirable, much can be achieved by amending intra-institutional or inter-institutional rules or practices.

19. Given the limited political will among EU leaders for increasing interparliamentary cooperation on a formal footing, which was visible in the Lisbon Treaty negotiations, it is recommendable to develop this type of cooperation on an informal and bilateral basis whenever common interests are identified and whenever joint approaches can be agreed. Sectoral committee members and staff should exchange views, compare policy approaches, and assess the viability and desirability of draft EU acts. This means that interparliamentary cooperation need not be collective. Collectivity of action is only one method of participation in EU affairs and, due to constraints related to organisation and coordination, it is probably not the most effective one in substantive terms. This is why smaller-scale collaborative efforts in groups of interested parliamentarians across the Member States seem to be a better solution.

20. The network of national parliament representatives in Brussels could be helpful in this regard. In their own informal meetings, these representatives could establish which national parliaments and who of their members usually exhibit interest in given sectoral policies. Accordingly, informal cooperation groups could be created on topics of mutual interest. This can but need not be related to the early warning mechanism, which is a rather narrow mechanism for parliamentary pronouncement.

21. One other way to streamline the scrutiny of EU affairs is to improve the involvement of sectoral committees. These could appoint an officer among their midst to be in charge of following EU developments on a permanent basis and who would be in constant dialogue not only with the committee for EU affairs but also with relevant EU institutions. In some form, this is already a practice in the French National Assembly.

26 September 2013


The inter-parliamentary conference on Economic and Financial Governance

1. At its meeting from 22 to 24 April 2013 the Speakers’ Conference (the Presidents of all Parliaments in the European Union) decided to set up an inter-parliamentary conference on Economic and Financial Governance with the participation of all 28 national parliaments and the European Parliament.\(^{192}\) This decision was taken quietly, but the inter-parliamentary conference will come together for the first time in Vilnius from 16 to 18 October 2013.

2. This inter-parliamentary conference on Economic and Financial Governance is actually an old solution for a new problem (fiscal and economic policy coordination) and follows the characteristics of the “standard” inter-parliamentary conference. The decision did not have the ambition to be innovative, but rather to duplicate a model that has worked – while leaving ambiguity and without taking into account the specific necessities for fiscal and economic policy coordination. These ambiguities, however, pose a risk to the success of the whole conference and are a serious constraint to enhancing the role of national parliaments in the European Union.

Inter-parliamentary cooperation: Functions, opportunities and constraints

3. The most significant manifestation of inter-parliamentary cooperation are inter-parliamentary conferences where MPs from national parliaments and MEPs meet together in an organised and recurrent setting to discuss topics of common interest. An inter-parliamentary conference can fulfil four main functions:
   - to control decisions taken at the EU level,
   - to counter-weight the decline of national parliamentary sovereignty,
   - to find an institutional expression of political support and opposition,
   - to socialize MPs in order to Europeanize the control exercised at the national level that is highly nationally framed.

4. The idea to have a higher degree of parliamentary control in economic and financial governance emerged during the negotiations on the Treaty on Stability, Coordination and Governance (TSCG) in December 2011 and January 2012. Later, the main reports on the deepening of the Economic and Monetary Union (EMU) that were elaborated by EU institutions (European Council President, European Commission, and European Parliament) assessed possibilities of inter-parliamentary cooperation, and national parliaments drafted working papers and adopted reports. In order to establish an inter-parliamentary conference on Economic and Financial Governance, Protocol n°1 of the EU treaties and Article 13 TSCG provide a sufficient legal basis.\(^{193}\)

---


\(^{193}\) Article 13 of the TSCG: “As provided for in Title II of Protocol (No 1) on the role of national Parliaments in the European Union annexed to the European Union Treaties, the European Parliament and the national Parliaments of the Contracting Parties will together determine the organisation and promotion of a conference of representatives of the relevant committees of the European Parliament and representatives of the relevant committees of national Parliaments in order to discuss budgetary policies and other issues covered by this Treaty.”
The inter-parliamentary conference on Economic and Financial Governance: A missed opportunity?

5. The compromise of the Speakers’ Conference does not address the two most basic elements necessary for the smooth functioning of such a conference: a clear composition and a comprehensive definition of powers and competences.

6. First, the absence of a clear provision with respect to membership in the conference poses a serious threat to making this conference work. The reason behind the wording “[t]he composition and size of each delegation rests upon each Parliament” seems to be two-fold: The European Parliament might have difficulties to restrict itself to 16 MEPs when the conference takes place in Brussels and national parliaments of smaller member states might have difficulties to mobilize 6 MPs to participate in the conference. But the following questions have remained unanswered:

- How can a conference function internally without clearly codified membership? What will be the impact on the functioning if national parliaments can send significantly different numbers of MPs?
- How can members socialize without stable participation?
- In addition to that, the absence of a limit to the size of the delegation has an impact on MPs’ and MEPs’ motivation: Is participation in the conference exclusive enough?

It is still possible to clarify these questions – and a certain degree of flexibility obviously also has its advantages. The conference could agree to draft Rules of Procedure that codify the composition at its first meeting in October 2013. The objective should be to have a smoothly working conference with a stable and equal composition for the 2014 European Semester cycle.

7. Second, the Speakers’ decision does not specify the competences of the Conference. The conference will not have decision-making powers, but be a place to “discuss” the issues covered by the TSCG in a setting that brings together national parliaments and the European Parliament, as indicated in Article 13 TSCG. With respect to the European Semester, the conclusions state that national parliaments “should be adequately involved in shaping and implementing the framework for stronger economic, budgetary and fiscal policy reforms in their countries and in bringing the EU dimension into national politics.” Hence their first demand is to exercise real influence in the context of the European Semester. It remains to be seen how this can be put into practice; the conference will have some room to define its area of action.

8. Furthermore the new inter-parliamentary conference will replace “the meetings of the Chairpersons of relevant Committees”, probably the meetings of the chairpersons of finance committees. While this is in line with the Conclusions of a previous Speakers’ Conference (Stockholm 2010) and the procedure followed in the case of the inter-parliamentary for CFSP and CSDP, a transition period might have been useful instead of immediately replacing a meeting that works. There are obviously matters that are better treated in a smaller committee-like setting with 30 persons around the table than in an assembly with perhaps 200 MEPs and MPs.

Our recommendations for making the Inter-parliamentary Conference work

9. Establishing an inter-parliamentary conference is a unique opportunity to ensure a higher level of parliamentary control of fiscal and economic policies and decisions taken at the EU level, to counter-weight the decline of national parliamentary sovereignty on budgets.
Valentin Kreilinger, Jacques Delors Institute and Olivier Rozenberg, Centre d’études européennes, Sciences Po (Paris) — Written evidence

(and the restriction of possible policy choices taken by parliamentary majorities in national parliaments), to find an institutional expression of political support and opposition for the EU policy decisions in the context of budgetary and economic coordination, and to socialize MPs in order to Europeanize the control exercised at the national level that is highly nationally framed.

10. **Composition.** The Conclusions of the Speakers’ Conference as well as the working paper issued after the meeting of the Presidents of the Parliaments of the six founding member states that took place in Luxembourg on 11 January 2013[^194] make reference to the model of the Inter-Parliamentary Conference for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP). This conference is composed of 6 MPs per member state and 16 MEPs, for a total number of 178 parliamentarians. This model appears indeed well-fitted for having in each delegation representatives from all major political parties as well as both specialized MPs (like Budget committee chairs) and some less specialized able to develop new perspectives on budget issues.

11. **Competences.** The Inter-Parliamentary Conference should at least be allowed to adopt non-binding conclusions. For instance this has been the case for the Conference of Parliamentary Committees for Union Affairs of Parliaments of the EU (COSAC) with no damage for the EU. Apart from this point, it does not seem central to us to ask for more firm competences for the conference. First, because it is highly unlikely that the European Parliament (as well as some national parliaments) accept that. Second, because the key activity of such conference lies in its capacity to implement a genuine accountability mechanism rather than taking binding decisions. European decision-makers, from the Presidents of the European Council and the Commission, the Vice-President of the Commission and Commissioner for Economic and Monetary Affairs as well as the Chairperson of the Eurogroup to Chancellor Merkel, should be publicly heard, questioned and even criticized by the conference but it does not make sense to expect the conference to take decisions instead of those leaders.

12. **Frequency of the meetings.** The conference could meet shortly before European Council meetings in order to allow the Conference to give input on the agenda of the summits. The rather disappointing example of the COSAC indicates how crucial it is to position such meetings in global agenda of the EU. Such timing would also constitute a strong incentive for MPs to participate actively to the conference.

13. **Differentiation.** If we are rather critical about the decisions taken in Nicosia, we support yet the idea to give the same right to any participant MPs from any member states. The Nicosia compromise has indeed avoided any differentiation among the national parliaments. MPs from all 28 national parliaments, regardless whether they have the euro as their currency, are expected to join the euro, have an opt-out, have signed, ratified or not taken part in the TSCG. Since the inter-parliamentary conference does not restrict itself to fiscal and economic policy coordination within the Eurozone, but covers “Economic and Financial Governance” hence possibly including issues of the governance of the Single Market and sensitive subjects like the banking union, this is a sound decision that avoids a split between Member states that are ‘in’, ‘pre-in’ and ‘out’ with respect to the 17/18-member Eurozone.

14. Legal status. Those recommendations do not require treaty changes which is a good thing. Indeed, the recent debates over the reform of the governance of the EU and the role for national parliaments – particularly in the UK – indicates that there is a real risk of opening Pandora’s box. Some proposals have been made to give national parliaments, individually or collectively, a “red card” on EU legislative proposals or even the right to suspend EU law. Since we believe that those ideas constitute a serious threat for the viability of the EU, we see the advantages of both avoiding treaty changes and developing a collective and robust system of parliamentary cooperation in the field of Economic and Financial Governance.

26 September 2013
1. There isn’t a question why should NP have a role, but if they have this role and how efficient they use their right in the EU framework.

As a parliament who gives mandate to the government to represent countries interests in the EU, we strongly believe, that one of the most important task for the NP is to hold its government to account on all EU issues. Of course NP role should not and can’t restrict itself only to the scrutiny of the government if the EU legislation process is already in the pipeline. NP should be also a very active player in putting forward the ideas for better EU legislation and better EU policies, as NP are the ones, who see the needs of the Europe’s citizens in practice.

One of the biggest problems of the EU has always been too many opinions and too many ways of interpreting and seeing policies and laws. However this is the fascination of the democracy – to find the compromise and balance. There are many ideas floating around - the NP as the 2 chamber of the EP; deeper involvement into the political dialog with the EC and others. We believe that first on the EU level - we need to use all the right given in the treaties and on national level – keep our governments accountable to the parliaments.

The access to the information differs from each country to country and from each National parliament to National parliament. In our case, we have open access to the governments EU database, as also to the Councils database. Of course we can always wish for more, but in Latvian case the information exchange between parliament and government is sufficient.

Nevertheless the EC should be more open and available, especially organising more often visits of their experts and commissionaire’s to the capitals and parliaments. Also the new technologies can be used more frequently to enhance the dialog between the EU institutions and National parliaments (for example the Videoconferences)

2. In our parliament we feel that Subsidiarity checks have not added real power to national parliaments in respect to the EU decision making. This is partially due to the nature of the model of scrutiny over EU issues. We focus on scrutinizing activities of the national government. Subsidiarity checks of the new EU draft legislation envisaged by the Treaty of Lisbon do not completely resolve this problem, because we perceive subsidiarity checks as are more technical process.

However we must agree that in course of time, several processes have improved significantly, for example, parliamentary cooperation in cases when there is reasonable doubts about compliance with the subsidiarity principle.

At the same time, equal developments in this area at the EU level are not felt – meaning that in the Monti II case we expected European Commission to give reasoning why EC believes that Monti II was in line with principle of subsidiarity.

There is a lack of justification as to why despite numerous reasoned opinions provided by national parliaments, the European Commission still believes that in this case the principle of
subsidarity was observed. As a result, the “yellow card” mechanism was put into practice, but the outcome cannot be regarded as a trustworthy precedent because it does not facilitate understanding of the subsidiarity principle.

3. As indicated in the answers to the first question, the initiative from the 2006, when the EC started its dialog with the National parliaments has developed considerably. However, the dialog could be more intense especially from the EC side.

We welcome also the recent involvement of the EP in closer dialog with the National parliaments, especially inviting the NP to participate in the EP committee meetings on the topics relevant to the interest of many NP. Nevertheless, we would appreciate also greater feedback from those meetings, e.g., seeing that the EP takes notice and uses the NP views and ideas for the concrete legislative act or policy planning document.

On the COSAC
- We believe that COSAC must play a key role into the future discussion about the possible treaty changes, as there is crucial need to guarantee democratic legitimacy and accountability - what can be done only through the real involvement of the National Parliaments.
- National parliaments have to be a linking element between the national interests and a common vision of Europe.
- Following of the initiative launched by the Danish parliament, we have already started a discussion on the future of the European Union. We support inclusion of these issues on the agenda of COSAC because COSAC can be one of the platforms where discussions on this subject should be held on the EU level.
- Cosac can serve as a platform for more deepened discussions on many crucial issues for the EU, if there is wish to do so from the members of the COSAC. COSAC can be used as the practical experience on scrutiny matters exchange point, but also as a political platform for interesting and fruitful discussions among its members.
- Any formalisation brings more bureaucracy. Though we need inter-parliamentary bodies, to influence the EU decision making. However we always need to leave a room for manoeuvre and have open possibilities to convene ad-hoc meetings between NP or between NP and EP. NP might be encouraged to invite more often the EP members to the NP, to receive their input and hear their feedback on many EU policy areas.

4. The EU scrutiny systems among EU member states are different. Mainly dividing into two models – mandate giving and document based. In Latvia we do have the model more common in Baltic and Nordic countries – the mandate giving model, which automatically means very in-depth involvement of the National parliament in the EU matters. Recently we have also witnessed that in the mandate giving models there is also growing tendency to involve in direct dialog with the EU institutions, mainly EC. (In our case, during the last 2-3 years we have developed the practise regularly to visit the EC and EP to inform them about the LV positions, and also to receive direct information from the EC and the second co-legislator – the EP.)
Even the Fiscal compact has indicated the need for more inter-parliamentary cooperation rather than less. Indeed, there is the will to continue and to foster the relationships among NP and between NP and EP.

For the efficient and fruitful inter-parliamentary relations between NP themselves and also between NP and EP, the NP representatives in Brussels is the crucial key instrument. If the governments have their channels and links in the council between all the MS, the NP representative’s network is a small, but very effective and useful tool in the hands of the NP. The information exchange on policies, different practices and also tactics are only some of the tasks, what are performed with the help of NP representatives. Their direct contacts and links to the EU institutions are even more valuable to use for the efficient NP involvement in to the EU matters. Also the EU institutions more and more are using the NP representatives as the first stop to convey the messages to the NP. No doubt, the NP Representatives network in the future could develop for a valuable and useful instrument in the hands of NP.

November 2013
I welcome your Committee's decision to hold an inquiry into the role of national parliaments in the European Union. In this written evidence I have focused on addressing the questions posed by the Committee. The Government is clear that national parliaments are the main source of democratic legitimacy and accountability in the EU and the most effective way that the voices of people across the EU can be heard.

The Committee asks why national parliaments should have a role in the EU framework. The Government's answer is simple: people in Europe identify with their national parliaments more than with EU institutions. They understand how to make their voice heard through national parliaments. National parliaments are closer to, and understand better, the concerns of citizens. And the UK Parliament, like others, has significant expertise to bring to bear.

The Government supports national parliaments' efforts to play a fuller role in the EU's functioning, including through ongoing work to enhance their coordination and direct interaction with EU institutions. In support of this, the Government will continue to discuss with our EU partners a number of specific proposals to enhance national parliaments' role, including through changes to processes in Brussels such as an enhanced "yellow card" and considering further a "red card," as set out in more detail in the enclosed.

In addition, the Government looks forward to working with Parliament on Improvements to the UK's scrutiny procedures. We are keen to streamline the scrutiny process where possible to ensure that it focuses on the most important issues. This could include exempting less significant documents from scrutiny. And we want to look at further mainstreaming EU business, for example by closer work between the Parliamentary Scrutiny Committees in both Houses and Departmental Select Committees.

1. The Government is clear that national parliaments are the main source of democratic legitimacy and accountability in the EU and the most effective way that the voices of people across the EU can be heard. I welcome the Committee's inquiry as a contribution to the debate on this important issue in the UK and across Europe, and I look forward to working with the Committee on this.

2. There is widespread agreement that the EU faces, and indeed has always faced, a significant democratic accountability challenge. Polling by Eurobarometer amongst others makes this clear: for the first time since Eurobarometer started their surveys in 1978, more respondents across the EU are today dissatisfied with the way democracy works in the EU than are satisfied. Pew Research published in May 195 provided a further warning of a sharp fall in support for the EU across the continent: eight points lower in Germany at 60 percent; two points lower in Britain at 43 percent; 19 points lower in France at 41 percent. A recent YouGov Deutschland poll testing trust in 13 domestic and European institutions in Germany found the least faith in the European Parliament and European Commission (33% and 30% respectively). 196 As I have said previously, this matters because stable democracies rely on citizens accepting the rules as effective and legitimate, and feeling like they have a stake in how decisions are made.

195 http://www.pewglobal.org/2013/05/13/the-new-sick-man-of-europe-the-european-union/
196 http://www.openeurope.org.uk/Content/Documents/PDFs/130917briefingpoll2.pdf
For the Government, there are two ways to address this challenge: to increase the role of national democracies through the Council and European Council and for national parliaments to play a greater and more effective role in the EU’s functioning. I focus on the latter in this submission.

4. The Committee asks why national parliaments should have a role in the EU framework. The Government’s answer is simple: people in Europe identify with their national parliaments more than with EU institutions. They understand how to make their voice heard through national parliaments. National parliaments are closer to, and understand better, the concerns of citizens. And the UK Parliament, like others, has significant expertise to bring to bear.

5. Linked to this, the Committee rightly identified as key to this question whether there is widespread agreement on what national parliaments’ role should be. The Treaties’ existing provisions demonstrate that there is agreement that national parliaments should “contribute actively to the good functioning of the Union” – see Article 12 of the Treaty on European Union (TEU) and Protocols 1 and 2 of the Treaties. These existing provisions provide for national parliaments to be sent consultation documents and draft legislation; to monitor respect for the subsidiarity principle including by issuing reasoned opinions on whether draft legislation complies with this principle and, through their Member State, challenging EU legislation in breach of the subsidiarity principle at the Court of Justice; play a particular role in relation to the area of freedom, security and justice; play a role in Treaty revision; are notified of applications for accession; receive the Court of Auditors annual report; and, take part in inter-parliamentary coordination.

6. The democratic deficit is a genuine concern across Member States and within the EU institutions. Many agree on the importance of giving national parliaments a greater and more effective role in the EU’s functioning; Conclusions at the December 2012 European Council are one such example. But Member States and the institutions do place different emphasis on how best to tackle the issue across the board, including on what role national parliaments should take.

7. The Government is taking forward discussions with EU partners on specific proposals to enhance this role. We want to make more effective use of the existing yellow and orange cards and identify earlier Commission proposals which raise subsidiarity concerns. In addition, we want to make it easier for national parliaments to challenge EU legislation. For example, we should consider strengthening the existing yellow card process (giving parliaments more time, lowering the threshold of the number of parliaments required to trigger a yellow card, and extending the scope of the card e.g. to cover proportionality).

197 Paragraph 14 of the December 2012 European Council Conclusions stated that:
“Throughout the process, the general objective remains to ensure democratic legitimacy and accountability at the level at which decisions are taken and implemented. Any new steps towards strengthening economic governance will need to be accompanied by further steps towards stronger legitimacy and accountability. At national level, moves towards further integration of the fiscal and economic policy frameworks would require that Member States ensure the appropriate involvement of their parliaments. Further integration of policy making and greater pooling of competences must be accompanied by a commensurate involvement of the European Parliament. New mechanisms increasing the level of cooperation between national parliaments and the European Parliament, in line with Article 13 of the TSGC and Protocol No 1 to the Treaties, can contribute to this process. The European Parliament and national parliaments will determine together the organisation and promotion of a conference of their representatives to discuss EMU related issues.”
and consider proposals to give national parliaments working together the power to force
the Commission to withdraw a proposal (a ‘red card’ procedure). We should explore
whether such cards might be issued at any point during the legislative process and indeed
whether they could be exercised in relation to existing legislation. The Government
would also support a number of COSAC’s recommendations, including that the
Commission should make a political commitment that it will respond to opinions or
requests issued by more than a third of chambers.

8. In addition to a greater role for national parliaments, some Member States, as well as the
institutions, are focussed on the 2014 European Parliament elections. For the
Government, this is not an either/or question. The European Parliament has an
important role to play and its Members are often expert and committed to their work.
But most people do not sufficiently identify with the European Parliament. And previous
attempts to address the democratic deficit by strengthening its role have not worked. So
we need to ensure both that the European Parliament is an effective and accountable
institution and that national parliaments play a greater role.

9. Parliaments have a number of routes to shape EU decision-making. These include
political dialogue with the Commission, informally bringing expertise to bear and using
formal procedures including those set out in Protocols 1 and 2 of the Lisbon Treaty.\textsuperscript{198}
We believe that each of these should be better utilised and further strengthened.

10. First, parliaments submit written opinions as part of their political dialogue with the
Commission. The total number of opinions received from national Parliaments in 2012
rose to 663\textsuperscript{199} representing an increase of 7% compared with 2011 (622). This was a
much smaller increase than in previous years (55% in 2010, 60% in 2011). The ten most
active chambers in the political dialogue (which includes the House of Lords) account for
more than 80% of the total number of opinions received. In 2012, the Lords submitted
16 written opinions; the House of Commons submitted six. The Government would like
to see greater use made of this mechanism, and for the Commission to respond more
systematically and effectively to opinions, including to make a political commitment that it
will respond to opinions or requests issued by more than a third of chambers – a
development which COSAC itself has called for.\textsuperscript{200} This would contribute to
strengthening the “positive” role of national parliaments and to extending further their
powers beyond policing subsidiarity concerns. The Government is also interested in
Parliament’s views on whether national parliaments working through COSAC might issue
“own initiative” reports, emulating in part the European Parliament’s practice, in order to
enhance the political dialogue process.

11. Second, parliaments can bring their expertise to bear in EU decision-making including
through informal contacts with EU institutions. In-depth reports setting out the views of
the Lords on dossiers have made a valuable contribution to shaping discussions and
negotiations. Recent examples include the Lords’ EU Select Committee report on the
European External Action Service (EEAS) (March 2013) published ahead of the High

\textsuperscript{198} Protocol 2 sets out how the principles of subsidiarity and proportionality should be applied and the role of national
parliaments in policing these. Subsidiarity and proportionality are defined in Articles 5(3) and 5(4) of the TEU respectively.
\textsuperscript{199} These include the 70 reasoned opinions received under the subsidiarity control mechanism.
\textsuperscript{200} See Contribution of the XLIX COSAC, Dublin, 23-25 June 2013 http://www.parleu2013.ie/wp-
content/uploads/2012/12/Contribution-EN.pdf

12. Third, Protocol 1 of the Treaty on the Functioning of the European Union (TFEU) sets out national parliaments’ formal role while Protocol 2 TFEU details procedures by which parliaments may issue reasoned opinions in respect of non-application of the subsidiarity principle (the so-called “yellow” and “orange” cards). I set out in an annex the evolution of the Treaty-based role of national parliaments. But the Committee sought views on how this formal role was working in practice.

13. In 2012, 70 reasoned opinions were submitted to the Commission, spread over 34 Commission proposals. This is a similar figure to that of 2011, where 64 reasoned opinions were submitted. The level of engagement in this process differs markedly across parliaments. In 2012 (as in 2011), the Swedish Riksdag adopted the highest number of reasoned opinions (20). The French Sénat adopted seven; the German Bundesrat five. In 2012, the House of Commons adopted three reasoned opinions; the House of Lords one.

14. Although the Lisbon Treaty has been in force for almost four years, only one yellow card, and no orange cards, have been issued to date. The one instance of a yellow card being issued was in response to a legislative proposal on the right to strike, known as Monti II. The specific circumstances of this proposal were relevant, not least that parliaments on both sides of the argument had concerns with the proposal, and so issued reasoned opinions. Analysis of how and why the yellow card process worked in this instance suggests a number of lessons, including in relation to:

• The importance of parliaments/chambers engaging in intensive information exchange on legislative proposals.
• Scope to do more to maximise the benefit of existing opportunities for inter-parliamentary contact and exchange, including ensuring this is speedy, comprehensive and up-to-date.
• The importance of exchanging information and submitting reasoned opinions as early as possible, since the eight week timeframe to reach the yellow/orange card thresholds is short. COSAC found that information from some parliaments/chambers appeared to influence decision-making in others, and sometimes encourages other parliaments/chambers to submit their own reasoned opinions. In the Monti II case, Denmark played an important role as an “initiator”. It encouraged others to follow its lead at a COSAC meeting in Copenhagen in the middle of the eight-week review period. It was also the first parliament to submit a reasoned opinion, which it quickly translated into English and circulated to other COSAC delegations for consideration.

---

201 The political decision that created the European External Action Service required that the High Representative should review the Service by mid-2013.
202 Including by COSAC in its 19th bi-annual report http://www.cosac.eu/documents/bi-annual-reports-of-cosac/ and Oslo University “A Yellow Card for the Striker: National Parliaments’ Role in the Defeat of the Monti II Regulation on the Right to Strike.”, Ian Cooper, ARENA – Centre for European Studies, University of Oslo, June 2013 www.euce.org/eusa/2013/papers/12g_cooper.docx
15. The fact that the yellow card threshold has been reached only once suggests national parliaments face obstacles in making use of the procedure. The Committee asked whether there is a well-developed, common understanding of subsidiarity. And if not, whether there was a need to develop one. We believe that there is not such a common understanding, but that this is not necessarily problematic in the context of issuing yellow/orange cards. The principle of subsidiarity aims to ensure that activity is taken at the appropriate governance level, and as closely as possible to EU citizens. Article 5(3) of the TEU states that, in areas where it does not have exclusive competence, the EU should only act where the objectives in question cannot be sufficiently achieved by the Member States (at central, regional or local level) but can be better achieved at EU level because of their scale or effects. This principle is open both to political and legal interpretation, which is often informed by value judgements as to whether EU action is desirable.

16. The existing yellow and orange cards provide national parliaments with a way to intervene directly in the legislative process: they are a way for parliament to play a policing role. I set out in more detail at paragraph 33 the Government’s position on how these, and other, provisions might be strengthened to enhance national parliaments’ role. But in addition to this “policing” role, parliaments can engage directly with EU institutions. I touched on this “shaping” role in brief at paragraphs 7-9 above. The Committee sought views on how effective is national parliaments’ dialogue with the Commission and European Parliament as well as inter-parliamentary coordination. I would be interested in the Committee’s assessment of this question, and set out a few considerations below.

17. In the UK, Parliament’s scrutiny role officially begins when a Government Explanatory Memorandum is submitted to Parliament following the deposit of an EU draft document or proposal. National parliaments should - and can - play a role in advance of this to influence the fundamental aspects of a proposal, including the opportunity to discuss whether a proposal should be pursued at all. One way of improving this dialogue would be for parliaments to have the power to request that Commissioners and MEPs give evidence before them. This has already happened in some circumstances. For example, Commissioner Reding gave evidence to Lords Select Committee E in late 2011 as part of an inquiry into the EU’s policy on criminal procedure. The Government would be ready to pursue a commitment from the Commission to respond favourably to such requests.

18. In terms of inter-parliamentary coordination, national parliaments have a wide range of formal and informal forums in which parliamentarians meet, discuss matters of mutual interest and share effective working practices. How these networks are developed is primarily a matter for parliaments themselves. The Government recognises and welcomes the important role played by UK parliamentarians whose work touches on EU affairs in this process. Part of the Government’s contribution to this engagement is by organising regular familiarisation visits to Brussels for parliamentarians.

19. Joint meetings of the Lords EU Select Committee and the Commons European Scrutiny Committee may be worth considering, perhaps to discuss documents that raise particular interest or concern. They could enable a broader pooling of expertise from

---

across both Houses, particularly if Commons’ Departmental Select Committees with an interest in EU affairs were included in some sessions. If parliamentarians - particularly committee chairs - are in regular and close contact across the EU, this will enable more effective co-ordination of national parliaments’ approaches to particular draft legislation and dialogue with EU institutions.

20. **COSAC** is one of the longest-established mechanisms for engagement between national parliaments, as well as between EU institutions, particularly the European Parliament, and national parliaments. The Government’s position is that COSAC should be further strengthened. For example, we noted above that the yellow card issued in relation to the Monti II proposal was in part due to the role of “initiator” played by Denmark, when in the chair. One way of ensuring this sort of action was put on a more sustainable footing would be for national parliaments to take on an informal role of “champion” for one or more policy areas in which they have a particular interest. Where necessary, this could provide the same momentum for the issuing of reasoned opinions.

21. The conclusions of COSAC’s June 2013 meeting stated that engagement between national parliaments had intensified since the entry into force of the Lisbon Treaty. Its suggestions for further improvements advocated engagement and greater information exchange between parliaments at an earlier stage, improvements to the IPEX website (including more detailed English and/or French summaries or translations of important documents) and a greater exchange of information between parliamentarians at COSAC meetings. The Government supports national parliaments in considering these and other more extensive reforms to COSAC’s working methods.

22. Of the seven officials in COSAC’s secretariat, only one is permanent and the others rotate in line with the Council Presidency Troika. This turnover can impact on continuity and lead to variation in capacity and expertise. This could be addressed by a larger and more permanent secretariat, allowing COSAC to coordinate more effectively. For example standing items on meeting agendas could be instituted, or annual debates arranged on issues of enduring interest such as the Commission’s work programme. COSAC might also be given a formal power to summon Commissioners: currently Commissioners appear before COSAC meetings by convention only.

23. Ensuring sufficient capacity is key to national parliaments playing a greater role in the EU. We note that with very few exceptions, national parliaments now have officials permanently based in Brussels. For the Government, this network of national parliament representatives has a very important role to play in channelling information and strengthening parliaments’ direct engagement with the institutions and coordination with each other. UKREP counsellors and desk officers meet UK national parliament representatives frequently to discuss dossiers, with the objective of assisting their reports back to Parliament and committees. The representatives also see UK Ambassadors and are invited to participate in meetings.

---


205 IPEX is the documents database containing draft legislative proposals, consultation and information documents from the European Commission. It also contains a calendar of interparliamentary meetings as well as the EU Speakers website.
24. As I have suggested previously\(^{206}\), Parliament might consider the scale of its current representation in Brussels (three individuals) compared to that of other national parliaments, and the impact that this has on Parliament’s ability to engage as effectively as it might in the early stages of the legislative process. For example, the Bundestag and the Bundesrat have nearly 20 individuals between them, in addition to the German federal representation and the representative offices of each of the German Länder.

25. In addition to their direct role in Brussels, national parliaments play a key role in **scrutinising EU decision-making**. The Committee asked how this role might be further developed. The Government is keen to explore with Parliament how we might improve the UK’s current scrutiny procedures.

26. We are keen to streamline the scrutiny process where possible to ensure that it focuses on the most important issues and allows Government to make the best use of the resources it has available to support parliamentary scrutiny of EU documents. For example, routine documents could be exempted from scrutiny. Lighter-touch Explanatory Memorandums could be issued for documents addressing less significant matters, such as Regulations implementing agreements reached through Council Decisions or sanctions agreed at the UN.

27. We also believe that there could be value in further mainstreaming EU business. Reflecting the fact that Departmental Select Committees already have responsibility for EU business under standing orders, we would advocate greater engagement and use of their expertise. In Germany, the equivalents of these Committees are central to the scrutiny process. Some Departmental Select Committees in Westminster have done some useful work on EU dossiers, such as the Justice Select Committee in the House of Commons on data protection in late 2012. There is a strong argument to bring the relevant Committees’ expertise to bear in EU business much more systematically.

28. One question on which the Committee sought input was on how effectively **proportionality** was scrutinised by national parliaments. Subsidiarity is the only grounds for which a specific Treaty-based procedure exists for national parliaments to play a role. But, national parliaments can issue opinions about whatever concerns they may have with a legislative proposal, including in relation to its proportionality. No legislative proposals have been withdrawn purely on grounds of proportionality. However, the Commission reported in 2008 that two company law legislative proposals were stopped in 2007 on the basis of the analysis in the impact assessments. The impact assessment of the first concluded that, in terms of proportionality, it was not clear that a Directive or a Recommendation were the least onerous ways to reduce the risk of private benefit extraction. Given the importance of the proportionality principle, we believe it would be valuable to explore the feasibility of extending national parliaments’ “yellow card” powers over subsidiarity to include proportionality as well, which might be achieved through a political commitment from the Commission (see paragraph 37).

29. In the context of scrutiny, the Committee asked about the effect of an increase in **first reading deals**. First reading deals provide for an efficient legislative process. Dispensing with some steps of the lengthy co-decision process can be good for non-controversial

---

\(^{206}\) See, for example, my intervention during the Westminster Hall Debate on the role of national parliaments in the EU 16 July 2013 [http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130716/halltext/cm130716h0001.htm](http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130716/halltext/cm130716h0001.htm)
30. The Government recently examined the scrutiny history and negotiating timetable for three first reading deals agreed at a Council of Ministers in June 2013. On average these agreements took two and a half years from date of publication to agreement. In light of this information, we do not think that this length of time impeded national parliaments’ ability to scrutinise EU decision-making. But, we understand the concern that some have expressed. Government departments therefore remain committed to updating Parliament at key points in negotiations, whether a proposal is agreed after all the stages of debate and negotiation including trilogue, or after just a first reading deal. Our aim is to ensure clearance is obtained if there have been substantive developments since an earlier stage of consideration.

31. Of course, for national parliaments to perform any of these functions effectively requires access to sufficient information. Responsibility for providing national parliaments with the information they need is shared between EU institutions and governments. EU institutions are required to share legislative proposals and other relevant documents with national parliaments. Commission consultation documents (green and white papers and communications) are forwarded directly by the Commission to national parliaments upon publication. The Commission also forwards the annual legislative programme and any other instrument of legislative planning or policy. Draft legislative acts sent to the European Parliament and the Council are also shared with national parliaments at the same time. National parliaments therefore have immediate access to a large amount of information from the institutions as it is published.

32. In the UK, the Government fulfils its own responsibility to provide explanatory memoranda relating to the EU’s publications to help parliamentary committees interpret the significance of EU documentation, and to prioritise its scrutiny work. We take these responsibilities seriously and continue to promote across all Government Departments the importance of early engagement with the Scrutiny Committees in both Houses.

33. As the Committee knows, the EU institutions produce large numbers of often extensive documents which need consideration within short deadlines. We believe robust structures and procedures are needed to respond to the information provided within these constraints. However, we recognise that, even if information is accessible early, considerable resources are needed to analyse this quantity of documentation. Ensuring that there is sufficient resource internally to do so is clearly a matter for Parliament itself to consider, but we see potential in drawing on the fullest expertise that Parliament has to offer, including by making greater use of Departmental Select Committees.

34. While Parliament’s scrutiny is a document-based system, there has also been some discussion recently of the mandate system of scrutiny used by some Member States including Denmark, the Netherlands and Sweden. As I have said previously,207 there are advantages and disadvantages to both systems. On the one hand, mandate systems allow

committees an opportunity to shape negotiations before the relevant Council meeting. They also tend to steer committees to focus on the highest priority issues.

35. On the other hand, mandate systems can be considerably more resource-intensive for both parliaments and governments. As I said in my evidence to the European Scrutiny Committee, careful thought would be needed to avoid any new arrangements in the UK imposing a considerable additional workload upon Government that we would struggle to deliver. In mandate systems, committees need to decide how priorities are set. It would be impossible under a mandate system to continue to scrutinise every document as is the case currently in the UK. Mandate systems necessarily involve private discussions between scrutiny committees and ministers, and the sharing of confidential information about our and other Member States’ priorities, which affects the transparency of the process as a whole. Depending on the exact nature of the system, they are also prone to more rigidity in the way decisions are taken with a consequent reduction in ability to deliver the best policy outcomes across the spectrum of EU business.

36. We would also support the ideas raised in the recent debate on the Lords EU Select Committee’s 2012-13 Annual Report (debated on 30 July 2013) that Parliament’s EU scrutiny committees may wish to consider if they are able to begin forming opinions as to whether an EU document raises subsidiarity issues ahead of receipt of a Government Explanatory Memorandum. However, Explanatory Memorandums will of course continue to be submitted to Parliament within the established timelines, as per the Government’s scrutiny obligations.

37. To conclude, the Committee sought views on ways in which the role of national parliaments could be changed or enhanced. If the role of national parliaments in EU business is to expand overall, improvements to existing practice will be needed, particularly in terms of parliaments’ coordination and direct interactions with EU institutions. While this is a matter for Parliament to decide itself, the Government looks forward to continuing this conversation. The Government will continue to discuss with our EU partners a number of specific proposals to enhance national parliaments’ role. These include:

- **Increased coordination between national parliaments.** We believe a combination of strengthening existing cooperation channels, particularly COSAC, and establishing new channels (joint committee meetings, or regular evidence sessions from Commissioners or MEPs) should be considered.

- **Earlier engagement by national parliaments.** Earlier and more direct engagement with EU institutions than is routinely the case today would be beneficial so that the overall direction of legislative proposals, as well as the more detailed content, can be discussed, negotiated and influenced. To this end, the Government would encourage Parliament to consider increasing its level of representation in Brussels.

- **Changes to the processes in Brussels:** We want to make more effective use of the existing yellow and orange cards; identify earlier Commission proposals which raise subsidiarity concerns, including through better analysis of subsidiarity
implications in Commission legislative proposals. In addition we want to make it easier for national parliaments to challenge EU legislation. For example, we should consider strengthening the existing yellow card process (giving parliaments more time, lowering the threshold of the number of parliaments required to trigger a yellow card, and extending the scope of the card e.g. to cover proportionality) and consider proposals to give national parliaments working together the power to force the Commission to withdraw a proposal (a 'red card' procedure). We should explore whether such cards might be issued at any point during the legislative process and indeed whether they could be exercised in relation to existing legislation. The Government would also support a number of COSAC's recommendations, including that the Commission should make a political commitment that it will respond to opinions or requests issued by more than a third of chambers. And the Government is interested in Parliament's views on whether national parliaments working through COSAC might issue "own initiative" reports, emulating in part the European Parliament’s practice, in order to enhance the political dialogue process. Such changes could be achieved through political agreement between Member States and the EU institutions in the short term, and/or through any future Treaty change.

38. We do not underestimate the scale of the challenge: enabling 28 national parliaments with differing customs and practices to work closely together within the EU's complex decision-making process is not straightforward. But, I look forward to working with the Committee as this inquiry develops.

September 2013

ANNEX – Evolution of the role of national parliaments in the EU's Treaties

1. Successive treaty change has enhanced the relationship between national parliaments and the EU institutions.

2. At Maastricht, Article 3b of the Treaty establishing the European Community (TEC) formally introduced the principle of subsidiarity into Community law by stating: “In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.”

3. The preamble to the new Treaty on European Union (TEU), also agreed at Maastricht, expressed resolve to take decisions “as closely as possible to the citizen in accordance with the principle of subsidiarity.”

4. A Declaration also encouraged greater involvement of national parliaments in the activities of the EU, and the exchange of information and contacts between them and the European Parliament. Governments were to ensure that national parliaments received proposals for legislation in good time for information or examination.
5. Following Maastricht, specific guidelines were devised on how the subsidiarity principle should be applied. These were set out in the Edinburgh European Council Conclusions of December 1992 and through an Inter-Institutional Agreement of 25 October 1993. These guidelines were further developed and given treaty status by the Treaty of Amsterdam.

6. A new Protocol agreed at Amsterdam and annexed to the TEC further developed and defined the principles of subsidiarity and proportionality and the criteria for applying them. For EU action to be warranted, three main principles needed to be engaged: first, the issue for which action was proposed had to be transnational; second, evidence was needed that inaction would conflict with Treaty requirements or significantly damage Member States' interests; and third, evidence was needed that action at the European level would produce greater benefits than national action. All proposals for legislation would have to lay out how they complied with these principles. The protocol further clarified that legislation should be as light as possible, that the scope for national action should be maximised and that the Commission was required to produce an annual report on the application of subsidiarity. As this was set out in a Protocol, this overall approach to the application of subsidiarity became legally binding and subject to judicial review.

7. In addition, a Protocol on the role of National Parliaments in the EU was introduced at Amsterdam. Inter alia, this provided for all Commission consultation documents to be forwarded promptly to national parliaments, and that the Commission would produce proposals for legislation in good time to ensure that governments could forward them to their parliaments as appropriate. The inter-parliamentary body COSAC was invited to make any contribution it deemed appropriate to the institutions, including on draft texts under discussion. COSAC could also make contributions on issues such as subsidiarity. However, COSAC's contribution could not bind national parliaments.

8. The Lisbon Treaty introduced another qualitative step forward by expanding the scope of subsidiary to cover the Union as a whole, including at regional and local levels. Article 5(3) of the Treaty on European Union (TEU) reads: “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.”

9. A new Article 12 TEU sets out a number of ways in which national parliaments can contribute actively to the good functioning of the Union. Moreover, the Commission must draw any proposals with a legal base of Article 352 TFEU to the attention of national parliaments.

10. National parliaments' role of ensuring compliance with the principle of subsidiarity was strengthened by Protocol No.2 (on the application of the principles of subsidiarity and proportionality). This introduced the ability for national parliaments to submit reasoned opinions (with two votes allocated per parliament) to the Presidents of the Commission, Council or European Parliament if they believe that a legislative proposal does not comply with the principle of subsidiarity. The deadline for doing so falls eight weeks after the date of transmission of a draft legislative act as translated into the official languages of the Union. Should the number of reasoned opinions reach the 'yellow card' threshold (one third – or a quarter in the case of police and criminal justice legislative proposals)
or the ‘orange card’ threshold (a simple majority), the Commission reviews the proposal. After review, the Commission (or other institution/group of Member States which has initiated the draft legislation) may decide to maintain, amend or withdraw its proposal. The Court of Justice has jurisdiction in actions brought on grounds of infringement of the subsidiarity principle. Article 8 of Protocol 2 enables national parliaments to take a case to the Court through their Government if it believes that the subsidiarity principle is infringed by a legislative act.

II. Protocol no.1 to TFEU (on the Role of National Parliaments in the EU) repeats in summary form some of these elements of Protocol 2; it provides for the Commission to forward its consultation documents, annual legislative programme and other instruments directly to national parliaments; its requires the agendas for and outcomes of the Council meetings to be forwarded directly to national parliaments; and it provides for different forms of inter-parliamentary cooperation.
Questions 147 - 157

TUESDAY 14 JANUARY 2014

Members present

Lord Boswell of Aynho (Chairman)
Lord Bowness
Lord Cameron of Dillington
Baroness Corston
Baroness Eccles of Moulton
Lord Foulkes of Cumnock
Lord Hannay of Chiswick
Lord Harrison
Lord Maclean of Rogart
Lord Marlesford
Baroness O'Cathain
Baroness Parminter
Baroness Quin
Earl of Sandwich
Baroness Scott of Needham Market
Lord Tomlinson
Lord Tugendhat
Lord Wilson of Tillyorn

Examination of Witness

Rt Hon David Lidington MP, Minister of State for Europe at the Foreign and Commonwealth Office

Q147 The Chairman: If we may move straight on seamlessly, although still under the threat of further Division, to the inquiry into national parliaments, I will close one inquiry and start the other evidence session now.
Minister, you will know that last week we were in Paris on behalf of this Committee talking to colleagues from their Senate European Affairs Committee and the Foreign Affairs and European Affairs Committees of the National Assembly. We had a very useful and constructive set of discussions. In general, as well as the formal conferences—the COSACs, whatever—that are in place, would you be in favour of more informal contacts between parliamentarians from different member states to talk about what is going on, particularly in the policy formation stage? I will just point that by saying that as we were there meeting the Senate Committee, on the floor they were discussing TTIP, and in London one of our sub-committees of our Committee was also discussing TTIP, but I do not think they had ever done it together; they were doing it in parallel. What is your take on all that?

David Lidington: I am strongly in favour of both formal and informal contact. I do everything I can, I hope, to encourage that, particularly by Members of the House of Commons, so across all political parties, whether through formal relationships, for example by Select Committees, just individual Members going to Brussels or going to member state capitals, meeting their counterparts, and discussing policy and understanding how the system works.

It is the parliamentarians themselves who ultimately to decide how to do this. The yellow card provisions in the Lisbon treaty would probably be more effective still if there were a habit of contact and working together between national parliaments. COSAC meetings are important and institutionalised. I am being polite: they are an institutional means of providing that liaison. However, if you simply wait for the next formal meeting, you are going to miss lots of opportunities. MPs, Peers and members of the Chambers around the EU need to network more.

Q148 Baroness Corston: If we may move on to yellow card procedures, we all know at the moment national parliaments can only submit a reasoned opinion if they consider there has been a breach of the subsidiarity principle. In your written evidence there is a suggestion that the grounds for issuing a reasoned opinion might be extended. What could be the nature of that extension?

David Lidington: The most obvious extension to me would be to say that national parliaments could deploy the card on the grounds of proportionality as well as subsidiarity. That principle is written into the treaties. It is one that is recognised by the European Court of Justice and by the constitutions and courts of a significant number of member states. The Germans in particular emphasised this to me on many occasions.

You can have a proposal that perhaps you could argue met the subsidiarity test. You could say it is proper but some action is taken at EU level because it cannot be accomplished at member state level, but then it is a different test to say that the particular action proposed is proportionate. I think it should be open to national parliaments to say that a proposal, even if it should be done at EU level, is disproportionate in terms of the objective it is designed to achieve. That will be first on my list.

Baroness Corston: Has there been any consideration given to the time limits, because at the moment a reasoned opinion has to be issued within eight weeks of a publication of a proposal in all languages? That is all well and fine, but if the Commission clears its desks for the end of July, and you have eight weeks, it means that a lot of parliaments are not included and find it very difficult to respond. My Committee on the European Public Prosecutor’s Office and staff had to do a lot of work at the beginning of September, when the House is not sitting.
David Lidington MP: I completely accept that. The Commons Scrutiny Committee makes points talking about the recess and the difficulties that causes over summer as well.

I would certainly like us to look again at the time limits and at what point in the legislative procedure a card could be deployed. Those are perhaps separate but very closely related questions. I would be very interested to hear the Committee’s conclusions on that, but it is something that I and the Government are very open to considering.

Lord Hannay of Chiswick: I will, if I may, ask a follow-up question on your point about proportionality. I do not know if you noticed but when my sub-committee, endorsed subsequently by the whole of this Committee, put a reasoned opinion in on psychoactive substances recently we included in our recent opinion the issue of proportionality because we believe that the proposal sinned against both subsidiarity and proportionality. It will be interesting to see how the Commission replies. But in most cases, would you not agree, where proportionality is an instance probably subsidiarity is as well?

I wonder whether one needs to go very far towards systematising that, other than to encourage people to bring proportionality into it, because the only case where it would not work was where, as you say, the subsidiarity condition was fulfilled but proportionality was not. That is fairly far fetched actually. It might not be worth a huge amount. You said it is number one in your list. I can think of several other things on the yellow card that come higher up my list than that, of which the point made by Baroness Corston—the obvious one, which is the time limit, is absolutely crucial because it is not so much that we do not have enough time to do the work ourselves, it is that the shortness of the time makes it almost impossible to concert properly with other parliaments, and if you raised the limit to 12 weeks or 16 weeks informally, without changing the treaty, this would, I believe, transform the whole process.

David Lidington: I take the clarification. The proportionality is top of my list so far as an extension of the grounds for deploying a yellow card is concerned. I am certainly in no way downgrading the importance of the time limits question.

The reason I believe that that change is important is that it is not just a matter of a parliamentary chamber deciding to base a challenge upon a particular argument. The Monti II yellow card in effect did involve some parliaments using proportionality rather than subsidiarity grounds. Rather, the question is about the extent to which the Commission is obliged to take action as a result of the yellow card.

If the Commission wants to be legalistic it can look at the reasoned opinions and say, “These ones are not about subsidiarity at all. They are about proportionality and the treaty only says subsidiarity”. The Commission would be sensible—if it wanted to be taken seriously in its offer to national parliaments—to say, “Look, in future we will act on the basis that a yellow card that rests on proportionality as well as subsidiarity grounds will be valid”. I would still like to write that into the treaties when we next come to open them up so that is codified and clearly justiciable in the case of a dispute, but by changes to working practice the Commission could make a difference tomorrow.

Lord Hannay of Chiswick: Could I move on to my question now, which is precisely that? How much of this agenda, which I think you and this Committee probably will share much of, can be achieved without treaty change and how much of it requires treaty change? It seems to me that if your answer is that practically all of it requires treaty change, we are not, alas, talking about something that is going to happen very soon. If you are talking about what can be achieved, as you said, by changes in practice, that is different. In the
middle of 2014 we are going to have a moment at which there is going to be a new European Council chairman and a new Commission with a new president. Is that not the moment at which to seek some agreement about working practices that will relate to this and, if so, is it not time we got started now?

David Lidington: Yes, I completely agree. There is a great deal that can be done, whether it is about the grounds for deploying a card, about the Commission accepting that it would treat a yellow card as an outright veto—as a red card, in effect—or about changes to the time limits that could be done for an act of political will, as Lord Hannay describes.

It would be better if that could be formally written into treaties because that would make the law clear in the case of any dispute, but we could go a long way at an earlier stage through voluntary acts of political will. We could try to institutionalise those to some extent in the form of an intra-institutional agreement. There is talk now in the Council about an IIA between the Council and the other institutions. At the moment, as the Committee knows, there is just an IIA between the Commission and the European Parliament, and I think that has tilted the playing field somewhat towards the parliament in terms of influence over the EU’s agenda.

Yes, I would look actively for ways in which we can secure our objectives without going to treaty change, but I would want, when the treaties are next reopened, to say, “We agreed all this. It is the right thing to do”. It should be not controversial at all to write it into the treaties at this point.

Q151 Lord Wilson of Tillyorn: I have more on yellow cards and how they might be used. I think in your written evidence you suggested that the yellow card procedure might be used earlier on in the legislative process and also—a very interesting thought—that it could be used on existing legislation. How would those work in practice? I am slightly puzzled particularly by the second one and what that would mean in practice.

David Lidington MP: There are strong arguments in favour of both changes. In terms of the legislative process, as Baroness Corston pointed out at the moment there is a very tight time limit on national parliaments, and the right to deploy the yellow card exists only in terms of the Commission’s initial proposal. Once that proposal goes through the mill of the Council, then it goes to the European Parliament, and then you are into trilogues, and it can be changed quite significantly. The assessment that national parliaments might wish to make could in turn vary a great deal, depending on the content of the measure.

I would like national parliaments to have greater flexibility. It is not just us. The Dutch Tweede Kamer has made proposals about strengthening the role of national parliaments, and that includes establishing what they call a late card for parliaments to scrutinise legislation at the end of the legislative procedure before the legislation is finally adopted.

On the second point of Lord Wilson’s question, I am interested in the idea which again the Dutch are very interested in pushing: what I have heard Dutch Ministers advocate as a “green card”. In effect this is about giving to national parliaments something that is not dissimilar from the right of own initiative that the European Parliament currently enjoys, where the European Parliament can come forward and say, “Right, we think the Commission should take action on this point”, and bring forward a proposal, or that it should review, repeal or amend part of the existing acquis of European legislation.

I do not see why national parliaments should not have something comparable. We have a huge body of European Union legislation. One of my criticisms of the way the EU operates is that it is not good enough going back over the rule book and examining whether, in the light
of experience, the current body of law is fit for purpose, is delivering what was hoped, or has had unintended damaging effects.

I give national parliaments the right to pose that sort of challenge and demand a response from the Commission. I think that would make for a healthier law on policymaking in Europe.

**Lord Wilson of Tillyorn:** That would mean, presumably, a group of parliaments or chambers getting together and saying, “Look, out of all this massive legislation we, collectively, think this one ought to be rescinded or changed”.

**David Lidington:** Yes. One would need to debate and negotiate at that point whether that becomes something binding on the Commission. The Commission is pretty jealous of its treaty-based right to be the sole initiator—apart from some exceptions of legislation—but a requirement at least to consider and report on that proposal from national parliaments would not be inconsistent with the current treaty rights of the Commission to initiate legislation. There are different ways in which one could approach this, but the principle is a good one.

**The Chairman:** At this point we will move on straightaway to look at some of the other aspects in which we can influence policy. I think we are probably carded out, as it were, for the moment. Let us turn to Lord Maclellan.

Q152 **Lord Maclellan of Rogart:** Minister, in your own written evidence you supported more upstream engagement—you also said that just now—and pre-legislative scrutiny. Would the Government contemplate assisting that process by engaging in pre-Council discussion where the Government’s awareness of what is coming up in the Council could be revealed and the attitude of the Government revealed so that we could be more effective in co-ordinating viewpoints?

**David Lidington:** The question for government here we would want to consider is whether what Lord Maclellan and other Members of both Houses might be asking for is the opportunity to be briefed on the Government’s approach to a Council or a mandate system of scrutiny, the strongest example of which exists in Denmark and in weaker forms in other Scandinavian countries. The House of Commons European Scrutiny Committee has recently published a report that formally proposes a number of measures that would move in the direction that Lord Maclellan describes, and in fairness I should not pre-empt the Government’s response to that published report, particularly as Whitehall discussions are still very much ongoing on how we as a Government should respond to that.

Mandate systems clearly work in other countries, but one would have to think seriously both about the political consequences—to what extent should Ministers negotiating positions be bound by the need ultimately to telephone the Chairs of the two committees to ask permission to agree to some deal—and about the practical consequences. If we are going to have a mandate system, we might be looking at the need to streamline scrutiny of a very large number of documents simply to keep the workload on Ministers and officials within manageable proportions each year.

**Lord Maclellan of Rogart:** Minister, I am not necessarily advocating the mandate system of Denmark and other countries. I am simply asking whether national parliaments could not be more effective in influencing legislation if they were more aware of the positions of their Government. After all, most national parliaments will be reflecting the positions of their national Governments, and if we do not have that awareness it is less likely that they can be helpful.
David Lidington: I understand the point Lord Maclellan is making. My response is this. First of all, most Ministers make a point of tabling written statements in advance of formal Council meetings and then further written statements to describe the conclusions of Council meetings. So we try to put that information before Parliament.

For parliamentarians to have an influence, though, we have to look not simply at the relationship of an evidence-session, formal or informal, before a particular Council meeting, but at the whole question of more upstream engagement by Parliament with EU issues.

The House of Lords has a sub-committee system where particular sub-committees specialise. In the House of Commons, I am trying to encourage the departmental Select Committees to undertake more of this work. It is already provided for—Baroness Quin will remember—under its Standing Orders. Some are keener on doing this than others, but there would be a real advantage in those committees looking at Commission work programmes, Green Papers, White Papers, before we get into the weeds of very detailed textual negotiations on a particular measure.

Similarly, they would benefit in retrospective examination, perhaps a few years down the line, of how a particular directive or regulation has worked out in practice and for parliamentary committees to report on that.

The Chairman: Thank you. We might go on because, from both the card discussions and the discussions about upstreaming, some of this may depend on the good will and active political dialogue with the Commission. I will ask Baroness O’Cathain to ask on that and report no doubt some of her recent experiences.

Q153 Baroness O’Cathain: I think they are pretty well known. We recently had difficulty with a Commissioner who did not wish to meet us. How can we overcome the problem of reluctant Commissioners, such as those who cancelled a meeting that we had paid for to travel to Brussels with less than 24-hour notice? Is the Commission sufficiently receptive to the views of national parliaments? It would seem not. If not, how could it be more seriously engaged with national parliaments? Before you answer that, can I just say: amen to your suggestion of a post-installation audit of three years or something. That would make it very easy to see how a directive was going. However, that is not my question. My question is about post-legislative scrutiny.

David Lidington: I would absolutely be in favour of that sort of post-legislative scrutiny. The Commission for the most part is a relatively open institution, certainly at the working level. There are individual Commissioners who are not necessarily as open, and different Commissioners differ in their attitude towards national parliaments.

At the risk of repeating myself, this is in part about networking. One could not expect Commissioners to travel solemnly to Westminster every year, but there is video-conferencing, although I know there has been difficulty with that with one Commissioner. Certainly Committees travel to Brussels as well. We have to look at all means of trying to enhance that.

Baroness O’Cathain: We offer all that. We still get rebuffed.

David Lidington MP: That is the sort of thing the Government would be willing to take up. Where there is evidence of that, I would want to bring it to the attention of the President of the Commission, because that is not how the Commission says that it intends to operate. There are other Commissioners who do make a point of trying to make themselves and their cabinets available to national parliamentary committees. Where something goes wrong,
we want to understand the reasons and we should be prepared to make courteous but firm protests about it.

Lord Hannay of Chiswick: I just want to follow that point up because, as you probably know, my sub-committee, with help from Baroness Corston’s, is doing an inquiry at the moment on the future justice and home affairs programme from 2015 to 2019. We have been unable to get either Commissioner Reding or Commissioner Malmström to appear, although we are going to Brussels in two weeks’ time. We have been rejected by both of them to give videos. They are, however, providing their directors-general in both cases, so we cannot say that they are being totally obstructive, but I do think—and again, this is another item perhaps to be tucked away for the installation of the new Commission—that if you were able to get from the new Commission some broad undertakings to respond positive to national parliaments, that would be very valuable.

David Lidington MP: I think that is a very good point and I would argue to the incoming president that it is in the Commission’s own interests that it starts off on the right foot with national parliaments.

Q154 Lord Bowness: Minister, can I turn, to make it very specific, to the whole co-decision process? I think that much of that is probably in the hands of national parliaments themselves, but there is a particular difficulty when an issue goes through scrutiny—we have had your Explanatory Memorandum. It then goes into co-decision, and particularly first reading, deals and trilogues, where detailed changes can often make a significant difference to the nature of the proposal that we have seen and cleared. In your evidence you say that you are anxious that we be told if there are substantive changes to the original proposal, because all these things happen very quickly. As I say, I think a lot of it is down to the arrangements that we make with the European Parliament, but the Council, of course, is also involved in this.

I wonder what suggestions or assistance you might be able to offer. In the context of the Council, because clearly you want to speak for that, do you agree with what is almost an allegation really that that the Council is probably the least transparent of all the institutions in the European Union?

David Lidington MP: Let us take those questions one at a time. On the point about scrutiny clearance, the Government are committed to always trying to let the committees know if there has been a substantive change, and I think the idea of a pause at Brussels level if there is a major change to the emerging policy is an attractive one.

I can see that there will be cases where there is genuine need for urgency. There will be other cases where, because the Commission or the External Action Service has taken a long time to divulge the final draft of the document or because trilogues have taken a long time, the altered text emerges very soon before the key Council meeting where the decision was due to be taken perhaps then with the European Council due to meet a couple of days after that solemnly to ratify it and for all Heads of State or Government to announce it in front of the cameras.

At that point the political dynamic tends to drive people forward to say, “Please do not pause”, particularly if there has been a difficult negotiation, and “We do not want to let the rats get at it by stopping it now”. I absolutely understand the logic of the argument. I look with great interest at any specific proposals the Committee might make on that, taking into account the caveats I have given and that it could not apply in every case.
On Lord Bowness’s strictures about the Council, when we are legislating we have those decisions on camera. That tends to mean that the legislative sessions are the most boring, unremarkable parts of the Council proceedings. You can get access to the agenda and Council priorities online. You can look at the Ministerial Statements the British Government produce. Other Governments will produce their own statements of what they hope to achieve. We are down to this very familiar tension between, on the one hand, the wish for transparency and, on the other, the need to have a space within which Ministers from different Governments are able to talk and sometimes argue quite vehemently in private about matters with the objective of reaching a decision.

If you are talking about possible compromises, either about language or about substance, you do not want to do that in public until you are certain that the deal has been agreed and all aspects of it locked down. I think that tension is unavoidable. I think we should try to be open wherever possible, but it can never be completely open. If we have the cameras in for the Ministers-only lunch at Council meetings, which is where you tend to get some frank conversations around the table, all that will happen then is that there will be a boring lunch and then they will adjourn the Council and then go off and have tea together away from the cameras and have the private discussion. There is no avoiding this dilemma.

Q155 Baroness Parminter: In your written evidence you raised an issue of the resources available to national parliaments to discuss European scrutiny matters, and a limiting factor of that is time. How can we encourage national parliaments to devote more time to European scrutiny in the way our Committees here in the House of Lords devote serious quantities of time, which we hope has some significant benefit?

David Lidington MP: I think there is a question—perhaps more for the Commons than the Lords because the Commons does not have the same sifting system that the Lords does—about priorities. A huge volume of European documents comes through every year. Some of them are, frankly, of trivial importance. They perhaps repeat something that had been agreed and was subjected to scrutiny on a previous occasion. Some are of very great significance, and I think there is a case for saying to Parliament, “Is there a way in which we can agree between government and Parliament to streamline the scrutiny process so that we can find a way to spend less time on less significant matters?”, and for our part that government officials spend less time drafting detailed Explanatory Memorandums about things that are frankly not of legal, political or constitutional significance at all. Again, I do not think we are ever going to get to a perfect answer on that.

That strikes me as one way of doing it. Another is that we need somehow—and, again, I think this is probably more for the Commons than the Lords—get more Members to take an interest in European matters. That is why that is best done if we approach it thematically and saying to Select Committees and perhaps to Members who make a specialism in a particular area of policy, “Part of your work should be to look at what is happening at Brussels level and look at the experience of other European countries because that is very pertinent to what you are thinking about in regard to the United Kingdom”.

Q156 Lord Hannay of Chiswick: Could I just a question on resources? We have only had time resources.

The Chairman: If we can have five minutes more, Minister.

David Lidington MP: Yes.

Lord Hannay of Chiswick: We have had time resources, but we have not had financial resources, and this is a serious point. It is a serious point for national parliaments and it is
also a serious point for any way in which we might try to make COSAC more effective. COSAC is not effective now. It could be made more effective, I believe, but it cannot be made more effective without some resources. Where are those resources to come from? It is no good asking very small countries with very small budgets to put much more money into a system like that. Why is the European budget not, in some way or another, available? It spends I do not know how many hundred millions on the European Parliament.

David Lidington MP: That is a perfectly reasonable question. I am very open to looking at any proposal that the Committee might want to make on this. Again, if this Committee were joined by a number of its equivalents across the European Union in pressing for that sort of outcome, that would make for a more powerful influence upon Governments and institutions.

Q157 Lord Cameron of Dillington: In your written evidence you said that the Government are taking forward discussion with EU partners on specific proposals to enhance the role of national parliaments. What proposals have you made? Also—this is perhaps not to be answered now but perhaps, to help the purposes of our inquiry, you could answer in writing—what is the reaction of your EU partners to your proposals and what are their views generally about enhancing parliamentary powers? It would be very helpful if we could have a detailed note on that, please.

David Lidington MP: I will happily write. In our detailed conversations, national parliaments have focused for the most part on the red, yellow and green cards, which we discussed earlier. I think it is fair to say that the greatest appetite for that sort of conversation comes from the Netherlands and the Scandinavian countries, but I was very interested by the Committee’s findings in Paris. It is unusual to find at the level of national Governments outright opposition to these ideas. They will vary in the degree of importance that they ascribe to a greater role for national parliaments, and some leaders will also think more automatically of the European Parliament as the place where they assume that public accountability should lie for Brussels decisions. In the Brussels institutions I think there is more resistance to some of these ideas. This is not headline grabbing, but we have also been pushing for some of the practical reforms to COSAC that have been suggested to try to make it a more effective outfit.

The Chairman: Thank you, Minister. On that note and with that undertaking to write further, I would just like to say in conclusion that we do appreciate your presence. Despite your strictures on what happens when the broadcasters are in, we have not found your session at all boring or unhelpful. It has been both interesting and extremely helpful to us. We will look forward to gathering our thoughts further on the inquiry. Then you will obviously have an opportunity to see what comes out of it, but you have assisted our process. We declare the formal session now closed, and if the gallery would withdraw we will then have a short deliberative session.

David Lidington MP: Thank you very much indeed.
The Rt. Hon. David Lidington MP, Minister for Europe, Foreign and Commonwealth Office—Supplementary written evidence

FOLLOW-UP TO EVIDENCE SESSION ON NATIONAL PARLIAMENTS AND DECEMBER EUROPEAN COUNCIL

I would like to thank the Committee for the informative evidence session last week for your inquiry on the role of national parliaments. During the session you asked for an update on discussions with other Member States on strengthening the role of national parliaments.

As the Committee is aware, addressing the lack of democratic accountability in the EU is a top priority for the Government. And we see strengthening the role of national parliaments in the EU’s functioning as key to this.

This issue is therefore one which the Foreign Secretary and I raise with our counterparts from across the EU in every conversation we have on EU reform. The same is true at official level. This is an ongoing conversation: the Government is setting out those proposals which we think would make a concrete difference, and we are open to all suggestions from other Member States.

I set out in my written evidence the proposals which we are discussing. We want to make more effective use of the existing yellow and orange cards and identify earlier Commission proposals which raise subsidiarity concerns. In addition, we want to make it easier for national parliaments to challenge EU legislation. For example, strengthening the existing yellow card process (giving parliaments more time, lowering the threshold of the number of parliaments required to trigger a yellow card, and extending the scope of the card, for example to cover proportionality). And we are discussing proposals to give national parliaments working together the power to force the Commission to withdraw a proposal (a ‘red card’ procedure).

During discussions with other Member States we have also been exploring whether such cards might be issued at any point during the legislative process and indeed whether they could be exercised in relation to existing legislation. The Government would also support a number of COSAC’s recommendations, including that the Commission should make a political commitment that it will respond to opinions or requests issued by more than a third of chambers. And others have made interesting proposals too. For example, the Dutch Tweede Kamer has suggested a new “green card” and a “late card”.

Our discussions have shown that the democratic deficit is a genuine concern across Member States and within the EU institutions. I have seen a real change in the attention given to the issue over the past year – for example it has been addressed on several occasions at the General Affairs Council. I myself have raised it on multiple occasions and when I intervened at the December Council to highlight the Commission’s inadequate response to the yellow card issued by national parliaments on its proposal to establish a European Public Prosecutor’s Office, a number of Member States intervened in support.

The lesson I draw from these conversations is that many agree on the importance of giving national parliaments a greater and more effective role in the EU’s functioning. Dutch Foreign
Minister, Frans Timmermans, for example, has called for national parliaments to be given a red card.

At the same time, this is the beginning of a process and it will take time to move forward. National parliaments themselves have a crucial role to play in this process. We will be able to move further and faster the more that national parliaments themselves vocally call for a strengthened role. I am happy to keep the Committee updated on further developments.

I should also record, as mentioned to you yesterday, that I took the occasion of my visit to Brussels this week to deliver on my promise to highlight to President Barroso’s team your, and our, unhappiness at the refusal of Commissioner Reding to appear before your Committee despite repeated requests.

On a separate matter, and in respect of our discussions on the December European Council, you asked whether financial assistance on contractual arrangements would be in the form of cheap loans. I wish to clarify that the exact nature of the arrangements is yet to be decided. The December 2013 European Council conclusions state that work will be carried forward to further explore all options including loans, grants and guarantees, with the aim of reaching overall agreement at the October 2014 European Council. This therefore suggests the arrangements may not necessarily be in the form of cheap loans.

I am copying this letter to William Cash MP, Chairman of the House of Commons European Select Committee, Les Saunders, Cabinet Office, Jonathan Worgan and Magdalena Williams, FCO Departmental Scrutiny Co-ordinators and Victoria Butt, FCO Select Committee Liaison Officer.

27 January 2014
Gediminas Kirkilas, Chair of the EU Affairs Committee, Seimas, Lithuania—Written evidence

1. Why should national Parliaments have a role in the EU framework? What role should national Parliaments play in a) shaping, and b) scrutinising, EU decision making? In answering this question you may wish to consider:

a. Is there widespread agreement on what this role should be?

The Seimas of the Republic of Lithuania (thereinafter – The Seimas) did not hold the plenary debate on the role of national parliaments in the EU decision making. However, the Seimas sees the need for the systematic involvement of the national Parliaments in the EU decision-making process. There is a common awareness of the importance of more active and coordinated inter-parliamentary cooperation that could be in a “cluster of interests” format with a clear leadership.

The Seimas Committee on European Affairs (thereinafter – Committee) has highlighted on a number of occasions that there is a need to effectively use the powers of national Parliaments that are justifiably extended under the Lisbon Treaty.

The Seimas as a Presidency Parliament has initiated a debate on the democratic legitimacy in the EU and the role of EU Parliaments during the upcoming L COSAC plenary session in October, 2013

b. Do national Parliaments have access to sufficient information and the requisite influence at an EU level to play the role that you suggest? Whose responsibility is it to ensure that they have the information they need?

The Seimas of the Republic of Lithuania has an extensive access to the EU information. The members of the Parliament receive the Lithuanian Government’s position on the key items on the EU agenda as well as the EU documents through the information management system Linesis. The Linesis database offers the possibility to search, download, print, find any related additional information, etc. This database is managed by the Government, though the MPs and parliamentary staff have free access to the entire database and EU related documents deliberated by the Seimas (committee conclusions, opinions, resolutions, etc.) can be uploaded into the database. There is a possibility to subscribe and regularly receive certain EU documents and Government papers (positions, reports from the working groups, non-papers, etc.).

The challenge is not the access to the EU information, but rather the processing its ever increasing amount.

Formal role of national Parliaments

2. How is the formal role of national Parliaments under the Treaties working in practice? In answering this question you may wish to consider:

a. What impact have the Maastricht, Amsterdam and Lisbon Treaties had on interactions between national Parliaments and EU institutions?
The role of national Parliaments has been increasing from Treaty to Treaty and that made a relatively positive impact on the cooperation between the EU institutions and national Parliaments. The National Parliaments should employ the powers given more actively.

b. What is your assessment of the existing yellow and orange card procedures? Are national Parliaments making good use of these?

The existing yellow and orange card procedure gives national Parliaments the possibility to effect the EU legislation with more power than before. It also facilitates exchange of information as well as builds up the inter-parliamentary cooperation.

c. Is there a well-developed, common understanding of subsidiarity?

Yes.

d. How effectively is proportionality scrutinised by national Parliaments?

The Seimas does not scrutinise/control the principle of proportionality.

e. Should national Parliaments have a greater, or different, role in the development and scrutiny of EU legislation?

The Seimas has not debated on this matter.

Dialogue and scrutiny of EU policies

3. What is your assessment of the level and quality of engagement between EU institutions and national Parliaments, and between national Parliaments? We invite you to offer specific examples. In answering this question you may wish to consider:

a. What assessment do you make of the adequacy of the level of dialogue between the Commission and national Parliaments regarding legislative proposals? What influence, if any, do national parliament opinions have on the legislative process?

The existing practice (such as comments to green papers, blueprints, participation during the first readings, mandating the Lithuanian position before the European Council or Council of ministries, subsidiarity check and parliamentary reservation) gives the instruments to influence the EU legislative process, but national Parliaments, because of objective and subjective reasons, do not employ them at the most. Coordinated inter-parliamentary cooperation (e.g. already mentioned clusters of interests) could build up the contribution of national parliaments in the legislative process.

b. How effective is engagement between national Parliaments and the European Parliament? Could it be improved?

The Committee is of the opinion that on the information exchange level the cooperation between national Parliaments and the European Parliament is satisfactory.

c. What effect are procedural trends, such as increased agreement on legislation at first reading, having on the ability of national Parliaments to scrutinise EU decision making?

The Seimas of the Republic of Lithuania did not debate on this matter.
d. What should be the role of COSAC (the Conference of Parliamentary Committees for Union Affairs)? Does it require any changes to make it more effective?

The Seimas consider the COSAC bi-annual reports as source of systematic information on parliamentary practices as well as experience and good examples sharing. COSAC should remain a parliamentary forum for the exchange of information and best practices of parliamentary control as well as a debating platform for the future of the EU matters. COSAC should increasingly debate EU political matters (and aim at building up a common position on the EU policy matters), the outcome of which should be taken into account by the EU institutions defining the EU policies.

e. What is your assessment of other mechanisms (such as Joint Parliamentary Meetings, Joint Committee Meetings and IPEX) for co-operation between national Parliaments and EU institutions; and should any other mechanisms be established?

The Committee is of the opinion that Joint Parliamentary Meetings, Joint Committee Meetings and IPEX are useful tools for the exchange of information on the deliberation of EU documents and that there is no need for new mechanisms. National Parliaments and EU institutions should use the existing mechanisms more effectively.

Capacity of national Parliaments

4. How effective are national Parliaments at engaging with European affairs? In answering this question you may wish to consider:

a. Are national parliamentarians sufficiently engaged with detailed European issues? Are national Parliaments as effective at political dialogue with EU institutions as they are at holding their own governments to account?

The Seimas of the Republic of Lithuania recognizes the clear need for a constructive political dialogue with EU institutions, especially with the European Commission.

The Seimas would welcome a constructive cooperation with the EU institutions and the possibility of hearing the key EU figures and members of the European Commission. However the practice has proven that the national Parliaments are not a priority on the agenda of EU political figures, for instance national Parliaments often experience difficulties trying to engage the Commission members into parliamentary dimension activities and events.

The Seimas would appreciate the Commission members presenting to the Seimas the Annual growth survey, EU annual budget, etc.

b. Can you give specific examples of Member States that are good at building co-operation and co-ordination between national Parliaments? What do they do well? Should other countries learn lessons from this good practice?

In recent years the Danish Parliament has come up with the concrete initiatives of the inter-parliamentary cooperation, encouraging of building up clusters of interest among national Parliaments.
Also L COSAC in October will run parliamentary debate on the national Parliament’s role in the EU decision making process. In so called informal agenda of the COSAC, the Committee is initiating few informal parliamentary dimension meetings, namely EU Baltic Sea Strategy and COSAC woman forum.

a. Is there political will, and resource, for increased interparliamentary co-operation?

Yes, there is a political will for increased inter-parliamentary co-operation. The possible forms and resources for such co-operation are to be discussed.

d. What role does the network of national parliament representatives in Brussels play? Should the network be further developed?

National parliament representatives facilitate the exchange of formal and informal information among the parliaments and this should be maintained and strengthened. Fast and timely exchange of information, especially on the subsidiarity checks, is a valuable tool for the parliaments organizing scrutiny procedures.

Other possible changes

5. In what other ways should the role of national Parliaments in the European Union be changed or enhanced? Which of these suggestions would require treaty change and which would not? In answering these questions you may wish to consider whether there are any specific policy areas (such as financial and economic policy) which are particularly relevant.

The Committee has not debated extensively on this matter, however, the views are shared, that the time has come for the new Convention on the division of functions and roles between national Parliaments and EU institutions in the light of EU democratic legitimacy.

3 October 2013
One of the most significant and debated problems within the European constitutional architecture concerns the so-called democratic deficit in its institutions, and in particular in the Council, the solution to which would be a democratic legitimation of the indirect type. The principle is currently expressed in Art. 10 (2) TUE according to which “the Member states are represented in the European Council by their respective Heads of State or Government and in the Council by their respective governments, which in turn are democratically responsible before their National Parliaments or before their citizens”.

This two-tier level of legitimation, together with the direct representation of the citizens of the Union within the European Parliament, should ensure that the democratic principle is upheld thus giving legal force to the legislation produced by the European institutions.

It is however evident that this is a “weak” solution and that it assigns to national Parliaments a merely negative role in the sense that it attributes to them a task of exercising mere “supervision”, which is furthermore carried out a posteriori. This is true, albeit to a lesser extent, also for those EU Member States (e.g. Germany) that have implemented, under the aegis of the principle of “responsibility for integration” (Integrationsverantwortung), internal procedures for ensuring conformity of the position adopted in the Council by the Member State on the directives issued by their Parliament.

From this point of view, some (partial) steps forward have been made since the European Union (with the Maastricht, Amsterdam and Lisbon Treaties) attached direct importance to National Parliaments.

b) First of all there has been progress from the standpoint of the “information flow” in that both Articles 1 and 2 of Prot. 1 and Art. 4 of Prot. 2 ensure that draft legislative acts (and other acts) be immediately forwarded to the National Parliaments. In this phase it is evident that a fundamental role is played by the European Commission, which – as holder of the power of legislative initiative – is the institution that more than any other is burdened by the duty to inform Parliaments.

However this flow of information is extremely large and the number of acts that need to be mastered is so huge that Parliaments are finding it difficult to manage the information, in spite of the fact that they are assisted by particularly complex support structures that are endowed with staff that is specialized in legal matters, including matters related to EU Law.

Moreover, Parliaments have been given the possibility to use a number of instruments for bringing their position to the attention of the European institutions. In particular, it should be recalled that through the provisions contained in Protocols 1 and 2, national Parliaments are empowered to express their opinions on the draft legislative acts (and other acts) of the EU both from the standpoint of the “political dialogue” and above all from the standpoint of compliance with the subsidiarity principle. In the second case, furthermore, their participation in the procedure may give rise to a further burdening of procedures, if the numbers are large (see Art. 7 of Protocol no 2).
a) As emerges from the literature and as shown in paragraph 2, in either case the role of national Parliaments is becoming increasingly important in the sphere of EU law.

However, the direct instruments mentioned above are participatory only in a very broad sense and not in the strict sense; in short they are not deliberative. Hence, in the name of a meaningful implementation of the democratic principle, the Treaties should be reformed in the direction of strengthening the role of national Parliaments.

2. Formal role of national parliaments

a) The formal role attributed to national Parliaments by Art. 12 TUE consists above all in the power to submit opinions, which is the last step in a process whose origin can be traced back to the Maastricht Treaty and in particular to the Declaration on the role of National Parliaments in the European Union. With the subsequent reform of the Treaties (Amsterdam) this process was further advanced through the introduction of the Protocol on the application of the principles of subsidiarity and proportionality and of the Protocol on the role of National Parliaments in the European Union whose current formulation is the outcome of the last reform (Lisbon).

Submitting reasoned opinions is not however the only means that national Parliaments have to take part in the drafting of European acts.

The so-called “political dialogue” uses three instruments: (1) the debates and general discussions at bilateral and multilateral levels in which an important role is played by the Conference of Parliamentary bodies specialized in Community and European affairs of the Parliaments of the European Union (COSAC); (2) the sharing of written opinions by National Parliaments, whose numbers increased further in 2012 (7% more than 2011) and the answers by the Commission and (3) a series of other personal contacts or meetings that occurred during the year.

In line of principle it can be stated that in the light of the economic and financial difficulties currently being experienced by the European economies, as of late the political dialogue has focused mainly on these issues.

Also control by Parliaments on compliance with the principle of subsidiarity occurs by submitting a reasoned opinion, in accordance with the provision of Protocol 2 attached to the Treaty. Even though these opinions are different in terms of content from those concerning the political dialogue, the two instruments are often used in parallel by the legislative Assemblies. Also in this case there has been a steady increase in the attention paid by national Parliaments to European legislative acts as shown by the fact that in 2012 there was an overall 9% increase in the number of subsidiarity opinions submitted.

It must however be recalled that in checking the application of the principle of subsidiarity there is a considerable imbalance among national Parliaments. Suffice it to recall that the three most active Chambers in 2012 (in ranking order the Swedish Riksdag, the French Sénat and the German Bundesrat) formulated about 50% of all the reasoned opinions forwarded by national Parliaments in 2012. This means that the other Chambers gave a very small contribution to the matter of subsidiarity checks. On the other hand, it must be observed that the greater “activism” of the three mentioned chambers is a direct consequence of their role within their constitutional systems. Indeed, in the case of the Riksdag, the peculiar characteristics of the Swedish state are to be taken into account in
terms of size of the population and social organization as a result of which Parliament has a workload that allows it to keep a closer eye on European acts. The activity of the other two Chambers, the French Sénat and the German Bundesrat, is to be related to the role played by these Chambers in their respective forms of government that allows them to concentrate in depth on this type of activity. Indeed, the Bundesrat is less active than the other National Chamber (Bundestag) in the making of laws; in the case of the French Senate instead, account needs to be kept of the fact that in the French system there is a “division” between laws and regulations in favour of the regulatory source, and hence the legislative activity is less intense.

b) As is well known, the number of subsidiarity opinions may entail the consequence of activating the yellow card or orange card mechanisms whose actual usefulness may reasonably be questioned. Indeed the Chambers of National Parliaments have used the yellow card mechanism only recently for the first time with regard to the “Draft regulation on the exercise of the right to promote class actions with regard to the freedom of establishment and of providing services” (Monti II), whereas to date there have been no cases where the orange card mechanism was used.

c) These poor results seem to be attributable among other things to the different ways in which the notion of the principle of subsidiarity is interpreted across Member States. This is pointed out even by the European Commission in the mentioned annual report (2012) on the principle of subsidiarity. In particular, it refers to the eighteenth half-year report of COSAC, which states that “a large majority of national Parliaments report that their reasoned opinions are often based on a broader interpretation of the principle of subsidiarity than the wording in Protocol No 2. For example, the Dutch Eerste Kamer believes that ‘it is not possible to exclude the principles of legality and proportionality when applying the subsidiarity check …’. The Czech Senát is of the opinion that subsidiarity has a ‘general and abstract nature … is not a strict and clear legal concept’ and therefore a broad interpretation should be used. The UK House of Lords gave a similar view, arguing in favour of a wider interpretation of this principle because ‘although the principle is a legal concept, in practice its application depends on political judgement’” (European Commission, Report from the Commission, Annual Report 2012 on Subsidiarity and Proportionality, Bruxelles 30.7.2013, COM(2013) 566 final, p.4).

It must also be pointed out that it is not only the “ideal” qualification of the principle of subsidiarity that differs in the EU Member States but also its application in the sense that the principle of subsidiarity has reached different levels of “maturation” in the individual States, because only for some of them (above all the States having a federal structure like Germany or a regional structure like Italy) can we say that subsidiarity is a notion that has been fully acquired albeit not widely applied. Hence it would be appropriate for the European Union to undertake a “harmonization” process so as to develop an idem sentire of the subsidiarity principle.

d) In this framework, the principle of proportionality takes on a marginal role. On the one hand, formally, it is not emphasized in Protocol 2 because the reasoned opinions envisaged in Art. 6 should be restricted to checking compliance with the subsidiarity principle (the only one mentioned there) but it is evident that the two notions are intimately connected. In any case, the remarks concerning the principle of proportionality brought to the attention of the European Institutions do not appear to obtain the desired effect (see paragraph 3). The picture that emerges from the “criticalities” of the oversight system of European acts by
national Parliaments suggests the need to rethink their participation in the European legislative procedure in the ways indicated in paragraph 5 on the reform proposals.

3. Dialogue and scrutiny of EU policies

a) In general we might state that in the European Union a closer (and mutual) relationship is being shaped between the European Institutions and the National Parliaments. This idea is borne out by the growing number of opinions sent by the national parliamentarians (both with regard to the so-called political dialogue and with regard to subsidiarity checks).

However the role of national parliaments does not appear to be significant, especially if one looks at the consequences produced by the opinions submitted. Indeed, even though it is true that the European Institutions, and in particular the Commission, always respond (in application of the Barroso procedure), this hardly ever turns into a reformulation of the legislative draft. On the contrary, often the Commission uses this “response” to confirm its position on respect for the subsidiarity principle (or on the political opportuneness of the act).

The most evident proof of this is the outcome of the draft act for which the first yellow card mechanism was activated. Reading the 2012 Report of the Commission on the principle of subsidiarity, it states that “following an in-depth evaluation of the arguments submitted by national Parliaments in their reasoned opinions, (...) it concluded that there was no violation of the subsidiarity principle”. Hence even in that case the national remarks were not considered to be “sufficient”.

The subsequent withdrawal of the proposal was not caused by the joint action of the parliaments but by an acknowledgement by the Commission that the proposal would not obtain the political support by the European Parliament and Council required for it to be adopted.

Consequently these two Institutions are the true “masters” of the legislative activity. Hence until the national Parliaments do not succeed in becoming co-legislators (for instance they could take the place of the Council as is being suggested here; see paragraph 5), they will never have any real instrument for taking a significant part in the European legislative activity.

c) This conclusion is all the more true in the light of the procedural practice that is becoming consolidated, among which the increase in cases where the legislative act is adopted following the first reading. Indeed, it is clear that this fact implies that the Commission, in promoting the legislative proposals, should beforehand make sure that the two co-legislators are in sufficient agreement (Parliament and the Council). Achieving this result is an exhausting exercise which is hence a deterrent against having the drafts re-examined following the parliamentarians’ observations. Indeed, their acceptance could thwart the positive outcome of the laborious mediation work.

b), d), e) Taking into account these empirical data suggests that the current mechanisms providing a connection between the European Parliament and the national parliamentarians, and among the national Parliaments themselves (COSAC, Joint Parliamentary Meetings, Joint Committee Meetings, IPEX and informal meetings), albeit pursuing a praiseworthy intention, are still too weak.
From this standpoint an opportunity for upgrading them could derive from Art. 13 of the Treaty on Stability Coordination and Governance in the Economic and Monetary Union, according to which “(...) the European Parliament and the National Parliaments of the Contracting Parties will together determine the organisation and promotion of a conference of representatives of the relevant committees of the European Parliament and representatives of the relevant committees of national Parliaments in order to discuss budgetary policies and other issues covered by this Treaty”.

The implementation of this provision could constitute a way for softening the effects that are being produced because of the financial crisis. The latter has deprived several Member States of the European Union of many further “portions” of their sovereignty especially in matters related to their economic and financial policy. This however has not been followed by a further advancement of the European integration process but, quite to the contrary, there has been a downright loss of sovereignty by (some) Member States whose decisions in terms of budget policy have been “shifted” into the hands of bodies that are not democratically accountable to the citizens affected by such measures.

4. Capacity of national parliaments

a) Even though, as already pointed out, the level of information and attention paid to the drafting of EU law has undoubtedly grown within national Parliaments, and hence they are aware of the relationship with the European legal order, their efficiency in political dialogue is not comparable with the capacity of asserting the responsibility of the respective governments.

In the current stage of the process of European integration, national Parliaments continue to play a weak or in any case a non decisive role vis-à-vis the EU policies. Indeed, any comparison in terms of accountability between national Parliaments on the one hand and the European institutions and national governments, on the other, is ill-defined. In the constitutional practice of EU Member States, the parliamentarization of the system is so strong that it gives rise to a democratic circuit that supports the policies pursued by the public apparatuses. This is something that is not present in the European order and its absence is cause of discomfort especially if one considers that the evolution of the European integration process depends on it.

b), c), d) Hence we need to acknowledge the fact that, in the current stage of the integration process, there is a demand for the “parliamentarization” of the system that cannot be ignored. It is not by chance that national parliaments have given rise to unprecedented procedures for optimizing their work in order to contribute to the drafting of European acts, among which stands out the frequent use of mechanisms (established by law or through parliamentary regulations) that are functional to achieving a rapid and effective result in terms of participation. Suffice it to say that some Member States have decided to attribute the competence of the issuing of reasoned opinions not to the plenum of the parliamentary Assemblies, but directly to some parliamentary Committees, as in the case of the Europakammer of the German Bundesrat. In this connection mention can be made also of Spain that set up the Comisión Mixta para la Unión Europea, which has been given the power to use both votes of the Spanish Parliament to check compliance with the subsidiarity principle.

Therefore if there is a political will to continue along this direction it is not exaggerated to state that there is scope for giving rise to a general overhaul of the European constitutional
architecture, that may lead to an actual representation of national parliaments within the form of government of the European Union, going well beyond the albeit praiseworthy work done today by the Network of national parliament representatives.

5. Other possible changes

In the light of the foregoing, we need to acknowledge that the true quantum leap for the role of National Parliaments should be a form of participation in the deliberative stage of legislative acts which – obviously – requires a reform of the Treaties.

From this point of view, by duly making a distinction between legislative functions and executive functions, one might think of replacing, for the former, the Council with a European Chamber of Parliaments (as proposed by Giscard d’Estaing and Joschka Fischer). According to the criterion of degressive proportionality, this body should consist of about 300 delegates from Member States holding a national parliamentary mandate, very much like the European Parliament as it was in the beginning. In this way, when called upon to vote at political elections, the citizens of the various Member States, would at the same time give democratic legitimation to both national Parliament and this European Chamber of Parliaments.

It could also be envisaged that, from an internal point of view, Member States could be free to impose, if desirable, a binding mandate given to such delegates so that they would have to comply “en bloc” with the guidelines laid down by their respective Parliaments, using all the votes available to the Member State. However, if this power were to be envisaged, for self-evident reasons of fairness, holding a European mandate would be incompatible with the national mandate which means that upon being appointed delegate to the European Chamber he/she would step down from being a member of Parliament at home.

It is however evident that such a distinction in the roles of the two bodies commands a review of the composition of the European Parliament and its voting system that cannot continue to be based on individual national regulations.

From a first standpoint, a true representativeness of European citizens demands that the principle of degressive proportionality be removed in favour of the adoption of a system whereby the number of representatives per Member States be directly proportionate to the Country’s population. However this should not exclude the minimum “clause of protection” assigning at least one seat to those States that do not reach the quorum required to have access to a seat.

From a second point of view we must emphasize that the lack of a uniform electoral system is an obstacle against the creation of a true European “politics” and of authentic European parties that are transversal to national interests (or would be even indifferent to them).

A uniform electoral procedure would attenuate the influence that the national “provenance” of the Member would play in his active European policy. Furthermore it is clear that achieving this goal requires that a uniform electoral system would require that the European political parties be well grounded in the Member States, which would be guaranteed by systems requiring that candidates should come only from parties that are of European importance.
As regards the electoral formula, two alternatives seem to be possible. On the one hand there could be a proportional system with an electoral threshold at national level where the constituencies would coincide with the States and the sub-constituencies would be established by a European regulation.

On the other hand a first-past-the-post voting system would also be satisfactory, based on single member constituencies, they too delineated in a European regulation.

In both cases, envisaging that the candidate to the Presidency of the Commission be explicitly indicated (even though not formalized in an act) by the European political parties would be useful for bringing European politics closer to public opinion.

If this change is made it would also be possible to amend the existing jumbled legislative procedure (Art. 294 TEU), tailoring it to the type of European competence involved.

It must be said that this idea arises from the fact that both changes being suggested would entail the European institutions to embrace the federal theory according to which one of the two Chambers making up Parliament is the expression of the Federation and of its people, while the other is the expression of the Member States. Indeed, accepting the reform proposal would entail the final consolidation of the first role that the European Parliament should have with regard to which it is already envisaged that “citizens are directly represented at the level of the Union in the European Parliament” (Art. 10 (2) TUE), while the second role would be played by the European Chamber of Parliaments within which the exponential nature of national interests would emerge even more clearly.

Once this separation of roles is made, as described above, the system would be “ready” to accept a different involvement of the two European “Chambers” (the European Parliament on the one hand, and the European Chamber of Parliaments, on the other), depending on whether the matters at hand are of exclusive EU competence or not (Art. 3 TFUE). In the first case one could only ask for approval of the legislative act by the European Parliament, unless the other Chamber requests (a certain number of States or of Parliamentarians) that the legislative act be put before it. For other competences, the draft legislative act would have to be discussed by both chambers.

If the role of National Parliaments and of the democratic principle are to be truly enhanced, the right of legislative initiative needs to be amended in the sense of expanding it to other bodies.

Actually it must be pointed out that the current system under which the right of legislative initiative is restricted to the Commission, is an (almost) necessary reflection of the European ordinary right to initiative (Art. 294 TFUE), where the Commission is conceived of as a sort of “mediator” that (1) promotes only the draft laws that it deems will receive a good level of consent by the two co-legislators (Parliament and Council) and (2) it tries in various ways, during the procedure, to get the co-legislators to reach a common position. Moreover, apart from this evaluation of it being opportune, the literature has pointed out that the circumstance that the European parliamentarians do not enjoy the right of legislative initiative constitutes an open anomaly within the forms of parliamentarian government.

However, the solution to these issues would be easy in a modified institutional framework in the sense described above, because there would be a true “parliamentarization” of the legislative procedure and, more in general, of the European form of government, that would
no longer justify the fact that the right of legislative initiative lies only with the Commission. Indeed, the right of legislative initiative could be extended also to each member of both “Chambers”. It goes without saying that the legislative initiative of the members of the European Chamber of Parliaments might be restricted to the draft laws concerning the legislative competences other than those exclusive to the EU. This shortcoming could however be offset by envisaging that the right of legislative initiative be attributed to the national Parliaments (or individual Chambers to which they belong). On the other hand such powers given to regional legislative assemblies is not new among European forms of government, as for instance in Italy.

In such a reviewed framework for exercising European legislative powers, the current provisions contained in Protocols 1 and 2 could be weakened or even repealed provided that the aims they pursue were guaranteed (in an even more efficient manner) by the parliamentarization of the system.

The reform of the European form of government along the lines suggested here entails also a change in the attribution of executive powers.

Indeed, the proposed changes make it finally possible to operate the principle of the separation of powers also in the order of the European Union. Legislative power would authentically be itself and “self-sufficient”, once it were freed from the attribution of the right to legislative initiative to the Commission and there would also be the space to attribute to the latter the role of “Government” of the European Union the members of which would continue to be assigned upon indication of the national governments and would be politically accountable (only) to the European Parliament. The Commission therefore should be given executive powers authorized in the legislative acts for which besides recourse to the so-called comitology mechanism there could also be the opinions of the Parliamentary Committees of the European Chamber of Parliaments.

September 2013
WEDNESDAY 8 JANUARY 2014

Members present

Lord Boswell of Aynho (Chairman)
Lord Bowness
Lord Foulkes of Cumnock
Lord Harrison
Lord Maclennan of Rogart
Lord Wilson of Tillyorn

Examination of Witnesses

Mr Miguel Angel Martínez Martínez MEP, Vice-President, European Parliament, and Mr Carlo Casini MEP

Q125 The Chairman: Thank you, Vice-President.

Miguel Angel Martínez Martínez: Welcome. I do not know what the procedure will be and if it is going to be informal. In any case, President Casini and I are extremely happy to receive you and to work with you. We will have time later to express our appreciation for the communication that we have with House of Lords, at least with those Members of the House of Lords who come to meetings. Let me just say that from now on we are going to follow something that is strictly a must in the parliamentary life of the European Parliament. Each one of us will speak his own language. In the absolute concern that we have for transparency and democracy, we do not speak a language that is ignored by 60%, 70% of European citizens. Everything that we say is said in a language that goes straight to the people of the world who speak it. Therefore, Mr Casini will speak Italian and I will speak Spanish, and I am sure that—thanks to the always very competent and efficient work of our interpreters—communication will be perfect, as it is in the daily work of the Parliament. My portfolios concern relations with national parliaments but also everything that has to do with multilingualism—everything that has to do with interpretation and translation, including the agreements that we have with over 140 universities that train interpreters and the satisfaction that we have to be the leading body in this field for communication, which
includes cooperation with the White House and State Department in the US or with the UN and with the universities of Shanghai, Beijing, Moscow, St Petersburg, etc., and indeed the UK. We are particularly happy about the work that we do with the University of Cambridge, which is the basic pillar in this aspect of our work. I think it is good to have the opportunity to pay homage to the University of Cambridge. I will tell them that I mentioned them in our talk with the Lords. I do not know if any of you come from that area or not. It is very rewarding work that we develop with them, especially the assessment system that they have developed to evaluate the knowledge of languages. They have become a basic partner for our work and that is good to know. Besides that, let me tell you that I am very proud to be a doctor honoris causa of the University of Aberdeen. That is a different issue. I do not know if any of you come from that area in Scotland, but if that is the case let me express my pride in that.

(Interpretation) Good morning, everybody. I would like to express our cordiality, and our friendship. We would like to thank you for all of the efforts that are being made within the House of Lords to try to contribute to improving co-ordination between the national parliaments and the European Parliament, and the processes under way at European level. Let me introduce President Carlo Casini. He is the Chairman of the Constitutional Affairs Committee of the European Parliament. Together with me he is Co-President of the particular body where we mainly develop the relations with national parliaments—COSAC more specifically. We head the European Parliament delegation to COSAC and have done it for the last few years. Thank you very much for being here. We are here for any questions you have to put to us.

Q126 The Chairman: Thank you, Vice-President. Perhaps I may welcome you to your own building—we are delighted that you have been able to spend the time with us today for this evidence session—and Mr Casini as Chair of the AFCO Committee. It is no accident that I have been personally very lucky to have had the chance to meet you both at COSAC meetings. The last time I saw Mr Casini was when he was at the British Houses of Parliament with his committee and they met a number of us in the European Affairs Committee and the Constitutional Affairs Committee. That was a very good example of interparliamentary exchange.

I make only two other general points in starting. First—and I think it has no need of interpretation—I will just record the fact that we are an entirely balanced representation. We have three from England and three from Scotland, so that is a thought. Secondly, I think we could say clearly that we have the habit in the House of Lords of trying to receive the evidence first before we reach conclusions, which is why your presence here is so welcome. We could probably say that we are in the business of finding ways of building bridges and working out how we can best integrate our activities rather than creating some kind of artificial stand-off. My personal experience of both of you, gentlemen, is that that is the way in which you approach the issue and it is greatly appreciated by us.

For the record, this is now a formal session of our parliamentary inquiry. It is on the record and it is being recorded from now on. We will be preparing a transcript of this session as part of our evidence, and we will make sure you receive a copy of the draft. Of course, if there are any questions of wording or fact of a minor correction, we are very amenable to those. But it will be published and I think it is helpful for us to get that formal evidence.

To start our discussion, I would like to put the question that we have put to a number of other people here. Some of our witnesses who have given evidence to us within the United Kingdom have indicated that there may be a problem with the Treaty of Lisbon in giving
merely the appearance of greater democratic legitimacy to European Union affairs. It is fairly clear that there was some enhancement of the powers of the European Parliament. I am not reopening that issue, but I think it is also clear that in the years since Lisbon—and we have had a chance to explore its working—there has been something of a crisis in the European Union as far as our members, constituents and electors are concerned, and we need to be able to represent their interests very effectively in difficult times. Gentlemen, could I ask you first to give an assessment of the real impact that Lisbon has had, both for the European Parliament and for national parliaments, and to some extent the relations between our two sets of parliaments? Mr Martínez, would you like to respond?

*Miguel Angel Martínez Martínez* (Interpretation) My understanding is that we are speaking as colleagues and Members of Parliament. We are not diplomats involved in a conversation and, of course, we presume there is good faith from your delegation, Lord Boswell, in all of the questions that you put to us. We understand that the first points that we have to make here are personal communications within the remit of our own sphere of responsibility, but I also want to make sure I am being as sincere as I can be with what I say. We are sure that none of what we say here today will be manipulated against our interests and against the interests of the European Parliament.

It seems to me that it cannot be questioned that the Lisbon treaty is a considerable step forward in terms of improving the competencies of the European Parliament. I think that is simply not up for question. It is not up for question because the texts of the treaties themselves spell it out very clearly. Given that, since the coming into effect of the Lisbon treaty, the European Parliament is now a co-legislator in some 70% to 80% of policy areas, how could that not represent significant progress and how could it not represent better democratic legitimacy in the whole process? I usually give one example to my constituents when I speak on this subject. Of course, my own constituency and my citizens are equally concerned with this question. I tell them one fact: for 50 years the European Parliament did not have decision-making powers in the common agricultural policy, which manages more than 40% of the budget. It was previously more than 50% of the European budget. The European Parliament had no capacity, responsibility or competence to decide on matters relating to the common agricultural policy, so for 40 years we simply issued an opinion on how the CAP should be funded. This opinion was sometimes followed more, sometimes less, depending on what the Council did with it. In most cases the Council simply did not take those recommendations into consideration. That situation has ended. The fact that the European Parliament has co-decision powers on how half of the EU’s resources are managed definitely represents a step forward, I think.

I have to be sincere in what I say, particularly because Lord Boswell has been sincere in his question to me. What I feel to be a deficiency in the process, in terms of the democratic functioning of all of our societies as well as these institutions, is that the political majority that exists in the Council is the same political majority that exists in the European Parliament. What that means—and this is a larger scale of what happens in most member states, and it happened for a long time in my country—is that the European Parliament, despite having this role of exercising democratic scrutiny over the executive body, is dominated by the same political majority. That is what is happening here now. Very often, even though the Parliament has co-decision powers, because we have the same political majority in Parliament as we do in Council, the proposals that Council comes out with end up being adopted. That limits the ability of the European Parliament to amend the proposals and the effect is lessened. I do not think that is satisfactory and that is something that should be improved in terms of the way the Parliament works.
Mr Miguel Angel Martínez Martínez MEP, Vice-President, European Parliament, and Mr Carlo Casini MEP—(QQ 125-136)

It is true that there is a lot more still to be done. In my opinion, the progress that has been achieved through the Lisbon treaty—in terms of competence for the European Parliament and improving democratic legitimacy—is significant. However, we have to keep making the same effort as we are making in each of our member states to make sure that the institutions are legitimately representing the people whom we are supposed to represent.

In the Lisbon treaty specific attention is given to national parliaments that had not been given to date before the Lisbon treaty. The national parliaments are given an additional role in the text of the Lisbon treaty. That was largely due to the impetus given by the European Parliament. None of the member states’ Governments wanted to boost the role of national parliaments. They did not want to see the national parliaments playing a stronger role. It was the European Parliament that promoted this. It is thanks to the co-ordination we have been involved in—through COSAC and other bodies—that the European Parliament said very strongly that national parliaments needed to play a greater role. That is what we are seeing now. That is why we are all committed to boosting the effective role played by national parliaments.

One final word: in order to make this additional role for national parliaments more effective we have to follow the line of reasoning that Lord Boswell mentioned. We cannot simply increase the role of national parliaments if their role is seen as a way of attacking the European Parliament or trying to undermine the way that European institutions work. We have a great deal of confidence and trust in the work being done by the House of Lords, precisely because it is a body that represents the people in a member state within the European Union. As such, it helps us contribute by bringing ideas to the table and we expect and hope that obstacles are not constantly put in front of us in effectively carrying out our work. I personally have a great deal of hope for the future in this field. I do not know if Carlo wants to add a few words.

Carlo Casini: (Interpretation) I endorse what Vice President Martínez has said, and would start by saying that the Treaty of Lisbon does not constitute a finished product, but rather work in progress, as is stated in Article 1 and 2 TEU. It is therefore important to know what our goal is.

Identifying that goal is is very important if we want to know where we are going. I would emphasise in this regard that the Lisbon Treaty has fully involved the national parliaments in European integration. Article 12 spells out that national parliaments are not just spectators lining the route. They are actors in the integration process, even if it is important to emphasise that there can be no replacing the European Parliament in its legislative role.

The degree of democracy in the European Union has been greatly increased by the Lisbon Treaty, not least because of the increase in the legislative powers attributed to the European Parliament. The overarching principle is the general rule that legislative powers lie with the European Parliament. Bar exceptions, such as in the case of foreign policy, Parliament is the co-legislator along with the Council.

The national parliaments are part of the European parliamentary system, even though they are not direct European legislators. Under Article 12 of the Lisbon Treaty and the first and second additional protocols thereto, they can and should provide their opinions at the pre legislative stage. Perhaps the time has come to draw up an interinstitutional agreement regulating interparliamentary cooperation, as suggested in Article 9 of the first protocol.

Scrutiny over subsidiarity has a direct impact on the legislative process but, to my mind, it should viewed as a way of furthering the integration process. It should not simply be used as
Mr Miguel Angel Martínez Martínez MEP, Vice-President, European Parliament, and Mr Carlo Casini MEP—(QQ 125-136)

a brake, but rather as a stimulus for a more correct and complete integration through positive proposals made by the national parliaments.

There is certainly a need to identify how we can do things better. We need national parliaments. First and foremost, the will of the people is expressed through the national parliaments. It is also expressed through the European Parliament, so we need to work together in order to be close to the people. There is no doubt about that. We also want to be certain that the United Kingdom will remain a pillar of the European integration process. Do you really intend to be that or do you see a different goal to be achieved? I think that is the fundamental question that should be asked of the United Kingdom.

Q127 The Chairman: Thank you both for those very helpful contributions and the positive note that you have established at the beginning of our discussions. I was particularly grateful for something Mr Casini said by accident—because he then changed to a different article of the treaty—when he referred to Article 2. The point I have sometimes made, and I think it is useful for this discussion, is that we should remember that we are all guided by the democratic and other humane values of the European Union. Perhaps that is an area we can always agree on and remind our Governments of the importance of.

If I can take up the line of questioning so far, I would like to ask our two witnesses whether they see national parliaments operating—if not exclusively—mainly as guardians of the subsidiarity principle, Article 5, or is it sensible within the spirit of collaboration to look for national parliaments to be more active in the upstream activity, having conversations with yourselves as colleagues, as legislators here, with the Commission and others earlier in the process of forming policy? Perhaps I can put it like this: it may not be healthy simply to wait until the last moment to play a yellow card; it would be much better to avoid the need for a yellow card ever being played. Do you recognise that kind of dialogue? Where is the best place for national parliaments to exercise their influence, both in terms of getting what they would like but also in terms of informing the European process?

Miguel Angel Martínez Martínez: (Interpretation) I believe that the subsidiarity principle is extremely important and it is a responsibility of national parliaments. Having said that, I think it would be wrong, restrictive and a weakening of the system to confine national parliaments simply to be responsible for looking after subsidiarity. With the fullest respect for what national parliaments do in the field of subsidiarity, I think they have to explore all of the terrain and I think national parliaments have a key role to play in other fields. Lord Boswell said this very clearly. I think it would be more effective for national parliaments to have their voice heard as early as possible in order to enrich the debate, to contribute with opinions and comments. There is very little doubt in my mind as to the importance of that process.

In the work that we have been carrying out, perhaps the one area where I have felt this enhanced role of national parliaments most is in the interparliamentary committees. These interparliamentary committees do not have a very clear legislative role. However, when I speak to colleagues from the Transport Committee or from the Agriculture Committee, or colleagues from committees that have to deal with issues relating to immigration, I see that the European Parliament is trying to do a great deal of work that is of great interest to the committees elsewhere.

We are not talking about just generic relations between institutions; we are talking about matters of substance and content. The important point is that we should be bringing wealth to the debate and adding ideas from all levels. That is extremely important. These meetings can serve the purpose of making it very clear just how much we appreciate the contributions that you have brought to us. These are often issues that could be forgotten or left by the
wayside if it was not for the flagging up of certain issues from national parliaments. That is why we have a high amount of trust and confidence in the work that is done in national parliaments and that is the way it needs to be in order to proceed.

This environment of trust is necessary if we are to make progress in the specific interparliamentary committees. I think we would all admit that the earlier these matters are dealt with and discussed with national parliaments the better; when it is a question of drafting the Green Papers and so on, the earlier the better. It is not just a question of listening as a pro forma exercise; we need to listen to what people have to say and attempt to apply that when texts are being drafted, because this is useful information in the process.

Carlo Casini: (Interpretation) I have little to add to that, but would merely like to make an observation. The exchange of information between the European Parliament and national parliaments is made possible by modern communications technology. The European Parliament has spent a lot of money on putting together its IT system to receive material from you. You were asking at what point you should come into the process. Well, you should probably not wait until the end, and can make an important contribution throughout the process. The national parliaments have the ball in their courts, and they should decide when to it comes into play. When a proposal has been sufficiently discussed, then let us know. It is our task to take on board your considerations. We already have the instruments, and if there are any shortcomings they should be flagged up. Perhaps that is one of the times you should make your voice heard, so that we can resolve these issues.

Q128 The Chairman: Thank you. One final comment: in a sense I am inviting you to be critical across national parliaments. As you know, the people who are representatives in national parliaments are not spending all their time on European affairs and many of the specialist committees in national parliaments are not very well accommodated to having a dialogue with you. In some cases there will be specialist EU affairs committees. In other cases this will be left to the responsibility of the departmental specialist committees, and they may or may not have a rapporteur who relates to you. If we are going to have a dialogue, do you think that this is an area that we—at least as national parliaments and perhaps at the COSAC level—need to give some attention to as to how we have a dialogue among equals?

Miguel Angel Martinez Martinez: (Interpretation) Absolutely, my dear friend, Lord Boswell. One of the problems that we have here is that we talk about national parliaments as if they were a homogeneous group across member states. In fact, we are talking about some parliaments where we have 20 members of staff devoted to the European issues, whereas in other parliaments you often get one member of staff responsible for European and all other international affairs. That does not compare very well, so it is very difficult to talk about national parliaments and to tar them all with the same brush. The UK Parliament works in no way like the Maltese or Cypriot parliaments, for example. We have to take into account the fact that we have the House of Commons and the House of Lords in the UK, which is another specific feature. None the less, the different ways in which the different national parliaments work can help. All of this—with good faith and with the right approach—can add to the substance.

I am very pleased with what you have said, Lord Boswell, because one of the most serious problems we have is that in many of the national parliaments the European affairs questions are not a priority subject; it is just one subject among many others. Of course, it is not even the most urgent and pressing matter that colleagues are looking into. I was a Member of Parliament for 22 years at the time when Spain was negotiating with the European Union
with a view to accession. Not even for us was it the most pressing issue. It was number 11 or 12 on our list of pressing matters. We had matters relating to electoral constituencies and various other issues that were of greater importance. What that means is that we have a very complex hierarchy of importance. The European Parliament only looks at European matters and our interlocutors are approaching this from a very different perspective.

In the so-called European affairs committees in national parliaments, the way I see things is that these committees have lost some of their specific approach in looking at concrete issues, because when we are looking at concrete issues, technical matters, we send them to the Agriculture Committee, the Transport Committee and the Social Affairs Committee, and so on, depending on their area of expertise. For that reason, I appreciate increasingly the meetings that we have at the level of specialised committees—whether it is by videoconference or remote conferencing—to try to discuss these matters of substance. I think, however, that we have a major challenge that we need to overcome. We also need to overcome this issue relating to understanding. We only focus on these issues, and our interlocutors are looking at 10 different issues at the same time. Of course, that is a decisive factor.

Also, this could go some way towards explaining why, in the House of Lords, European affairs are dealt with in more depth and with more rigour than in the House of Commons; perhaps, because you have fewer precise legislative, pressing, immediate subjects that you have to deal with. You perhaps have a little bit more distance with which to reflect and to ponder these matters. We are devoured, consumed, by the immediate issues. In the House of Lords you have more of a global view of these things, and that is very interesting. That is why your contribution is always reasonable, mature and constructive, and therefore particularly useful and appreciated.

The Chairman: Thank you very much. We will take your accolade and your endorsement of our position and build it into our constitutional debate. I would like to bring in my colleagues to respond now to some of the points already made and to make points of their own.

Q129 Lord Foulkes of Cumnock: Miguel, you said, “It is wrong to confine national parliaments to looking after subsidiarity”. As you know, some people have suggested—including the Dutch House of Representatives—that national parliaments should have the right to propose initiatives. What do you think about that?

Miguel Angel Martínez Martínez: What I think about that is that, as you certainly know, the European Parliament does not either have the right to propose initiatives. This has been one of our historical claims. Every time there is a new treaty, one of our key efforts has been to try to get this. (Interpretation) The priority for us is to try to get the right for the European Parliament to begin initiatives. I do not know whether in forthcoming revisions or alterations of the Treaties we will manage to achieve that. At least to date, I do not think I can say that we have been setting traps, but we have been trying to prepare the ground with national parliaments to try to allow this to happen in the future. National Parliaments have the possibility to propose initiatives through their Governments. A national parliament can call upon or pressure its national Government to go to Council and to propose a certain initiative. The truth is that that has not been done to date very much, at least as far as we are aware. We do not have evidence of this happening. As to the Netherlands House of Commons, which is so concerned with the right to propose initiatives, we do not have any evidence that they may have used this way or suggested that any particular Parliament should go to its Government and call for that Government to propose an initiative to
Council within the remit of what it is institutionally able to do. We get the impression that they are more concerned with the form than the content of what it would appear they are trying to achieve. I think at the moment national parliaments have almost more chances of initiative than we have in the European Parliament. As to trying to get that right of initiative, I do not know what is going to happen in the near future. We do not change Treaties every single year—not even close. But if there is sufficient ground for trying to claim that, perhaps it would be the European Parliament together with the national parliaments that could provide that impetus with getting the initiative started. That could be a way to proceed.

Perhaps many members of one individual Parliament could get together and join what is known as the European Citizens’ Initiative. That could be a way of putting an initiative to the European institutions. That would be a way of having a legislative impact. That would not necessarily be the best way. I think the best way would be a motorway taking us straight there. However, for the time being, I do not see that as being a realistic possibility. I would like to see the European Parliament with the right of initiative as soon as possible, but of course there is a deficit in that area.

Lord Foulkes of Cumnock: Does Mr Casini have the same view?

Carlo Casini: (Interpretation) Thank you for raising the issue of legislative initiative. I believe that this is an area in which the increased powers attributed to the European Parliament fall seriously short. There is no Parliament that does not have the right to initiate legislation. However, I cannot see there being any direct legislative initiative for national parliaments in this area. When the European Parliament is awarded its right of initiative, the national parliaments will certainly have greater scope to request this autonomous right for themselves, but will also be able to exercise a right of initiative more easily not just through their governments, but through the European Parliament too. I therefore feel it is in the interests of the national parliaments for the European Parliament to have that right to initiate legislation. That is the solution I wanted to propose. At this juncture, I would like to point to the cooperation we have sought to achieve precisely in the United Kingdom with regard to uniform electoral law. We visited the University of Cambridge to sound out mathematical formulae for achieving this, but were unable to find the right solution for dovetailing the democratic principle with the interests of the Member States. Indeed, the interests of Member States are political, rather than mathematical.

Lord Foulkes of Cumnock: That is very helpful.

Q130 Lord Harrison: (Interpretation) First, I would like to say I was in the European Parliament 20 years ago, so I am very pleased to be able to meet you once again, Mr Casini.

Carlo Casini: (Interpretation) I am very happy to see you, too.

Lord Harrison: I have two questions. Of course, Señor Martínez, we have met in the Socialist Group. I understand we have recently become Democratic—we are now the Socialist and Democratic Group. Welcome to democracy and socialism. Can I ask you each two questions? Can you give an example, Señor Casini and Señor Martínez, of where a national parliament has formed your views about an important dossier or policy initiative that you have then introduced into the discussions in the European Parliament? Could you give an example? The second question is: how would you like to have bundled up the views of the national parliaments so they could be transmitted to the European Parliament? I bear in mind what Mr Martínez said about the fact that you cannot treat the national parliaments in a uniform way. In order for us to be effective intruding our view from a national Parliament, how would you like to receive that information so that you can use it?
Miguel Angel Martínez Martínez: (Interpretation) First, very quickly, I have two examples in which the European Parliament’s policy-making has been very clearly influenced by positions taken by the Spanish Parliament, of course, this is the National Parliament with which I am most closely acquainted; The common agricultural policy has recently been reformed—that is an extremely important issue—as has the common fisheries policy. In those two policy areas, not only the Spanish Parliament has played a significant role in conveying its concerns and demands but also regional parliaments in Spain have had their voice heard. As you know, Spain is a country where the regional parliaments have very precise legislative competencies in certain areas. The regional parliaments in Spain in these fields were extremely decisive in conveying their points of view, and I think successfully if you look at the final results. Perhaps the other question Mr Casini can respond on—the second part of the question that was posed.

Carlo Casini: (Interpretation) I am not sure I can answer you, but would say that your question involves COSAC and its remits. Other regular and structured interparliamentary meetings have recently been introduced — I am thinking above all of the Conference on the economic governance of Europe — but COSAC also has a more general role. It has been criticised for being over general. Until the start of this parliamentary term, COSAC was above all a forum for looking at how the principle of subsidiarity was being implemented but now, with the Treaty of Lisbon, that specific remit has gone. I believe that the especially important role is emerging for COSAC of taking stock of the stage reached in European integration writ large. COSAC remains, therefore, the main conduit for taking the suggestions made by national parliaments to a European level.

The Chairman: Thank you for those exchanges. It seems to me that if we have a common purpose in involving the national parliaments, equally we have a common obligation to avoid making the legislative process even more complicated, so we have to find practical ways, perhaps, of selecting the areas of priority. Mr Casini, you have just mentioned COSAC specifically. Could we bring in Lord Maclennan, both on the yellow card issue—which we have obviously discussed a bit—but also on COSAC and its role perhaps in setting some of these priorities?

Q131 Lord Maclennan of Rogart: The yellow card procedure has only been used on two occasions: Monti II and prosecuting. Can you say whether, in the view of the European Parliament, this is a system that is working? Are there any reforms that you might favour to the procedure? That is the question about the yellow card. I will come to COSAC later.

Miguel Angel Martínez Martínez: (Interpretation) On the question of the yellow card, the truth is I do not think it is pertinent for us here at the European Parliament to opine on the yellow card. I think it is up to the national parliaments to explain whether it is working, whether it could work better or how it could be improved. On this matter, I think the European Parliament has to assume the role of a mere observer. Of course, we will assume all of our commitments as far as we can. But once again, dear friends, I come back to what I said at the start. What we need is an environment of trust between us, so that if a criticism is forthcoming about something it is not misintentioned and it is not a personal criticism. It is a criticism whose objective is to improve how something works. On this particular point, we have to listen to your experience in order to find out what you have experienced with regard to the way the yellow card works at the moment. What would you suggest regarding how things can be improved? It is in any case a new form of working; it is still in its infancy.

Lord Maclennan of Rogart: Does Mr Casini have anything to add to that?
**Carlo Casini:** *(Interpretation)* The European Parliament has taken the yellow card very seriously indeed. Indeed, it has amended its Rules of Procedure to align these more closely with the protocol concerning the yellow card. It has also ensured that all the reasoned opinions from national parliaments are translated into all the languages so everyone can read them in their own language. It is only Gaelic and Maltese that are not provided for in translation.

**Q132 Lord Maclennan of Rogart:** Thank you very much. Moving to the question of COSAC, do you think that its role could be increased effectively? If so, how do you think that might be done? In particular, would you wish to see the Secretariat of COSAC enlarged and strengthened? Otherwise, could you say what more you think COSAC might be able to do that would be helpful to the processes of integration and bringing together national parliaments and the European Parliament?

**Miguel Angel Martínez Martínez:** *(Interpretation)* My personal experience in this matter is one that I can summarise, as some progress has been made within COSAC. For four or five years I have been looking at the COSAC issue. At the first stage the situation was really quite unpleasant. It was unpleasant because the way things panned out was that whenever a debate began we would hear one or two or three National parliaments stand up and speak in an extremely aggressive tone against the European Parliament or even the European Union at large. Of course then the European Parliament representatives felt obliged to respond in the same tone. The truth is we were not making any progress at all. There was a very tense atmosphere. Furthermore, it was an absurd situation because we are elected by the same people, and one would presume that we share the same objectives.

I made a huge effort, and I can confess this to you because I am leaving in four months’ time and I am not standing for re-election so I can say what I mean. I have managed to get a new situation. When an aggressive and sometimes provocative comment was made against the European Parliament, our representatives do not react. What we have now is that a representative of another national parliament—perhaps a Member of the House of Lords, for example—comes to the floor and defends the European Parliament in that way. What we have now is three or four very aggressive comments and then two or three comments opposing that. It is no longer a conflict between national parliaments and the European Parliament; it is now a conflict between national parliaments that have a different vision as to how the European project should be built, and a legitimate difference of opinion at that.

What we do now is a new approach: after others have spoken, we say, “We agree with that national parliament, the Belgian, the House of Lords or this or that Parliament”, and we leave it at that. Now we have managed to calm things down to a considerable extent and we have managed to improve the situation. I think it is partly thanks to the House of Lords that we have managed to improve the situation. I will say this extremely clearly: we have stopped fighting between Taliban groups because, let us face it, there are Talibans in each camp. We have moved away from that and we have now imposed a more reasonable vision, which includes discrepancies of opinion. We understand that we have divergences of opinion that we are here to represent, but I think there has been some significant progress in the way things have turned out.

Furthermore, I think we are victims of a rather normal situation, to a certain extent. National parliaments have a certain fascination with the representatives of the European Commission that they want to speak to and they want to ask questions of. We all understand that. A national parliament does not often get the chance to speak to Mr Barroso or Commissioner X, Y and Z, or not very often, at least. While we see these
Mr Miguel Angel Martínez Martínez MEP, Vice-President, European Parliament, and Mr Carlo Casini MEP—(QQ 125-136)

Commissioners at least once a month and we constantly call upon representatives of the Commission to explain or do things. It is no longer such a great fascination for us. Actually, the Commissioners are our daily partners: we speak to them regularly are no longer all that exciting names to talk to.

There is an important statistic that I was told by our administrative services, which was that in COSAC meetings we always invite key speakers. Of these keynote speakers that were invited to speak, 80% or 75% were members of executive bodies, government people, proposed by national parliaments. It seems that national parliaments, when selecting keynote speakers for a conference, instead of calling for Lord XYZ who has a certain experience or expertise in this field, or a rapporteur who has produced a valuable report on a given subject, they prefer to hear from Minister ABC or Professor XYZ. They never want to hear from parliamentary speakers, so it is only about 20% of the speakers who are from the parliamentary sphere.

On our side, there is a constant pressure from the European Parliament to try to get people from the parliamentary sphere to testify, to give their experience and to contribute. I think this dysfunction exists between the way in which the national parliaments themselves operate and the relationship between the European Parliament and the Commission vis-à-vis the national parliaments’ relationship with the Commission. As a result, COSAC turned into a kind of platform for inviting respected speakers and not much more than that. Often we were calling overly on Commissioners and executive people rather than calling for expert speakers from the parliamentary sphere.

The Ministers and executive people, members of the Commission, are mostly responding to the questions posed by the national parliaments from the normal line that the Commission adopts. They react less often towards the European Parliament, because that dialogue takes place in our own daily life. We are willing to improve our communication. As far as I am concerned, the essential point with COSAC is we have to make sure an atmosphere of trust exists and an atmosphere of shared information exists. We do not know each other well enough, even if I think things are improving in that field.

One point that is extremely important for the future is the political groups. I believe a great deal in the political groups, and I was saying that it is not through the European Parliament as such that we can make many changes but, for example, from the Socialist Group or from other political families operating both in the European Parliament and in National parliaments. We can work together to make things happen through COSAC. The Liberal Group, the EPP, the ECR Group can all do this kind of work. They can talk to their colleagues in National parliaments and coordinate together what is done in COSAC.

We can also coordinate in suggesting which topics can be put on the agenda. There is a great deal of effort that can be put in there to try to achieve a situation where the political families work together. People sometimes do not like the term “political party” but at least political families can work together. It is not just half an hour before plenary that we should be getting together, shaking hands and talking about these subjects, or just before an important vote. We should put as a priority in this preparatory work within the political families and that is where we can make an effort.

Q133 Lord Maclellan of Rogart: I will ask a supplementary question on that. Are you saying that the current development is going in the right direction? Would you say that the goals that you see for COSAC could be achieved without treaty change, and how do you see this being advanced? Perhaps Mr Casini is going to answer.
Mr Miguel Angel Martínez Martínez MEP, Vice-President, European Parliament, and Mr Carlo Casini MEP—(QQ 125-136)

**Carlo Casini:** *(Interpretation)* I would like to add two thoughts to what has just been said by my colleague, Mr Martínez, and what I said earlier about COSAC. Perhaps the first thought is a little unwelcome but I think national parliaments and the European Parliament should be quite clear as to where the dividing line lies as regards their respective powers of political oversight. I feel we should divide up work on the basis of areas of responsibility. The European Parliament should exercise scrutiny over the Commission, and the national parliaments should scrutinise their governments, in particular as regards the activities of their respective governments within the Council. The excessive Commission presence at COSAC meetings is not consonant with such a dividing line. It makes COSAC look like a second assembly for political scrutiny superimposed on the scrutiny of the European Parliament, although I know that is not how it is. That is the first comment I wanted to make.

Concerning the need for amendment of the Treaties, I do not feel this is necessary. I believe we should try to roll out as quickly as possible what is already set out in the Treaties. In terms of amendments, I believe there are some avenues worth exploring, as Mr Martínez said, particularly as regards the role of political parties and political families in COSAC.

Traditionally, a short meeting is scheduled for the morning of the second day, and a lot of time is devoted to presentations without there being any genuine political debate enabling a common position be adopted to put before the plenary. Perhaps that position should be established by the parties before COSAC meets. And we really do need genuinely European political parties.

Q134 **Lord Bowness:** I agree with what our witnesses have been saying about co-operation between the political groups. I hope that the officials of our Parliament are listening because, as to the idea of applying to come to Brussels for a party meeting, in my position I might not go to the right party meeting. But that is another matter. I think it would not be necessarily well received, so we would need quite a cultural change to do that.

You have referred on a number of occasions to meetings and the COSAC meeting, but perhaps I can look at other interparliamentary meetings and ask your view about whether we have the right number of meetings and the right frequency. If you do not think we have enough, in fact, would it be practical to have more? Given the responsibilities of national parliamentarians, it is quite difficult to get away. The format needs to be looked at. I am sure that we have all been to interparliamentary meetings—kindly hosted by the European Parliament here—and I think you would probably accept that some are more successful than others. I have been as a national parliamentarian and, in fact, because there are so many expert speakers, everybody has gone back home again and nobody from a national parliament has said a word beyond “Good morning” and “Good afternoon”. Clearly, that does not help. Is there a way in which the outcome of these meetings can all be brought together so that, even if we do not make an executive decision, at least we know what the overall view is? I would be interested in your views on those sorts of meetings and how they can be improved. Perhaps while we are dealing with specific meetings we could your thoughts on the Interparliamentary Conference on Economic and Financial Governance and the interparliamentary scrutiny on those matters, and whether you think that is going to be really influential. Thank you.

**Miguel Angel Martínez Martínez:** *(Interpretation)* Here you are touching upon one of the most fundamental questions. In some media we hear criticism not of the European Parliament or of the EU itself but of everyone involved in politics—of course including the European dimension but not limited to it. I think one of the criticisms that we see is this
Mr Miguel Angel Martinez Martinez MEP, Vice-President, European Parliament, and Mr Carlo Casini MEP—(QQ 125-136)

...accusation of parliamentary tourism. With the crisis, this has led to some serious cuts in some national parliaments. I am not sure if it is the case in the House of Lords or in the House of Commons, whether similar cuts have been seen, but in the Spanish parliament there have been serious consequences. For example, assistant or alternate Members cannot travel in lieu of regular Members and this has serious consequences. Previously, if a group could not go to a meeting, they could assign a vacant place to another group that could represent them in their stead. That can no longer happen. That is something that impedes the work of the parliaments. So, because of the economic cuts that we are seeing, we are cutting back on a lot of subjects that are of importance internationally to these national parliaments. Of course, this is an issue that is extremely complicated—the number of meetings that we host, the number of delegation visits, and so on.

One of the issues that we touched upon earlier, which deserves more attention, is the issue relating to new technologies. These new technologies allow us—but also oblige us to a certain extent—to host meetings in a more economic manner, in a more practical way, considering time constraints as well. I will not hide from you that one of the problems we have identified, which most concerns me here in the European Parliament, is that in some interparliamentary meetings that took place in Brussels there were some 50 Members of national parliaments but in some cases not even a single representative of the European Parliament because they were all elsewhere otherwise engaged. This is absolutely scandalous. It is a sorry state of affairs. I think we have to rationalise, not just for economic reasons but also for time reasons, and we have to identify which of these meetings have added value. I believe in this concept of added value. Some meetings definitely bring something. We have to make sure that the agenda reflects exactly what needs to be discussed. We have to host meetings in smaller groups as well. There is no point having a 300-person strong meeting if it is not going to be effective. It is more important to bring together the rapporteurs on a given subject. If 20 rapporteurs on a given subject come together, they can do a great deal. They are not necessarily the absolute specialists but they are the people who are responsible, in a political sense, for making progress in a given field at a given time. This is an area we need to explore with common sense and, if we continue to be held hostage by the negative and critical media, then we will not make a great deal of progress.

This is an issue that concerns me a great deal, particularly because it is leading us to what I believe to be a very serious situation. For example, I was a leader of my party in my region for many years. When we had to go after candidates for key posts and mayors in municipal boroughs, people used to say, “Yes, I will do it. I am up for the challenge”. Now when we look for people to stand for election to take these important posts, they say, “What are you talking about? No way. I am a member of the party, okay, but do not ask me to be a councillor or a mayor or something like that. I am fine where I am, thank you very much. I am the owner of this bar here and people know where I am. They know where I live. I do not want that attention”. What we are seeing as a result is mediocrity in the people being sent to represent the people at the institutions. Many of you of the same generation as Mr Casini and I are will acknowledge that this was not the case when we were young. People who were politically committed came to the fore and the best came to the political positions that counted. That is what happens in industry. That is what happens in the communications fields. It is not happening in politics because in politics there is a demonisation of our work in public opinion.

One Vice-President of the Spanish Parliament left the position in the Parliament a few months later. I met with him and I said, “How are you?” He said, “I am fine. But when I was in the Parliament I drove a Mercedes and people pointed at me and said, ‘Thief, stealing from...
Mr Miguel Angel Martínez Martínez MEP, Vice-President, European Parliament, and Mr Carlo Casini MEP—(QQ 125-136)

the people. This person is driving a Mercedes”. He said, “Now I have gone back to my old law practice. I have given up my parliamentary work and people say, ‘Look, he must be a very good lawyer: he has managed to get himself a Mercedes”’. So, instead of denouncing this man for his thievery, he is now being commended for his professional efficiency. Having the same Mercedes he had 20 years ago is now a bonus and not the crime that it once appeared to be.

I think there is a great deal of work that we have to do to improve the situation. On this subject that you brought up, I think this is a field that we have to work on. How do we rationalise? How do we make our work more effective? How do we make these key meetings more effective? In the framework of globalisation, these meetings are increasingly necessary. International contacts are necessary and the international scale of democracy means that this kind of interparliamentary contact is necessary.

Just one final word on the point that you mentioned: you talked about the economic governance meetings that have recently been created. We are about to appraise and assess the value of these meetings and there is one point that concerns me a great deal. We are moving from the Community method to an intergovernmental method, and the intergovernmental method basically excludes the parliamentary sphere. Here we are getting into debates, conflicts and so on. But when we work within the Community method, then European Members of Parliament and Members of national Parliaments have a role to play. If you look at Treaties which are exclusively intergovernmental in their drafting, then there is just a passing reference made to the parliaments and the way they should be listened to or taken heed of. Not enough consideration is given to parliamentary work in this intergovernmental method, and that is a source of concern. We have to reconquer positions that we once attained for parliaments.

Q135 Lord Wilson of Tillyorn: Vice-President, both you and Mr Casini have referred quite often to interaction between national parliaments and the European Parliament. To follow up on that, Vice-President, I took it from what you were saying that, with modern technology, you would approve of and would like to see more interaction between individual parliamentarians—national and European—using videoconferencing and that sort of thing. Incidentally, I was very struck by what you said, in the case of Spain with the common agricultural policy, that there is a lot of consultation with regional parliaments as well as with the national parliament. If one did more of that—which I think to us would seem highly desirable—would other parliaments throughout Europe have the capacity to manage that sort of interaction? Would they have the infrastructure, the time, and so on, to do it?

Miguel Angel Martínez Martínez: (Interpretation) There are a number of parliaments that are extremely well equipped—in fact, better equipped than the European Parliament even—for example, the Bundestag. The French Senate, for example, is extremely pioneering in this field and the Lithuanian parliament has recently discovered a vocation in this field. In general terms, the new technology that we would need requires significant investment and this new technology is not cheap. It also requires maintenance and it requires staff to ensure that maintenance. We are entering into a field here of videoconferencing with different national parliaments, which could be a dramatic improvement. I am not going to demand the same thing of a parliament that comprises 30 Members as I would of a Parliament with 400 Members in it, but I think that significant effort can be made from the national parliaments’ side in this field. I should also acknowledge that for some of us who, a priori, would favour this kind of technology, there is still a kind of biological resistance to this new technology. I can imagine what resistance we would see if I had proposed this meeting on a screen
somewhere, a link-up with London. It is important for me to see whether people are smiling, laughing, responding to what I am saying. You cannot always see that on a screen.

I am often criticised by my colleagues for this in another series of issues but I believe that human relationships are what drive politics forward. I am quite astonished when I talk to my team—five or six people who work with me—and I say, “Go and talk to that person. Go and send some information to that person”, and they simply send it off by e-mail. Two hours later they come back and say, “Yes, we have the response”. They say, “We sent an e-mail to Mr Casini. We did not go to see him. We sent him an e-mail”. I am astonished. These people often work just across the corridor from other people. They are at the same distance as I am from you now. I could go over and knock on your door, Lord Boswell, and say, “How are you?” rather than send you an e-mail. This new generation seems to be biologically incapable of entering into that kind of human contact. They would rather write away at their keyboards and send off an e-mail, so I do not really know how human relations can go on, as I am not sure how conjugal relations are carried out in this new generation. People prefer their little machines. They have been playing with their video consoles since they were five years old. People are sending off e-mails with their keyboards; everyone is typing into a computer. My question is: how do these people enter into relations with each other?

Anyway, I think you will understand the point that I am trying to get at. The staff I work with are excellent people in all respects. But if you ask this person to take over a document to someone else across the corridor, they simply cannot get up from their desk, walk across the corridor and hand it to the other person. They are simply incapable of doing that. They will say, “I sent him an e-mail”. There is some kind of magic that I consider to be a kind of perverse magic that goes on in the internet, but I am sure some of you will know what I am talking about. When I retire I am thinking, “Perhaps I will dedicate all my time to these machines, these consoles. It would have come in very handy earlier on in my life, but perhaps when I retire I will find something better to do”.

Q136 Lord Wilson of Tillyorn: I do hope you do not spend your whole time learning to type, Vice-President. I think people would much rather meet you than meet you on a typewriter, and I prefer that too. One last question: when looked at from the European Parliament outwards, when there is an issue coming up, are there things that people tend to do to find out what the views of national parliaments and national parliamentarians are? Does it operate the other way around, so that the national parliaments are keen to get in touch with the European Parliament and get their view across, or does it work in the European Parliament outwards as well?

Carlo Casini: (Interpretation) I think there is a fairly simple answer to that. The question of research is important. It is already possible to use a videoconferencing system, and there are ample possibilities for connecting online, but I agree with what Mr Martínez has said. As far as possible, we need to step up the modern systems, but we also need to preserve a minimum level of human contact. Modern technology should not eliminate the possibility of face to face meetings, particularly between committees, at interparliamentary conferences. One might also contemplate there being personal meetings between rapporteurs arranged on a reciprocal basis. Perhaps an MEP from a given country should be allowed to participate in meetings of national parliamentary committees when they are discussing issues that he is involved in at a European level. In exchange, members of the national parliaments should be able to participate in European Parliament meetings when issues are being discussed that they are involved in at national level.
Mr Miguel Angel Martínez Martínez MEP, Vice-President, European Parliament, and Mr Carlo Casini MEP—(QQ 125-136)

*Miguel Angel Martínez Martínez: (Interpretation)* A member of the administration has passed me a note that demonstrates how this would work. In a Civil Liberties Committee meeting with the members of the national parliaments on the question of Europol, after the meeting that we had with the national parliaments, the rapporteur from the EPP, Mr Díaz de Mera, a Spanish member, asked for written contributions to be submitted before his report was written. We had quite a generalised response to that request. Not everybody responded in writing but many did. The written contributions that were more useful were fed into the report. Mr Díaz de Mera did not just include many of the comments that were made but also expressed in the debate that these were ideas that came from national parliaments. The point here is that this is open and it is more important to have communication on issues made as precisely as possible. The worst thing that we can say is that we are constantly repeating vague and generalised abstract discussions without getting into detail, more matters of functioning and procedure than getting to the nitty-gritty of the problems that really affect our citizens, which of course is the raison d'être of our political work here.

*The Chairman:* Vice-President Martínez and Chairman Casini, if I am only brief in responding it is because I am conscious you have already given us so much time. We are reaching the end of our time, so I simply respond by thanking you both. In the spirit of what Mr Martínez said, in particular—and he mentioned this a number of times—I think we have to enter into these discussions in good faith. We have to carry out the dialogue in a vigorous way. By doing that, we build up a position of understanding and trust, which should be beneficial to both our interests in pursuing the interests of a better democratic involvement with the working of the European Union. We are very grateful. We look forward to reflecting some of your insights in the report we shall be preparing and of course we will report to you here as well. Thank you very much.
Mr René Leegte, Deputy Chair of the European Affairs Committee, Tweede Kamer de Staten-General (The Dutch House of Representatives), The Netherlands—(QQ 59-75)

TUESDAY 19 NOVEMBER 2013

Members present

Lord Boswell of Aynho (Chairman)
Lord Bowness
Baroness Corston
Lord Dear
Baroness Eccles of Moulton
Lord Hannay of Chiswick
Lord Maclellan of Rogart
Baroness O’Cathain
Earl of Sandwich
Baroness Scott of Needham Market
Lord Tomlinson
Lord Tugendhat
Lord Wilson of Tillyorn

Witness

Mr René Leegte, Deputy Chair of the European Affairs Committee, Tweede Kamer de Staten-General (The Dutch House of Representatives), The Netherlands

Q59 The Chairman: This is the House of Lords European Union Select Committee. We are very pleased that we have made video conference contact with Tweede Kamer in the Netherlands.

We have had many contacts on the subject of our inquiry into the role of national parliaments in the European Union. We have a strong shared interest in this subject and have had useful exchanges on it. We are very grateful to you for undertaking to respond to our queries this afternoon. For the record I would make the point, as I always would, that
Mr René Leegte, Deputy Chair of the European Affairs Committee, Tweede Kamer de Staten-General (The Dutch House of Representatives), The Netherlands—(QQ 59-75)

this is a public evidence session. We have a gallery of the public here. We record what is said in these sessions. They will eventually be available on our website. We will send you a transcript of the record for correction if there are any factual errors, but it is very much a public evidence session.

We have had dealings in the past personally, so I am going to invite Members of my Committee to ask questions. We have about 30 minutes to carry out this discussion. I am going to ask Lord Hannay to start the line of questioning. Thank you very much from us.

Lord Hannay of Chiswick: Good afternoon. Your parliament has recently published a position paper on the role of national parliaments that makes a number of suggestions for building on the yellow-card procedure and we have studied that report with interest, as we have studied also the Netherlands's Foreign Minister’s article in the Financial Times a few days ago, which touched on the same issue.

Could you expand a little on the ideas you put forward? How exactly would a green card or a late card work? Would that mean that you are proposing something that would not require a treaty change? Could you perhaps also comment on the Commission’s suggestions made in Vilnius, where you and I were both at the COSAC meeting, that national parliaments could do better if they tried to intervene in the legislative process at an earlier stage and got their views in when the Commission was still consulting and before they had made any formal proposals? Do you think that is practicable?

Mr Leegte: Thank you very much for the invitation to have this discussion among us.

I will try to answer. If I am not clear, please correct me or rephrase your question. I will try to be as clear as possible.

In our position paper, which is the first step in my rapporteurship on democratic legitimacy, we aim to stimulate discussion on strengthening parliamentary involvement. On the yellow-card procedure, I first want to elaborate on the process and then I will come to the substance of the procedures.

On the process, many parliaments are currently unhappy with the eight-week period. What we have proposed is to extend it to 12 weeks in order to give us a better opportunity for coalition-building. The networks are not yet in place but we need more time than the eight weeks given now. So we argue the proportionality argument should be taken into account and moreover the quality and timing of the Commission’s reaction should be improved as well. We think this can be done without a treaty change. We think that it could be done within so-called inter-institutional agreements, which has been done before, for example with the access to limited documents, the so-called documents limités. So that is on the process.

On the other hand, the green card, which gives parliaments rights to initiative, would ask for a treaty change. So that is something for the longer term as we see it.

On the substance then, one of the criticisms of parliamentary action is that it is currently negatively biased. parliaments can veto proposals collectively via the yellow card and firstly it might be considered to allow a certain number of national parliaments to advise the European Commission to table legislative proposals they believe to be necessary, or to review legislative proposals if they disagree with substantial elements. The Commission should be obliged to respond adequately to any of these requests at the COSAC meeting and give reasons for taking or not taking that action. Moreover, the Dutch House of Representatives notes a suggestion from within the House for the late card—that is, to strengthen the role of national parliaments with the possibility of scrutinising at the end of
Mr René Leegte, Deputy Chair of the European Affairs Committee, Tweede Kamer de Staten-General (The Dutch House of Representatives), The Netherlands—(QQ 59-75)

the European legislative procedure, since national parliaments scrutinise the proposals of the European Commission and not the results of negotiations. So that is what I want to say first and I hope that it is clear to you.

The Chairman: We will carry on with the questioning for the time being and if there is time at the end we can explore some of the implications of what has been said and what your paper says.

Q60 Lord Bowness: Thank you. Good afternoon. Perhaps I can put the question to you in this way. How has your role for your national parliament in the EU framework developed in recent years, particularly since the adoption of the Treaty of Lisbon?

Mr Leegte: How we see it, the last treaty was an improvement. So our focus is not so much on further improvement of treaties but more on how to make it work: how can we make use of the fruits in the current treaty.

Firstly the Treaty of Lisbon has inspired the Dutch Parliament to introduce a special parliamentary reserve and this reserve is placed on a selected number of proposals. Once published, a debate is held with the responsible Minister and a stringent information regime is in place during the negotiations.

Secondly, the Treaty has introduced yellow-card and orange-card procedures, which are taken seriously in the House. Each year a number of proposals are selected to be the subject of a subsidiarity check after they are published. We then seek contacts with other Houses in an attempt to reach the yellow-card threshold, which we reached for the second time two weeks ago. We experienced it as a great success.

Thirdly the Treaty of Lisbon has underlined the importance of our contacts with the other national parliaments. That is why we actively use the COSAC meetings and meetings of the parliamentary representatives in Brussels to build on this network.

Finally, the relevant standing committees annually assess the specific Commission proposals in their policy domain and indicate which proposals will be submitted to the parliamentary scrutiny reserve and/or a subsidiarity check. An English version of this assessment will be published and is sent to other parliaments as well. So that helps us. We want you to look into our priorities and we can share priorities among the national parliaments.

Q61 The Chairman: Perhaps I could ask a question that has been troubling me for some time. I will put it rather more bluntly than perhaps I should do. It is about looking at the Lisbon Treaty. You have explained your Parliament’s response in trying to make the best use of the powers that are open to you in the treaty. How much do you feel that behind the treaty there is a covert Commission agenda offering sops or douceurs or minor concessions to national parliaments? How strong do you think the support is in the Commission and the other parts of the European Union for a realistic and lively debate with national parliaments? In other words, are we playing a part in a charade or are we really part of the cast of players?

Mr Leegte: That is a matter of opinion, I think. What I experienced when I held this side event at the COSAC meeting in Dublin was that the European Commission reacted as if it had been stung by a wasp. Since then we have had discussions on whether the improvements we would like to make, together with the other national parliaments, can be done within inter-institutional agreements, which is our opinion, or—their opinion—that it needs a treaty change.
Mr René Leegte, Deputy Chair of the European Affairs Committee, Tweede Kamer de Staten-General (The Dutch House of Representatives), The Netherlands—(QQ 59-75)

We now have two universities in the Netherlands working on this and there are now a few supporting us. On 16 December I am going to Brussels to discuss with the European Commission our views on the improvement and the possibilities the Lisbon Treaty gives us to strengthen our position. So I can report back after 16 December on the content.

The Chairman: I ought perhaps to warn you that we may have a vote in our House at some stage. If suddenly I, because I do not vote, am left as the presiding Member of this Committee, we will have to suspend for 10 minutes while that vote takes place.

Baroness Scott, I do not know if you have anything to add on the Lisbon Treaty specifically, or whether you would like to leave it for now.

Baroness Scott of Needham Market: I will leave it for now.

Q62 Lord Tugendhat: Could I approach the issue from a slightly different angle than Lord Boswell? It seems to me that in recent years the European Commission has lost a lot of ground and influence in the Union, partly because it has become increasingly subject to the European Parliament—it is for ever looking over its shoulders at the European Parliament—and therefore its capacity to operate as the independent advocate of the broader European interest has been diminished. I wonder whether you feel that if there was a greater role played by national parliaments, this would add to the Commission’s freedom of manoeuvre and enhance its ability to look at issues from a broader European perspective rather than through the prism of the European Parliament.

Mr Leegte: The problem with your question, to be honest, is that I am a rapporteur of the whole parliament and as we have quite a variety of opinions on the European Union, your question is quite difficult to answer as I am in the starting process of our investigations. However, if we go further with the improvements the Lisbon Treaty gives national parliaments, the consequence is that the balance of power will be different. The equilibrium will lie somewhere different from where it lies now, whether it is more power to the Commission or more power with national parliaments. Being members of national parliaments of course we expect that it should be a bit more in the direction of the parliaments, which in my opinion gives more legitimacy to the European project.

Q63 Earl of Sandwich: Mr Leegte, can we look at the problem from the perspective of decision-making at the EU level? How effective has your national parliament been at shaping and influencing decisions at the EU level? It would be very helpful to us as a Committee if you could give us specific examples of where you think you have been able, as a country, to influence and shape decision-making through your Parliament.

Mr Leegte: How we work is that we have strong contacts and regular meetings with the European Commission. Each year we have multiple Commissioners visiting our House, although we lament delayed reactions on reasoned opinions from the Commission.

We also have bi-annual meetings with the 26 Dutch Members of the European Parliament and every standing committee aims to visit the European Parliament. For example, my committee on energy will visit Brussels next January.

We often use conferences in Brussels to meet with European Commission officers and/or EP Members. So the conclusion is that the level of quality of engagement is all right, although it can always be improved.

You asked for successes so far. The last yellow card is celebrated as a success, as it was an initiative of one of my Liberal colleagues. We also have had some minor successes in influencing the European process through the Council. So what we do is, the week before a
Council meeting there is a meeting in Parliament and with motions we can mandate our Ministers to direct and influence the discussion at the Council level, which then of course goes further into the European decision-making.

Q64 Lord Wilson of Tillyorn: You have touched on this before but I wonder if you could just deal with it specifically. It is the question of what impact you think the early-warning mechanism has had on the influence of your own national parliament.

Mr Leegte: It is difficult to say. That is why the University of Utrecht is now analysing the way we use the instruments and procedures we have. They are assessing the effects. Next December, so next year, when the Lisbon Treaty has its five-year anniversary, I hope to present the university’s report. I can promise to send you the report so you can see where we gained influence and where we could make more use of the instruments. I am sorry that I cannot tell you more.

Q65 Lord Dear: Good afternoon. It is common knowledge and commonly agreed, I think, that there is a financial crisis in Europe, or at least in some countries in Europe, and that this has highlighted the importance of democratic accountability and legitimacy within the EU. Because of that, again everyone would accept that national parliaments have a very important role to play in this. My question is about the role and the position of national parliaments, and your own parliament as well. It is in two parts, although they are linked. How do you see co-operation between parliaments in the EU changing and perhaps improving? Allied to that, how do you think the Dutch parliament particularly might develop its role—if it does change at all—in the face of these problems?

Mr Leegte: The first difficulty concerning your question is of course that some of the countries have introduced the euro and some not. Some are willing to introduce it and some are withdrawing from possible entrance to the euro. That gives a division between the different countries involved in the European Union. But the financial crisis, without doubt, has given an impulse to economic co-ordination of the European Union. The European semester is far-reaching and parliaments still struggle to get a grip on it. So that is where we propose the sharing of best practice in this regard. We consider the Article 13 conference—held six weeks ago in Vilnius—as an important occasion for inter-parliamentary discussions on economic co-ordination, which is of course very important. Moreover, our Parliament has nominated a rapporteur on the European semester—Anoushka Schut-Werkzijn, who is a member of my party. If you want some more information specifically about the European semester, she can join this conversation. I can exchange contact details through Lord Boswell if you would like.

The financial crisis has also increased national expenditure on Europe and consequently parliaments’ rights to approve budget more and more include expenditure at the European level. This leads to the dilemma that you would also like insight into how the budget is used: if it is really targeted and spent well. So far, there is not so much insight into that and so the questions are at the front end, but also on the responsibility of the spending.

The Chairman: Does any colleague want to add a question there?

Lord Hannay of Chiswick: You were at Vilnius, as was I, and heard the French Foreign Minister suggest that the best form of parliamentary oversight for these financial issues would be one restricted to the members of the eurozone. Others—I think we ourselves—would think that, because many of the issues being debated involve all 28 member states and impact on all 28 member states, the sort of formula that was followed at that meeting in Vilnius that you referred to, is the better one. I wonder if you could comment on that.
Mr René Leegte, Deputy Chair of the European Affairs Committee, Tweede Kamer de Staten-General (The Dutch House of Representatives), The Netherlands—(QQ 59-75)

Mr Leegte: The issue you stipulate is an important one, but in my role of independent rapporteur it is difficult to respond on it. At the next COSAC meeting I can give you my own personal views, or my party’s views, but in my current role I am afraid that I am not able to respond on it.

Q66 Baroness Scott of Needham Market: Thank you. I wanted to go back to the question of red and yellow cards and so on and particularly the question of subsidiarity. The Lisbon Treaty sets out subsidiarity in quite a legalistic way whereas for many national parliamentarians there is almost an emotional element to subsidiarity, where parliamentarians feel that their rights to represent their people are being infringed. I wonder what you think about this question of how one defines subsidiarity and whether the current rather legalistic approach is something that acts as an additional barrier to member states exerting more influence in this regard.

Mr Leegte: This is at the heart of my investigation as a rapporteur. So far we deal with it by asking our standing committees to look into the working programme of the European Commission and then answer the question whether the standing committee in the majority thinks it is a matter for subsidiarity-check, yes or no. We have now managed it in the process but it is not a real answer to your question. Then again, it is just in the early stages of my rapporteurship so once again maybe I should promise you that I will come back after my rapporteurship and offer the total document.

Q67 The Chairman: You are very modest but your answers are being very helpful to us. Can I extend the train of thought in our remaining minutes to ask a little bit about the nature of the most useful contacts that we can have between our parliaments in your experience? We have, with the first Chamber, done some work on specific areas, which our Sub-Committee B did, if I recall. That has been very useful. I would like to probe you in our remaining minutes as to how best we take these contacts forward. At one level it could be no more complicated than the fact that we might share email addresses and, if you had a problem, you could get in touch with us. That is supplementing the work that is done by our national parliaments’ offices in Brussels anyway.

At another level we could look at subjects that were of mutual interest. You mention the Commission’s work programme. We shall be considering how we handle that in our deliberative session here shortly. We could think about a practical way of just sharing views on that, without necessarily all having to fly to each other’s capitals to get a final conclusion.

Equally, there is the question of COSAC as a representative body for national parliaments. Do you see that as being a possible vehicle for representing and organising the collective effort? Or is it best kept in its present form and we should be relying on better bilateral or selected multilateral contacts? How do you feel that argument is developing?

Mr Leegte: I think we can improve co-operation between national parliaments. That is my strong belief. So far COSAC seems to be the best platform for that, where all the countries are involved, all the parliaments, both senates or parliaments—House of Commons, House of Lords—which thereby is a network of people involved in European process who know what the European Union is about.

As a sort of cliffhanger, next COSAC we are working now on a proposal to strengthen co-operation between national parliaments. So just in advance of the January meeting I will call you and give you my proposal and ask for your support then. The general feeling is that COSAC should be the platform for better networking and better working together as that is
an institution that is in place, which has its interpreters, and all the parties are involved and we meet four times a year. So that seems most logical.

**The Chairman:** Thank you for that and thank you for the answers you have given to our questions, which have been very helpful to this inquiry. We would like to express our appreciation. I am always conscious that it is the blessing or, if you like, the curse, of the British that we do use our mother tongue most of the time. That has been no handicap to you or to us in understanding your views but we are grateful to you for responding to us in English.

We are also grateful to you for triumphing over the occasional difficulties with the technology but it has enabled us to get through our questions and still save a minute or two in the process. So in thanking you and looking forward to future contacts with you and your committee, I would like to say in conclusion goodbye and dank u wel.

**Mr Leegte:** Thank you very much indeed. I look forward to our meeting in January. I have promised to send you some documents and I will do that through my clerk. Thank you very much for this interview. I look forward to our next contact.

**The Chairman:** Thank you. For the record, this formal session with the Dutch Parliament is now closed. Thank you.
Dr. Eleni Panagiotarea—Written evidence

Dr. Eleni Panagiotarea is a Research Fellow of the Hellenic Foundation for European and Foreign Policy (ELIAMEP). Her recent publication is ‘Greece in the Euro: Economic Delinquency or System Failure?’ (ECPR Press, 2013).

1. A big burden, political and institutional, has been placed on national parliaments operating in the European Union, as they seemingly and single-handedly have to fill in the ever-widening democratic deficit. Their ‘use’ is not disputed: they alone embody the ‘will of the people’ or at least encapsulate ‘popular consent’. ‘Bringing them in’ is more often than not the best strategy that EU officials and Eurozone officials have in preserving the modicum of legitimacy that is required, if their policies are to be cloaked in public acceptability.

2. Obviously, there are important political limits to ‘bringing national parliaments in’ merely for window-dressing exercises or for rubber-stamping prior decisions taken at national (political executive) or euro zone (EU institutions and authorities) level. These limits are very close to being reached. Citizens may no longer be content with the performance of their respective parliamentary democracies in the EU framework and casting a vote may no longer suffice to give ‘citizenship’ a substantive meaning. Interestingly, the declining trend in citizens’ trust in both the EU and national governments and parliaments, evident in successive Eurobarometer surveys and other surveys has not set the alarm bells ringing.

3. Before discussing the role that national parliaments should play in shaping and scrutinising EU decision making, it is important to take stock of a number of significant permutations that have been taking place and are beginning to crystallise.

   I. Some national parliaments have become more equal than others. National parliaments in the ‘core’ have acquired disproportional power, as governments in the ‘south’ are depended on their ‘yes’ vote, when it comes to authorising important financial support. While no one would dispute that taxpayers matter or that aid should come with conditions attached, this asymmetry may well be projected on to other fields, particularly as it builds on divergent models of capitalism (export-growth vs. demand-led).

   II. Some national parliaments are better at adapting to the new economic governance legislation that is currently being implemented. This is related to their institutional capacity but also to a potential institutional affinity between their current arrangements and the frameworks that they eventually have to adopt. Active institutional (re-)engineering may or may not place them in an advantage-a lot will depend on whether the idea that better fiscal outcomes can come about by adhering to stricter rules of a legislative or a legislative kind will withstand reality. It is certainly the case, however, that the degree of institutional efficiency will add or subtract from eventual budgetary performance, hence accentuating the trend of discriminating between ‘leaders’ and ‘laggards’, and exacerbating the kinds of asymmetries mentioned in I.

   III. All national parliaments have been unable to fend off the serious erosion of their power, particularly over setting and deciding upon the national budget, in the aftermath of the Eurozone crisis, the crisis management followed, and the

---

208 The evidence is submitted on a personal basis
remedies, both preventive and punitive, adopted. The fact that the new legislation is supposed to apply to EU-28, with some specific rules for the euro-area Member States, is solidifying the trend for removing important economic decisions from parliamentary scrutiny and control.

4. Obviously, no national parliament is the same or operates in a similar manner, embedded, as it is, in distinct legal-cultural trajectories; in like manner, the so-called Europeanisation process has not triggered a homogenisation of frameworks and procedures- national parliaments are there to re-assure not only that the minimum demands of representative democracy are met but also that every loss of sovereignty can be somehow accounted for, as the delegation of power has been ex ante approved.

5. This realisation should serve as a building block when considering ‘what next?’ for national parliaments in the EU framework. It may appear paradoxical but the biggest contribution that national parliaments can currently make is re-claim or re-politicise national policy space and place, particularly in the areas of revenues, spending, borrowing and job growth: in this way, they can assure their electorates that they still have their own vision for how to manage the economy; they can also ensure that, allowing for current policy co-ordination arrangements, EU decision-making takes into account ‘conditions on the ground’. National parliaments are uniquely placed to bridge the ‘national’ to the ‘supranational’ by explaining why diversity and flexibility, which are both necessary and inevitable, can be as important as co-ordination and discipline. A procedure akin to Protocol No. 1 (Treaty of Lisbon) can be instituted, whereby the direction of the flow of information, relevant instruments of policy, and consultation documents goes from national parliaments to the Commission. The “good functioning of the Union” passes through the good functioning of its constituent members; they are, in turn, evaluated by the extent to which they promote the well-being, economic and social, of EU citizens.

6. National parliaments also have a role to play in filling in the European public space that is currently being created and is, if anything, shallow: it does not go much deeper than the institutional strengthening of economic co-ordination and the principle of conditionality. The ‘post Euro crisis order’ project is lacking in strategic vision, a unifying narrative, and a notion of solidarity that can somehow compensate for the omission of mechanisms that promote institutional and productive convergence or risk-sharing. Forums such as the Conference of European Affairs Committees, which could have made some preparatory work, in terms of fostering some common purpose and understanding, have been of little relevance. Hence, prior to instituting new bodies or second and third chambers, it is worth investigating into the kinds of synergies that will guarantee visibility, and provide genuine platforms for reducing the distance between technocracy and accountability. Interparliamentary committees ought to have institutional teeth and be organised around specific targets, including the clarification of the political objectives of the EU, the sharing of responsibility vis-à-vis commonly agreed EU rules and institutions and equitable burden-sharing. The solution certainly does not lie in instituting new bodies or second and third chambers that may in fact multiply the pervasive sense of ‘blurred’ accountability that appears to prevail now.

7. National parliaments are not ‘free-standing’ structures. No one will disagree however that they currently constitute the strongest building block in the process of re-engaging
European citizens and awakening EU elites from their political messianism. The more they can be seen to be relevant, the more resources they will have to be relevant.

27 September 2013
SUMMARY

1. National parliaments’ role in the EU framework is dictated by their constitutional responsibility to control whether the competences transferred to the EU are exercised or not in accordance with the constitutional terms under which they have been transferred to. In addition to this, the involvement of national parliaments into the EU affairs could contribute to lessen the democratic deficit of the Union.

2. The statistics provided by the annual reports of the Commission on subsidiarity and proportionality show some worrying problems regarding the way national parliaments exercise their powers, especially their inability to accept the challenge to operate as a collective body.

3. The first “yellow card” drawn, in July 2012, highlights some of the problems national parliaments face. In any case, this first experience of the yellow card procedure is rich in the lessons of defining and applying the principle of subsidiarity.

4. Reasoned opinions do not concern the control of the principle of proportionality which belongs to the context of political dialogue.

5. The efficient application of the principles of subsidiarity led national parliaments to improve their national procedures and the interparliamentary cooperation. More efforts are needed to get the principle efficiently applied.

6. National parliaments need support in implementing efficiently the control of the respect of the principle of subsidiarity. EU institutions, above all the European Commission should support national parliaments.

7. The framework of political dialogue should be strengthened so as to allow national parliaments to contribute actively to the good functioning of the Union”, as Article 12 TEU requires.

8. National parliaments have a double role in the EU.

Written evidence

I. National Parliaments in the EU framework. (Why should NP have a role? If there is one, what role should NP play?)

1. National parliaments’ role is dictated by their constitutional responsibility to control whether the competences transferred to the EU are exercised or not in accordance with the constitutional terms under which they have been transferred. Moreover, the involvement of national parliaments in the EU affairs could contribute to lessen the democratic deficit of the Union. Even after Lisbon Treaty national parliaments remain the principal subject of democratic legitimization of the European Union, as Article 12 TEU
recognizes. They must therefore have a role in the European Union corresponding to their position, as the direct legitimate institutions. (See German Federal Constitutional Court’s Lisbon ruling, 2009).

2. The role of national parliaments should be analogous to their traditional legislative and controlling powers, eroded by the process of European integration. By playing a role in shaping and scrutinizing EU decision making, national parliaments may contribute to lessen not only the commonly accepted European democratic deficit, but also the growing national democratic deficit, created by the incessant shift of competences to the European Union. The 2009 Lisbon Treaty tried to preclude EU from acquiring new competences by reinforcing the institutional obstacles in that direction. It sets out a formal and very demanding role for national parliaments, as concretized along with the preexisting but further reinforced principles of subsidiarity and proportionality by the principle of respect for national identity. National parliaments should therefore engage in the general development and scrutiny of the process of European integration, even if they consider that their European role is or would be different.

II. Formal role on national parliaments. How is the formal role of NP under the Treaties working in practice?

3. The statistics provided by the annual reports of the Commission on subsidiarity and proportionality show an increase in the amount of reasoned opinions national parliaments have sent to the Commission. Using the post-Lisbon new powers, national parliaments have submitted 30 reasoned opinions in 2010, 64 in 2011 and 70 in 2012. Although this demonstrates a clear upward trend of parliamentary activity in relation to the implementation of the principle of subsidiarity one could observe some worrying statistics regarding the way national parliaments exercise their powers. Among others problems one could succinctly cite the overlap between the subsidiarity control mechanism and the political dialogue, the fact that the opinions sent as “reasoned opinions” do not state a breach of the principle of subsidiarity as required by the Article 6 of the Protocol, the application of differing criteria when national parliaments assess compliance with the principle of subsidiarity, the varying focus of reasoned opinions issued by national parliaments, the non participation (or the weak involvement) of some national parliaments in the control of the principle of subsidiarity and the inability of some parliaments to respect the period of eight weeks.

4. The first “yellow card” drawn, in July 2012, on the so called “Monti II-Regulation” highlights some of the above mentioned statistics. National parliaments issued 12 reasoned opinions on the Monti II proposal, representing 19 votes, whilst the threshold required by Article 7(2) of the Protocol no 2 is 18 votes. The Commission re-examined the proposal, as stipulated in the “yellow card” procedure, and concluded that the principle of subsidiarity was respected. Nevertheless, the Commission has withdrawn its proposal for political reasons, considering that it would not receive the needed political support within the European Parliament and the Council. The Commission informed the European Parliament, the Council and national parliaments by letters of 12 and 13 September 2012 of its intention to withdraw its proposal. It took its decision on 26 September 2012 [PV (2012), 2017]. As the annual report 2012 of the Commission on subsidiarity and proportionality indicates, the reasoned opinions were sent by 12 national parliaments out of 27. Most of the reasoned opinions sent questioned the use of Article 352 TFEU as the legal basis for the proposal, as well as its insufficient justification. Some expressed doubts as to the added value of the
proposal and the need for the action proposed. Five national parliaments argued that Article 153(3) would exclude the right to strike from the EU competences, while others claimed that the general principle of equality between the economic freedoms and the social rights and the proportionality test included in the proposal are not in line with the principle of subsidiarity and they could create a negative impact on the right to strike. In its reply to national parliaments that issued reasoned opinions (Letter of 14 March 2013), the Commission explained the aim of its proposal, emphasizing the need to clarify the principles and rules applicable at the EU level as regards the exercise of the right to strike within the context of the internal market, including the need to reconcile them in practice in cross-border situations. The latter could not be achieved by the Member States alone and required action at European Union level. As to the Article 153 TFEU, the Commission argued that Court rulings have clearly shown that the fact that this Article does not apply to the right to strike does not exclude collective action from the scope of EU law. Moreover the Commission justified the choice of a regulation, instead of proposing a directive, by underlining that as the regulation is directly applicable it would have reduced regulatory complexity. In addition, the proposed regulation would also recognize the importance of the existing national laws and procedures for the exercise of the right to strike, including existing alternative dispute-settlement institutions. As a whole, the Commission concluded that the principle of subsidiarity had not been breached.

5. The first “yellow card” procedure triggered by national parliaments is rich in the lessons of defining and applying the principle of subsidiarity. Although the principle of subsidiarity is defined in Article 5(3) TEU, and the Article 5 of Protocol no 2 provides helpful guidance on how this principle is to be applied, along with the previous Protocol on the application of the principle of subsidiarity and proportionality, attached to the Treaty of Amsterdam, which the Commission continues to use as a guideline for assessing the respect of these principles, [see the annual reports 2010 and 2011, (COM(10) 547 and COM(11) 344], it seems that the principle of subsidiarity is being interpreted differently by the national parliaments. While all the above mentioned texts link the concept of the principle of subsidiarity with the inability of Member States to achieve sufficiently the objectives of a proposed action at the national level, because of, among others, its transnational aspects, national parliaments did not take into consideration that the aim of the “Monti II” draft regulation was the necessity to reconcile the right to strike with the economic freedoms of the EU in practice in cross-border situations, which Member States can not resolve independently. The question of competence raised by their reasoned opinions relates more to the principle of conferral than to the principle of subsidiarity and proportionality. (See Article 5(1) TUE distinguishing the limits of EU competences from the use of the EU competences. National parliaments can control the respect of the principle of conferral but within the context of political dialogue).

6. This precedent shows the necessity to follow a commonly accepted definition of the principle of subsidiarity as the Treaty itself and its relative Protocols suggest. It is true that the eighteenth bi-annual report of COSAC Secretariat (27.9.2012) states that a large majority of national parliaments report that their reasoned opinions are often based on a broader interpretation of the principle of subsidiarity than the wording in Protocol no 2. The document refers to the opinion expressed by the UK House of Lords, stating that it is in favor of a wider interpretation of this principle because “although the principle is a legal concept, in practice its application depends on political judgment”. However, a common approach to the meaning and application of the principle of subsidiarity may make the threshold required for triggering the yellow and orange card less difficult to be reached. Moreover, national parliaments may establish a more efficient cooperation with the
Commission as regards the respect of the principle of subsidiarity. This cooperation should include as well the European Parliament and the Committee of Regions, which as the annual report 2012 of the Commission indicates are on the way to reinforce their control of the respect of the principle of subsidiarity. Finally, a well-framed cooperation with all EU Institutions may reinforce the ability of national parliaments to defend better an action on grounds of infringement of the principle of subsidiarity brought before the Court of Justice of the European Union pursuant to Article 8 of the Protocol no 2. The criteria to be chosen must take into account the relative provisions of the Treaty and its Protocols as they have been interpreted by the Court of Justice. Based on those provision, the Commission’s Impact Assessment Guidelines [SEC (2009) 92] set out clearly the criteria used to assess the compliance of Commission proposals with the principle of subsidiarity and proportionality. As its 2012 Report indicates, the Commission has always encouraged other institution to apply the same criteria. (See however the 18th Bi-annual Report, where it is indicated that national parliaments have differing views on the need for guidelines to clarify the scope of subsidiarity control and related criteria. Only half of the national parliaments responding to the questionnaire were in favor of this. All who supported it insisted that any guidelines must be non-binding).

7. Reasoned opinions do not concern the control of the principle of proportionality. The Protocol no 2 does not link the “yellow and orange card” procedures with the principle of proportionality, which pursuant to the Article 5 TUE governs the overall competences of the European Union. However, national parliaments could control the respect of the principle of subsidiarity either in relation to the control of the principle of subsidiarity or more clearly within the framework of the political dialogue. The former approach has recently been debated by COSAC indicating that “Even thought there is a disagreement as to the issue whether the principle of proportionality is an inextricable component of the principle of subsidiarity the majority of national Parliaments are of the opinion that the control of subsidiarity is not effective enough if a proportionality check of the proposal at hand in not conducted”. (See the Conclusions of COSAC, Nicosia 14-16 October 2012). In any case the abovementioned necessity of defining common criteria allowing to asses the respect of the principle of subsidiarity would shed more light on the relation between the principle of subsidiarity and the principle of proportionality.

8. The application of the principles of subsidiarity presents a challenge to the national parliaments which must accept it. Protocol no 2 aims at ensuring “that decisions are taken as closely as possible to the citizens of the Union” (first sentence of its preamble). This direct linkage between the principle of subsidiarity and the principle of democracy renders national parliaments more responsible for the efficient exercise of their new powers. The efficient control of the principle of subsidiarity should therefore be considered as the first priority of national parliaments, which could not but operate as a collective body to achieve their potential. The task involved is almost beyond their raison d’être, given their different political and constitutional traditions as well as their differing socio-political settings. However, the way national parliaments have altered their processes in order to be able to adapt to the dynamic institutional set-up of the European Union raises hopes for assuming their new responsibilities. (See the bi-annual reports of COSAC secretariat, especially the 18th and 19th reports). Moreover, as COSAC itself certifies the exchange of information between Parliaments on subsidiarity scrutiny has been significantly increased using a variety of exchange methods and networks, in particular the IPEX database and national parliaments representatives based in Brussels. In addition, as it acknowledges, in the context of this intensified activity, further improvements could be made, such as the exchange of accurate
information between Parliaments at an even earlier stage in the scrutiny process, the
amelioration of the content of the IPEX website to cover the substantive reasons for
breaching the subsidiarity principle and the availability of more detailed English and/or French
summaries or translation of important documents. (Conclusions of the XLIX COSAC,
Dublin, 23-25 June 2013). It is interesting to indicate that in relation to the as earlier as
possible scrutiny process, the 19th Bi-annual report refers to some national parliaments,
whose practices might be characterized as “best practices”, such as the modification of the
Standing Orders of the Parliament of Portugal, in January 2013, allowing the sectoral
committees to choose from the Commission’s Annual Legislative Programme the initiatives
to be scrutinised. Their analysis is submitted to the European Affairs Committee, which
prepare a written opinion on the compliance with the principle of subsidiarity, while the
breach of this principle would have to be determined in a plenary resolution. (See also the
House of Lords secretariat’s efforts to identify possible subsidiarity concerns early, including
through close scrutiny of the Commission’s Annual Legislative Programme).

9. National parliaments need support in implementing efficiently the control of the respect of
the principle of subsidiarity. Dublin COSAC Contribution acknowledged the work of the
Commission in dealing with the large number of reasoned opinions sent to it by national
parliaments. However, COSAC urged the Commission to respond to reasoned opinions
with greater speed and with greater focus on the arguments contained within each reasoned
opinion. Moreover, it invited the Commission to review, to improve and to clarify how the
“Practical arrangements for the operation of the Subsidiarity control mechanism under the
Protocol no 2 of the Treaty of Lisbon”, published by President Barroso in 2009, should
operate for both the yellow and orange cards. It invited the Commission, in this review, to
state, in particular, “how and when its responses should be issued in response to the cards
so triggered and the timeframe within which this will be undertaken”. Finally, it invited the
Commission “to identify the way in which it will communicate with national parliaments in
the scenario where a card has been triggered” and “to address more specifically the
concerns raised by national parliaments in their reasoned opinions.”

III. Political dialogue

10. It is true that the so-called Barroso Initiative has aimed at supporting national parliaments
beyond the texts of the Treaty and Protocol no 2. The Barroso Initiative emphasizes the
political dialogue with national parliaments, by favouring, in relation to the “Threshold”, “a
political interpretation of opinions received from national parliaments”, which means among
others that the Commission will consider all reasoned opinions “even if they provide
different motivations or refer to different provisions of the proposal”, that it will provide a
“political assessment” of the files for which the threshold has been reached, and that, in
the opposite case, it will reply to the respective national parliament “in the context of the
political dialogue”. In the case of the yellow and orange card procedure, the Commission will
give reasons for its final decision in the form of a Communication sent to all national
parliaments, as well as to the legislator and to IPEX. Dublin COSAC Contribution rightly
points out the necessity to take into account the experience of the first yellow card in
response to the “Monti II proposal” and to adapt the provisions of the Barroso Initiative. As
it is indicated, “in practice, a degree of uncertainty surrounded these arrangements following
the triggering of the first yellow card”. Any adaptation of these arrangements must
distinguish more clearly the duties of the Commission pursuant to the Treaty and Protocol
no 2 governing the principle of subsidiarity from what belongs to the concept of “political
dialogue.” (See for instance the provision Barroso Initiative relating to the “Scope of national
parliaments’ opinions, which distinguishes the subsidiarity aspects from the comments on the substance of a proposal and invites national parliaments “to be as clear as possible as regards their assessment on a proposal’s compliance with the principle of subsidiarity.”) The growing number of reasoned opinions necessitates the distinction between the subsidiarity control mechanism and the political dialogue framework, whose legal nature must be defined, especially in relation to the competences and responsibilities of the EU institutions. This delimitation will facilitate the establishment of an efficient and responsible cooperation between the national parliaments and the Commission, which begins to underline the “informal nature of the political dialogue, which has to be conducted in full respect of the prerogatives of the EU institutions and of the institutional balance more general.” (See the response of the Vice-President of the European Commission to the European Scrutiny Committee’s Forty-first report of session 2010-2012 of the House of Commons, on the subject of the 2010 Annual report on relations between the European Commission and national parliaments, Brussels, 11.01. 2012, C (2012) 39 final, who refers to the concern about the lack of a specific indication in the report about the impact of opinions expressed by national parliaments on the Commission’s proposal or positioning in the legislative process.)

II. However, the prerogatives of EU Institutions can not achieve the desired results without the active and continuous involvement of the national parliaments. In the terms of the European Council the “interdependence” between the European and the national legislative processes requires the participation of the national parliaments in the process of EU policy formulation. It therefore asked the Commission to duly considered comments by national parliaments, in particular with regard to the subsidiarity and proportionality principles. (Presidency conclusions, Brussels, 15-16 June 2006, para 37). Moreover, the fact that national parliaments remain even after the Lisbon Treaty the strongest legitimating factor of the process of European integration underlines the need to define broadly the framework of their political dialogue with the Commission. By making clear for the first time that “national parliaments contribute actively to the good functioning of the Union”, the new Treaty (Article 12 TEU) recognised a new conception of the evolving multilevel EU representative democracy. The political dialogue has to encompass, as the European Council suggested, not only the principle of subsidiarity and proportionality but also the principles of conferral and the principle of national identity(Articles 4 and 5 TEU) concerning all important aspects of the Commission’s legislative agenda and most importantly the further federalisation of the process of European integration. View under this approach, Dublin COSAC Contribution rightly pointed out that national parliaments “should be more effectively involved in the legislative process of the EU not just as the guardians of the subsidiarity principle but also as active contributors to that process. This goes beyond the adoption of reasoned opinions on draft legislative acts which may block these acts and would involve a more positive, considered and holistic view under which Parliaments could invite the Commission to develop legislative proposals.” COSAC therefore called the Commission a) to consider within the existing context of political dialogue any individual or collective requests from national parliaments for new legislative proposals, b) to give special attention and consideration to opinions on a specific legislative proposal or specific aspects of a proposal that have been issued in the context on the political dialogue by at least one third of national parliaments and c) to ensure that national parliaments are specially alerted to all Commission public consultations when they are launched and to pay special attention to any contributions made by Parliaments to any such consultations.
12. On the whole, national parliaments have a constitutional responsibility to protect the fundamental principles and values protected by national constitutions. To this end, they must participate in the shaping and scrutinizing EU decision making system. At the same time, by contributing to the good functioning of the EU, as required by the Treaty, national parliaments may assume a federal role consisting of the protection of national values throughout the formulation and protection of the European values. In other terms, the European role of national parliaments has a double dimension. The first dimension incorporates their mission to function as guardians of the national identity. The second dimension of their role aims at contributing to the development of a European identity based on the European values so as to protect better the national values.

September 2013
Mr Andrzej Gałążewski, Vice Chairman of European Union Affairs Committee, Sejm, Poland—(QQ 51-58)

Mr Andrzej Gałążewski, Vice Chairman of European Union Affairs Committee, Sejm, Poland—(QQ 51-58)

Evidence Session No. 4  Heard in Public  Questions 51 - 58

TUESDAY 19 NOVEMBER 2013

Members present

Lord Boswell of Aynho (Chairman)
Lord Bowness
Baroness Corston
Lord Dear
Baroness Eccles of Moulton
Lord Hannay of Chiswick
Lord Maclennan of Rogart
Baroness O’Cathain
Earl of Sandwich
Baroness Scott of Needham Market
Lord Tomlinson
Lord Tugendhat
Lord Wilson of Tillyorn

Witness

Mr Andrzej Gałążewski, Vice Chairman of European Union Affairs Committee, Sejm, Poland

Q51  The Chairman: Good afternoon, Mr Gałążewski, a very warm welcome from the European Union Select Committee of the House of Lords in London. This is a public evidence session in pursuit of the inquiry we are currently addressing into the role of national parliaments in Europe. We are trying this afternoon to take the mind of three national parliaments, yourselves, our Dutch colleagues and our Irish colleagues. You are most welcome to the Committee and we do appreciate your input.

I hope the weather is as nice in Warsaw as this afternoon it is in London, but we have some important business to discharge inside. Are you able to hear us and is everything all right?
Mr Andrzej Gałażewski, Vice Chairman of European Union Affairs Committee, Sejm, Poland—(QQ 51-58)

Mr Gałażewski: Good afternoon, welcome. Warsaw, of course, is very well and I think it will support our discussion because the humour is better when the weather is better.

The Chairman: If you are ready, I would just like to remind you, as we remind all our witnesses at public evidence sessions: this is a public session, it will be recorded, we will take a transcript and we will send that to you for any corrections of a factual nature, but it will be published on our website and available in an uncorrected form. Subject to that we would like to start straight away. There is a lot to get through and I would like to ask the first question of you. We have received some indications from your colleagues in the Polish Senate that relations with the European Parliament are much more effective than those with the European Commission. Does your Committee in the Sejm experience similar issues with the Commission and, if so, why do you think that is the case?

Mr Gałażewski: Yes, I do not know exactly what it means that this co-operation in the European Parliament is much better because co-operation with the European Parliament normally is in different forms. Direct contacts of course are fine. The written form is very similar to contacts with European Commission; the answer comes too late and is in general words only. So these two institutions are on the same level concerning their co-operation. Maybe the situation in the Polish Senate is better but I do not know.

I think co-operation with European Parliament is good; with parliamentarians it is better because it is natural. Their Parliament is on the same level. The task of the European Parliament is very similar to our task: we should improve our legislation and prepare good documents. We have formal and informal meetings. We are often in Brussels and we have our representatives in the European Parliament, so it is very natural. The main partner for the European Commission is the European Parliament. On the second level are our national parliaments, so it is not a very big problem for us. I do not think this co-operation is enough but it is not my dream to work on this issue a lot.

The Chairman: Thank you.

Q52 Baroness Corston: Mr Gałażewski, could you tell us how the role of your national parliament has developed in the European Union framework in recent years and, in particular, since the adoption of the Treaty of Lisbon?

Mr Gałażewski: Yes, the situation was quite different before the Treaty of Lisbon and after. Before the Treaty of Lisbon we had a European affairs committee and nearly all the documents were debated at the meeting of this committee. Now all the parliament debates are subject to scrutiny and one committee prepares the resolutions but the debate is on the level of Senate and independently on the level of Senate.

In the last years, the so-called sectoral committees are more involved in EU issues. It is quite new. Sometimes we organise a joint committee—the European affairs committee plus, for example, the finance and public economy committee—and we discuss concrete documents without any conclusions, but exchange of opinion is very important.

The Chairman: Thank you.

Q53 Earl of Sandwich: Good afternoon.

Mr Gałażewski: Excuse me, do you understand me or are there some problems with this?

The Chairman: It is fine at our end. That is very good. No problems, thank you. We will ask Lord Sandwich to ask his question and I hope you can hear him too.
Mr Andrzej Gałażewski, Vice Chairman of European Union Affairs Committee, Sejm, Poland—(QQ 51-58)

Earl of Sandwich: Mr Gałażewski, we are moving on to the question of decision-making in the EU itself and I wanted to ask you how effective your parliament has been. You mentioned some of your committees have been shaping and influencing decision-making. It would be helpful to our Committee if you could give us some specific examples of when you feel you have been able to influence and shape decisions at the EU level.

Mr Gałażewski: Yes. That influence on the decision-making process of the EU institution is very limited. Formally, we have influence only on some acts that we have investigated concerning subsidiarity, and that is on a parliamentary level. In direct relations they are our first tool, but I think they are even weaker than this former one. For example, I participated in the discussion in the European Parliament concerning better protection and all the national parliaments had remarks on the delegated acts. After a long discussion Commissioner Mrs Reding promised she would look at this document and maybe reduce the number of delegated acts, so it is our influence and your influence too.

The Chairman: Thank you. I think what we will do is we will ask our slate of questions first and then we may, if we have time, ask for a little more, what we would call, light and shade in the process of our joint experiences in this area.

Q54 Baroness O'Cathain: Good afternoon, I am just referring back to the answer that you made to the previous question that you had particular problems with Commissioner Reding. I am afraid in our Committee, which scrutinises the internal market infrastructure and employment, we have had frightful difficulty with Ms Reding, who refuses to communicate with us. Now, is this something that you have experienced because if it is—I will just ask you—do you think member states should get together and say this is not good enough?

Mr Gałażewski: Okay, Mrs Redding promised to change this number of delegated acts but, in fact, a good result in this case is when Governments and parliaments are on the same side. So one supports another. Of course we have such a situation that we approved the position of our Government and in this situation the Government has a better position during the Council meetings. I think that this, in direct inference, is much more powerful than direct contact with commissioner and commissions.

I do not remember whether there was any disagreement in the Commission though. Of course we have different opinions but in fact we in the Commission work on quite different levels. So that is my answer.

Baroness O’Cathain: Thank you.

Q55 Lord Dear: Good afternoon, Mr Gałażewski. We all know that there is an acute financing crisis in Europe, or at least in part of Europe, and this has highlighted the importance of accountability and legitimacy inside the EU. We all know that national parliaments have an important role to play in that. So my question against that background is: how do you think all of this might impact on the future inter-parliamentary co-operation and how the role of your own parliament might develop in this context?

Mr Gałażewski: Yes, I think the inter-parliamentary co-operation is crucial. I think it is much more important than co-operation between any other institutions because we sometimes have common interests and sometimes different interests. Unfortunately, during the crisis a lot of national ideas and political ideas and movements are more acceptable for citizens. That is a pity but only by co-operation, by sharing of information and by common discussion may we understand each other, so without this co-operation we will not solve
Mr Andrzej Gałążewski, Vice Chairman of European Union Affairs Committee, Sejm, Poland—(QQ 51-58)

our actual crisis, particularly during this time. So in the future it is not a question of if we should co-operate but how this co-operation should be organised.

I think that there are some examples that co-operation is better and some examples that it is not satisfactory. For example, the COSAC meeting is okay but there is not enough time to discuss between parliamentarians. It is only discussion between a speaker or somebody, a reporter, and any others. We need to exchange information between us. One good example was a workshop organised by the Danish Parliament. It was a very good discussion concerning so-called social tourism, vis-à-vis free movement of people—very interesting. Of course there is no conclusion but understanding is much better. I prefer a proper meeting, workshops and maybe such a conference like this one, to strengthen this co-operation.

The Chairman: Thank you very much for that. Can I follow it with a question of my own, because I too, of course, attend COSAC on behalf of this Committee? Is it your feeling that COSAC could have a useful role in establishing areas of common interest and perhaps, as it were, setting up or inspiring groups of parliaments to look at particular issues that could then report back either to COSAC or possibly to their national parliaments and to the Commission? In other words, COSAC would not be the executive body but it might be able to provide a machinery for conducting or starting these inquiries.

Mr Gałążewski: COSAC has a good history and experience but I am a little bit tired concerning the agenda. It is too big. I think we should focus on particular hot issues, not on everything because it is not fruitful. I think that we should limit the agenda topics and discuss in many groups of interest—I do not know exactly, but it is dangerous. One group of interest could be, for example, the eurozone group. It is difficult, but we should change something because it is now very tiring and they are not concrete meetings.

The Chairman: Thank you.

Q56 Lord Hannay of Chiswick: You mentioned the issue of parliamentary oversight of the European financial crisis and there is a lot of talk about that. The French Foreign Minister at the COSAC meeting in Vilnius put forward one model where it would just be the parliamentarians from eurozone countries who would exercise that debate and oversight. The other model would be that all 28 parliaments would do so because non members of the eurozone also have a major interest in the way that economic policy evolves. I wonder if you could comment on which of those two models you think should be pursued, and indeed whether there is some need for national parliaments to get involved in the oversight of these economic issues that are not all ones taken by collective decision but also some taken by national Governments.

Mr Gałążewski: You know that I criticised COSAC a little bit but there are two other conferences that are focused on the concrete issues; one on financial economy and one on foreign affairs and security. I have participated in these two conferences and I think that the discussion during these conferences, which have the same composition of 27 or 28 countries plus observers is different. It may be that the specific situation of COSAC makes us more critical but maybe during these conferences a new model will be created. I prefer a discussion, for example, during the meeting of European Affairs Committee, which is work on a concrete document. When we receive an invitation for such a meeting, we participate in these meetings, and try to explain our position because our position could be different from the English, French and so on. I think that such co-operation with the European Parliament may be better. So participating in European Parliament committees may be the future for national parliaments. Maybe we should send our chairmen to work on a European Parliament level to explain our different interests. That is my suggestion.
Mr Andrzej Gałążewski, Vice Chairman of European Union Affairs Committee, Sejm, Poland—(QQ 51-58)

The Chairman: Thank you.

Q57 Lord Maclennan of Rogart: Mr Gałążewski, I wonder if you could indicate what impact the early warning mechanism has had on the influence of your national parliament.

Mr Gałążewski: We are not experiencing that matter, in effect. We have of course our representative on the administration in the European Parliament and, if we need some information about work on the different national parliaments on concrete documents, of course we may obtain certain information. But I think that we learn now what to do with this and how to work with this mechanism. Unfortunately, I must say that our Parliament—our Sejm, our chamber—does not have experience on this issue.

Lord Hannay of Chiswick: The Commissioner responsible for relations with Parliament and national parliaments, Commissioner Šefčovič, has suggested that national parliaments could be more influential if they got involved, to a greater extent than they do now, in the consultative process that the Commission undertakes before it makes formal proposals—that is to say, upstream of any formal proposal and before the Commission has set in concrete the ideas. Do you think that is a good idea? Do you think it is a practicable idea? Do you thing the Sejm could cope with trying to get involved at an earlier stage in the legislative process?

Mr Gałążewski: I am not enthusiastic about this new idea to have more power for national parliaments. Maybe it is a problem of our experience. I know that the British Parliament and other western parliaments are more experienced and maybe have better knowledge and better co-operation. Unfortunately, I must say that the Polish Sejm is not ready to work seriously on this matter of having more power concerning relations between us and the European Commission. I think that firstly we should improve methods that already exist.

Q58 The Chairman: Can I perhaps follow that, Mr Gałążewski, as we begin to draw to the end of this particular session, by asking you, in terms of practical collaboration and co-operation between your parliament and this Parliament, how best this can be achieved? Is it enough to have the network of national parliament representatives in Brussels? Do we need to supplement that with a higher-level political dialogue? For example, should we have each other’s email addresses and be sending each other emails on matters of concern when they come to our attention? Is that the kind of way in which you see this process evolving?

Mr Gałążewski: Your view of it is very good. So that is one kind of co-operation. But, frankly speaking, it is a very small group that is looking for any comments from any other parliaments. I think we may use our experience from co-operation with our German colleagues, because they are closer. From time to time, we have a limited number of committee meetings on common issues—for example, energy problems. So we discuss with our German colleagues our different goals and the difference in renewable energy and so on: these kinds of problems.

The second mechanism we experience with our colleagues is party or political group meetings, in limited groups—once in Germany, the second time in Poland. For example, my party is co-operating with the CDU. Sometimes the discussion is very difficult, especially concerning historical problems and the results of the last war. But during these discussions we get closer to solving some problems.

So I propose that you and colleagues from the House of Commons arrange such meetings in Warsaw or in London. I think there are many topics we should discuss. One of them I mentioned, for example, is social tourism and the labour market—very difficult problems, and our interests are quite different to your interests. They are partly the same, but partly
not. I think there are some problems, for example, over the enlargement situation in Cyprus vis-à-vis Turkey; problems of Ukraine we discussed. There are a lot. So I propose to arrange such a meeting—maybe 40 people would be enough. You are in a better situation because generally such meetings are in English. We have to support our colleagues with interpreters or we send a group of people who may discuss the topics in English.

**The Chairman:** Can I say at this stage thank you very much for that offer? We will certainly see what we can do. I think we need to develop the realistic process of bilateral collaboration in parallel with whatever we do on national parliaments.

I would like to say in conclusion, on behalf of our Committee, that you have conducted this in impeccable English, which is not your mother tongue, for 30 minutes. You have given us most interesting information, for which we are very grateful. We would like to express our thanks and look forward to future collaboration both on this and other matters. Thank you very much and goodbye from London.

**Mr Gałążewski:** It was a pleasure for me and a very new experience. Thank you very much.
Mr Edmund Wittbrodt, Chairman of the European Affairs Committee, Senat, Poland—
Written evidence

1. There is no widespread agreement on the role the national parliaments should play in the EU decision making process. There is however a need to involve parliaments in the EU legislative process, because an ever growing body of EU legislation has been depriving national parliaments of their traditional legislative powers and functions.

National parliaments do not have sufficient access to information, especially they are not able to follow the whole process of negotiations on the dossier, although they should be kept fully informed on how the negotiations are pursued by their governments. On the one hand, national parliaments can influence the EU decision making process through their governments, on the other hand politicians and political parties can influence the EU negotiations through their MEPs.

2. Interactions between national parliaments have obviously developed since 1992, under a great impact of the Treaties. The Lisbon was especially significant because of a discussion accompanying the treaties’ reform on the role of national parliaments in the EU decision making process.

Although national parliaments often use an opportunity to issue reasoned opinions (ROs) and are willing to engage in the decision making, the mechanism does not seem to be efficient for the following reasons:

- a lack of common understanding of the subsidiarity principle, with the same case being qualified as a breach of subsidiarity by one chamber, and as a breach of proportionality by the other. In such a situation only one RO is issued, even though the draft has been negatively assessed by both chambers;

- a narrow scope of RO, which is closely linked with the above mentioned problem. It is often difficult to precisely differentiate between subsidiarity and proportionality issues, and even a proper legal basis;

- an eight week timeframe does not take into account other than summer holidays temporary problems, such as winter holidays or end of parliamentary term;

- not all chambers are interested in a given act, which is especially visible in relation to maritime issues or area of freedom, security and justice;

- subsidiarity principle is of a political nature and there is no consensus on what criteria should be used for its assessment.

The mechanism of yellow and orange cards, with its aim of exerting ex ante control of EU political principles made by national parliaments is a good start. The mechanism should be reformed to make it more effective.

3. The European Commission does not take into account national parliaments’ opinions or even neglects them. The Commission’s answers are often delayed and sent when negotiations are already advanced, are very general and do not address any specific issues. In
principle, the Commission upholds its position, repeating arguments from its original proposal.

Cooperation with the European Parliament has been more effective. We have signals that our opinions submitted within the framework of political dialogue have been taken into account. Our assessment of cooperation with the EP’s committees is also positive.

Reaching an agreement at the first reading makes the whole process less transparent, because this is a result of informal procedures. On the other hand though, the scrutiny process in member states is based on internal rules and procedures and national parliaments’ opinions can be used by their governments in negotiations. Therefore all procedural trends can be mitigated by internal procedures in member states.

For the Polish Senate the most useful tool of interparliamentary cooperation is IPEX. Its functioning has improved lately becoming an excellent source of information about others’ opinions. The only thing that still needs to be improved is a timeframe for uploading English versions of opinions since knowing other parliaments’ opinions may be quite an influential factor.

4. A level of commitments to EU affairs varies from one national parliament to another. Some of them are more effective than others probably because of two reasons: national parliaments differ in their mandates to control governments’ actions in the EU institutions and, in consequence, some of them are better prepared for the scrutiny process by their parliamentary administration.

A dialogue and scrutiny with national parliaments and a dialogue with the EU institutions have different roles to play. They are complementary rather than competitive ways of expressing national parliament’s opinions and therefore should not be compared. There is though a growing political will to increase interparliamentary cooperation as it enhances democratic legitimacy of the EU.

A parliamentary representatives’ network is crucial to interparliamentary cooperation since it is definitely a primary source of information, especially at a stage when there is no official opinion on a draft yet. The network should be developed.

27 September 2013
Thierry Repentin, Minister for European Affairs, French Government—(QQ 137-141)

Evidence Session No. 10  Heard in Public  Questions 137 - 141

WEDNESDAY 8 JANUARY 2014

Members present
Lord Boswell of Aynho (Chairman)
Lord Bowness
Lord Foulkes of Cumnock
Lord Harrison
Lord Maclennan of Rogart
Lord Wilson of Tillyorn

Examination of Witness

Thierry Repentin, Minister for European Affairs, French Government

Q59 The Chairman: Good evening Mr Repentin.

Thierry Repentin: (Interpretation) MPs, Ambassador, I am very happy to welcome you here to the Ministry of Foreign Affairs. I would like to ask you please to excuse me for being late. As you know, we Ministers do not always have control over our agendas, but I will catch up on the lost minutes in the meeting. At least the President of the Republic will be on time when he sees you on 31 January.

The Chairman: I think we have the Anglo-French summit on 31 January.

Thierry Repentin: (Interpretation) I think you wish to talk about the role of Parliaments in the EU, so I am available for any questions, but first of all I would like to listen to you.

Q60 The Chairman: Minister and Ambassador, may I respond by assuring you that I am delighted, and my colleagues are delighted, that you have agreed to participate in this session for us.

My Select Committee in the House of Lords is currently conducting an inquiry into this important issue for us all about how we develop the role of national parliaments in the European Union. We will, if we may, use your evidence this evening, which we will take formally and transcribe and relay to you, as part of the investigatory work for our inquiry. We hope to complete a report in the spring sometime before the forthcoming European
elections. I can assure you that it will not be a matter of final prescription; it will offer not quite a menu à la carte but a range of options that we need to explore.

If we may start, can I ask this question first on behalf of the Committee? It has been argued, I think in all our countries, that the European Union suffers from a lack of democratic legitimacy. Although we have spent the morning with the European Parliament, it might even be that it has not been able to overcome this problem on its own. Do you feel, Minister, that national parliaments can help to redress this democratic deficit? If we do that, can we be assured that we can do it in a way that makes the Union more effective and does not, for example, further delay the process of decision-making?

**Thierry Repentin:** (Interpretation) President, I am pleased: your question is paramount at this sensitive time. On 5 May, elections will be held, and on the one hand we have to consider the reality of the democratic process and what public opinion actually knows about it. It is possible to improve this democratic process even if the Lisbon treaty has already done a lot in that field. We can talk about the role of national parliaments within the EU and within the economic monetary union.

The role of national parliaments in the EU is very important in order to get European citizens closer to Europe. That is an important dimension. There is the Lisbon treaty, which implemented what we call the yellow and the red card process. This yellow card process has already been used in the Monti II project regarding the right to strike, and more recently it was used by the Senate for the European Public Prosecutor’s Office project. We are in favour of the creation of such a European Public Prosecutor’s Office. We wanted to review the content, but we agree on the idea.

There are also interparliamentary conferences, which are interesting for us, for debates between the EU and its citizens. There is also COSAC, which was created in 1989 by Laurent Fabius, and the fact that Laurent Fabius went to Vilnius in 2013 shows the importance of this issue for us.

If I may, I will speak about the role of the EMU. I always take the floor in front of the Commission on foreign and European affairs in France, before the Senate or the French Assemblée Nationale. Before we speak about the EMU, I would like to be completely honest with you and say that we lament the fact that European MPs are not always present at all these forums. National parliaments must promote further debate, exchanges of information and pedagogy between national parliaments and EU parliaments. Right now, the explanation of EU phenomena is not always clear to everyone, so we are in a way dealing with a lack of proactiveness from national parliaments today.

Of course the EMU has changed a lot because of the economic crisis, with the entry of the two pack and six-pack provisions that had consequences on the budget sovereignty of states. We absolutely need a decision-making body so that national parliaments have a role to play to decrease the role of the EMU. With the two and six-pack processes, the EU is now more involved in issues that are directly related to national parliaments. Article 13 of the ETSCG has established the interparliamentarian conference on economic and budgetary governance and there is a first meeting in October 2013 in Vilnius. The role was to strengthen democracy within the EU.

**The Chairman:** In the EMU particularly?

**Thierry Repentin:** (Interpretation) Yes, the role of democracy of the EU via the EMU. France and Germany also want a specific structure within the European Parliament that will make it possible for the European decision-making process to begin, as you can see.
As regards the eurozone, it is gaining power, so we think that will most absolutely have a more democratic dialogue. Today there is a lack of it and we absolutely need more exchanges.

Q61 The Chairman: If I could respond, first I would like to say that unlike most of my colleagues I had the privilege of hearing Monsieur Fabius in Vilnius and he paid a great honour to COSAC, in which he has such an important role as the founder, which was greatly appreciated.

I perhaps should have made one general point, which I think enters into this discussion, which is that if we do not solve some of the problems of democratic legitimacy, given the economic pressures under which Europe—that is, both the euro area and the countries like the United Kingdom outside it—are all suffering, this may end up on the streets, so we need to have the right democratic underpinning to meet the needs of citizens.

I was interested in your comment—perhaps I should put it this way—that national parliaments are not innocent in this process, because they do not engage enough. Could I ask you perhaps to reflect on this? We tend to see the potential role of national parliaments as twofold. The first is that they have a duty and an obligation to hold to account their national Governments, including you as a Minister, in their work at European Union level, for example in the Council. There are great constitutional variations. As you know, our Danish colleagues have a mandate system, we have a scrutiny system, but that is one route and perhaps that also includes the reserve powers or the final powers of the yellow card and the red card.

The second route—and we have some evidence about this—is to encourage national parliaments to be engaged at an earlier stage in the European debate and being prepared to enter into a political dialogue not only with their own Government and not only through their own Government but with European parliamentarians and others. First of all, do you identify that as being the correct range of two possible approaches to the problem? Secondly, do you have a personal perspective on whether or not the route through national governance is more effective than the route of discussion upstream in the policy process in Europe?

Thierry Repentin: (Interpretation) Each institutional organisation has its own history, so there is no miracle solution. We must remain humble when it comes to our responsibilities. From my experience, I can tell you that the French parliament can better grasp the European dimension. The parliament, the Assemblée Nationale, and the Senate use the means that they have at their disposal even if the situation is not always perfect. For instance, we have pre-Council debate that is organised to listen to Ministers. The Minister of European Affairs is systematically heard during these events so that the challenges are clear for everyone.

The difficulty is that the debates must happen as close as possible to the date of the Council meeting because, as you know, negotiations take place until the very last minute. Also, we have a new public session that is broadcast live on TV, and it usually happens right before the European Council. It is a two-minute question and answer debate on the different items on the agenda, and then I usually make a debriefing of the session.

With the democratic process that you described that you would like, I think we must improve the links between the Commission and the Parliament. In what we call the European semester, Commissioners must be absolutely clear when they explain the situation to parliamentarians who vote.
There was a competitiveness contract from 20 December on economic and budgetary issues but no agreement was reached, so that will be postponed to next year, but that goes to show that it is really important for national parliaments to have an improved dialogue between the Commission and parliaments, even if it means more work.

**Sir Peter Ricketts:** This was the issue of contracts within the eurozone, which, if it had been agreed by the European Council, would have had an impact on national parliaments.

**The Chairman:** Of course.

**Lord Harrison:** But is it really being delayed until next year?

**Thierry Repentin:** Although no agreement was reached, we agreed on structural arrangements if economic policies were improved, together with more solidarity from countries that made an extra effort, but we decided to resume those talks at the end of 2014, and that concerns all countries within the eurozone.

**Q62 Lord Wilson of Tillyorn:** Minister, I am very interested indeed in what you have said just now. Could I follow up on two things? One is the question of scrutiny by national parliaments. You gave a very interesting example of what is done in France on direct interaction between parliaments and the relevant Minister before a Council meeting. Do you see scrutiny on paper of the dossiers by national parliaments as being useful in addition to that? That is one point.

The other is the involvement of national parliaments. Should that be earlier in the process when ideas are being developed in the Commission? Would it be useful to involve national parliaments at that stage? How might it be done? Would it be welcomed or not by the Commission if it were done?

**Thierry Repentin:** Could you go back to your first point, please?

**Lord Wilson:** The first point was on the question of the practical scrutiny by national parliaments of proposals put forward by the Commission: legislative text and things like that. How useful is it for that? How much is it done in France on paper in addition to discussions? Is that a useful way of doing it?

**Thierry Repentin:** I do not know if I am going to answer all your questions, but regarding the way national parliaments can intervene, one thing must be absolutely clear: France does not call into question the initiative power of the Commission. No one wants to call into question the legitimacy of the European Parliament, and national parliaments cannot take over the role of the European parliaments that are elected. So consultations with national parliaments must happen after some work has been done at European Parliament level, but once again we do not want to call into question the importance of the role of the European Parliament. The pre-Council debate I mentioned aims at being pedagogical, explaining the situation clearly, and Parliaments must intervene as close as possible to the date of the European Council so that we have more room to manoeuvre.

I also have in mind a small detail that I would like to mention. It is, of course, this eight-week deadline. We must be extremely careful. These eight weeks must be a period of time that is available for parliament, which is not always the case. There is also a linguistic problem, a problem with translation, and I have seen these eight weeks being reduced to one week only, which is unacceptable.
Lord Bowness: Minister, I think you have answered my question about whether or not the Commission should have a greater involvement with the national parliaments, and as I understood it you agreed that that is the case.

Q63 The Chairman: I think there is a specific point on this, Minister. Would you see it as being an important part of the Commission’s role and the individual Commissioner’s role to make themselves available for discussions with national parliaments? To be honest, we have a rather mixed record from the Commissioners as to whether they wish to respond to our inquiries, debates and issues.

Thierry Repentin: (Interpretation) Élisabeth Guigou and Danielle Auroi meet European Commissioners on a regular basis. I actually know of three Commissioners who meet the French parliament regularly, so we must improve the dialogue but once again without calling into question the right of initiative. There is also a question of availability. More availability is necessary, but there are 28 countries and it is sometimes difficult for Commissioners to find time to dedicate to this.

I am sorry, I must leave now, but before I leave I want to tell you one last thing. From my experience, I know that the role in France which the parliament has on all these European issues is closely linked to the leadership of the state. What I mean by that is that if you have a leader who is very much involved in those issues, this will have fallouts on proactiveness and how often these issues are mentioned.

The Chairman: May I say in conclusion, Minister, first of all, our sincere thanks to you for participating in this session and for the warmth and perception of the judgments that you have brought before us? That is very encouraging for our inquiry. There may be one or two issues that we had suggested discussion on to which we could return by correspondence with your staff.

I am very grateful to you for arranging this meeting. It has been helpful to us. Perhaps I could also wish you well with your work in the Council and suggest that we may perhaps need to talk from time to time as part of this business of bringing together the work of national parliaments and national Governments with the activities of the European institutions themselves.
Olivier Rozenberg, Centre d’études européennes, Sciences Po (Paris), Claudia Hefftler, University of Cologne, Valentin Kreilinger, Jacques Delors Institute, and Wolfgang Wessels, University of Cologne—Written evidence

Submission to be found under Claudia Hefftler, research assistant at the Jean Monnet Chair, University of Cologne, Valentin Kreilinger, Research Fellow, Notre Europe, Jacques Delors Institute, Olivier Rozenberg, Associate Professor, Centre d’études européennes, Sciences Po (Paris), and Wolfgang Wessels, Jean Monnet Chair, University of Cologne and Chairman of the TEPSA Board – Written evidence
Written Commission contribution to the inquiry of the House of Lords on the role of national Parliament in the European Union

National Parliaments have a very important role to play in the EU framework. In addition to their significant national competences and functions, such as scrutinising their government and mandating it to act in Council, a key function of national Parliaments in the EU context is to adopt national measures for the implementation of EU directives.

National Parliaments also have a specific, direct role in the EU structure. As set out in Article 12 TFEU, they contribute actively to the good functioning of the European Union, inter alia by taking a position on draft EU legislation and by taking part in the revision procedures of the Treaties. The role of national Parliaments has been further strengthened with the specific powers that have been granted to them with the Lisbon Treaty under Protocol No. 2, namely to raise objections if they find that a legislative proposal does not respect the principle of subsidiarity. With these powers, the national Parliaments can verify if in their view the Commission has assessed correctly that action at EU level is appropriate.

The Commission is pleased to see that national Parliaments have made active use of this mechanism and that—in the Commission’s view—the mechanism works very well. Even though only one “yellow card” procedure has been triggered so far—also due to the great variety of views among national Parliaments, including diverging interpretations of the notion of subsidiarity—210—the option to issue a reasoned opinion is available to them on the terms set out in the Protocol. National Parliaments make use of this option: in 2012, the Commission received 70 reasoned opinions concerning 34 different proposals, with most of these proposals subject to only 1-3 reasoned opinions.211 The Commission examines the arguments presented by national Parliaments and—unless a yellow or orange card procedure is launched for which special procedures apply—replies in the framework of the political dialogue, launched by President Barroso in 2006.

It should be underlined that under the broader political dialogue, national Parliaments issue many more opinions (in 2012, the Commission received 593212) commenting on various aspects of future or present legislative proposals. This input from national Parliaments on all aspects of the proposals, including subsidiarity and proportionality, is valuable to the Commission as an input to the legislative process.

The Commission strongly supports this dialogue and in particular encourages the early involvement of national Parliament by their submission of contributions to public consultations on possible new or modified legislation. In this way, national Parliaments are

---


able to make their views and ideas known in the early stages of the preparation phase, and ahead of the adoption of a possible formal proposal.

Since the launch of the political dialogue the Commission has seen a substantial intensification of its interaction with national Parliaments. The number of written opinions submitted has increased significantly, especially in recent years, and the Commission welcomes the input it receives which it takes into account in the legislative process. The dialogue is, however, not limited to the exchange of letters. The Commission is always willing to appear upon invitation before national Parliaments to provide explanations of the Commission’s positions and to discuss legislative proposals and other EU matters. To this end, the Commissioners travel frequently to the Member States, just as the Commission receives a large number of delegations from national Parliaments in Brussels.

In order to perform their scrutiny role, national Parliaments should naturally have access to the necessary information. Under Protocols No. 1 and 2, national Parliaments receive draft legislative acts, communications, consultation documents, the annual legislative programme etc. The Commission transmits such documents to national Parliaments and will in the future also send other documents not covered by the Protocol to national Parliaments and the European Parliament\(^\text{213}\). National Parliaments that wish to be informed will soon also be alerted by the Commission to new public consultations. Furthermore, national Parliaments also have access to each other’s scrutiny documents via IPEX which has a valuable, publically accessible database. The Commission also transmits documents to IPEX and its services actively use this web tool.

In order to ensure full engagement of national Parliaments on EU issues, the Commission believes it is important to raise awareness and to debate key issues on the EU’s agenda not only within the EU Affairs Committees but also more broadly with National Parliaments. The Commission therefore has invited national Parliaments to take up the idea voiced by the Speaker of the Irish parliament to organize "Europe days" within national Parliaments dedicated to discussions on the most pressing EU issues. Moreover, the Commission is of the view that it would be beneficial for national Parliaments to hold debates on the Commission Work Programme for the following year once it is published at the end of October each year, in order to enable them to identify the priorities for their scrutiny work for the following year.

Communication and interaction between Parliaments, for instance in the context of COSAC, as also formally recognised by Protocol No. 1, is in the Commission’s view of great value to the EU, especially in the current context of the deepening of the Economic and Monetary Union which has increased the focus on democratic legitimacy and accountability. The key role of national Parliaments for ensuring democratic legitimacy and accountability at national level is currently one of the most important topics on the EU agenda, and the views of national Parliaments on the subject as expressed in COSAC or other fora are crucial as input for the shaping of the EU in the longer run.

The Commission considers that the political dialogue with national Parliaments has been a success and that it has contributed to increasing the focus on EU matters at national level. Recent initiatives from national Parliaments also attest to their deep commitment to their role in the EU framework and to ensuring democratic legitimacy and accountability. The

\(^{213}\) Further to a request made in the conclusions of the Speakers Conference in April2013 in Nicosia.
Commission sees this as a very positive engagement for the benefit of the EU as such and, most importantly, for its citizens.

16 October 2013
Good afternoon, Commissioner Šefčovič. I am sure I should not properly be welcoming you to your own place of work and activity. You have very kindly consented to act as a witness in a formal way to our inquiry into national parliaments. This is a work of supererogation, as the theologians would say, in that you have already submitted written evidence to us, for which we are very grateful, and you also participated very actively in the informal session we held on the occasion of the last COSAC—COSAC 50—in Vilnius some weeks ago, and that was very helpful. If I may say, you have at all times shown yourself conscious of the interests of national parliaments and responsive to them, certainly to ours, and we are very grateful for that.

As this is a formal evidence session as far as we are concerned, we are recording it. We will make available a transcript, which will be published, and of course your office will have an opportunity of correcting any factual errors. I wanted that to be clear. In introducing this, is there anything you would like to say before we start?

Vice-President Šefčovič: Thanks very much, Lord Boswell. I would like to welcome you all to Berlaymont. I start with my gratitude to the House of Lords for your very active participation in the interparliamentary exchanges in the political dialogue and the subsidiarity
check mechanism that was established by the Lisbon treaty, because the House of Lords is one of the most active chambers we have in the European Union. If you ask our lawyers, they will tell you that you are known in particular for the great clarity of your opinions, for the high-quality legislative work and the pertinence of your opinions. From this point of view, we are very pleased that the House of Lords is actively involved on a permanent basis in the dialogue with the European Commission when we are looking for ways to improve our communication and interaction. I am very glad that my personal co-operation, which started with Lord Roper’s review, has continued. It is at a very high level and is of high quality. We also very much rely on your insights into our daily work, our legislative work. I am very much looking forward to our discussion today, because it is quite clear that over the period of this Commission the role of the national parliaments has increased. We have seen the activity of the national parliaments and the participation in the political dialogue of the subsidiarity check mechanism grow tremendously. From the couple of dozens of opinions that we received when the political dialogue was established, today we have well over 600 opinions from the national parliaments per year. We reply to all of them.

I would like to underline the fact that we took very seriously the criticism coming from COSAC and some national parliaments concerning the delay in our answers. We have managed to shorten the period for our answers from more than five months to less than three months, which is what we promised at the beginning. It took a lot of effort. We had to change our internal procedures and put a lot of IT on to this, but now I believe that we are in a position to respect the promised delay of no more than three months for a response.

I would also like to underline that we have seen that the national parliaments are very interested in having more interaction with the European Commission, in having hearings and exchanges of opinions with the Commissioners and experts of the European Commission. I believe that this will be the tendency and the trend much more in the future.

Once again, welcome to Berlaymont and I am very much looking forward to your questions or to your sentiments. Thank you very much.

Q90 The Chairman: Thank you very much, Commissioner. We will get into the wider issues about political dialogue later on, but we start with recent issues in relation to the playing of the yellow card on the European Public Prosecutor’s Office. I think you will know from our earlier exchanges, including some at COSAC, which were reprovided to us in the evidence of another national parliament, that I was somewhat critical last year when I said that it is important that the Commission should not simply count the numbers as to whether or not the yellow card was successfully played but that it should also have due regard to minority opinion. More widely is the issue of, as we would say, acting in good faith when there is a difference of opinion and trying to resolve those differences rather than just relying on a simple legal outcome. In relation to the recent experience with the EPPO, how well do you feel the mechanism has worked? Are there lessons to be learnt from this on either side?

Vice-President Šefčovič: Thank you very much for that question. The yellow card on the EPPO was the second one, and I think that we learnt from the first one we received on Monti II. I was particularly clear back here in the Commission that we have to study very carefully the reasoned opinions sent to us by all chambers of the national parliaments, that we have to respect the political commitment, which I made several times to COSAC, that we would not be legalistic over the quality and the content of the reasoned opinions that we receive, and that we should respond to the national parliaments appropriately and without due delay.
Why am I saying all this? First, because if you looked at several reasoned opinions we have received from the national parliaments, I think you would be surprised to see that in some of them there was not one phrase of reasoning on why subsidiarity was breached. In other opinions there was a lot of argumentation concerning the content, structure or the proportionality of the proposal but not that much on the subsidiarity of the issue. As I promised I think two or three years ago, if it comes to yellow cards we will look at it politically, which means that if national parliaments send us an opinion that says that this is a reasoned opinion, we would not question the contents of that opinion but we would take it and respect it as a reasoned opinion.

That happened in this case. Once the threshold was reached, we triggered the procedure of the yellow card. That means that we studied all the opinions very carefully, and if you look at our communication you will see that we have been addressing in great detail different kinds of reservations concerning the subsidiarity of our proposal. On top of that, we are going to send very detailed responses to each individual chamber, including the House of Lords, on other aspects of your reservations related to this proposal.

The question was why we acted so swiftly. There was a presumption that because we acted so swiftly we did not study your opinions carefully. I cannot agree with that, because the only reason for the swift action on this matter was that we were going into parliamentary recess very soon and had elections to the European Parliament, and Article 86 of the Lisbon treaty clearly opens the possibility of proposing the establishment, the creation, of the European Public Prosecutor’s Office. We were simply under pressure of time. I can tell you that the service has been working very hard on this issue, including interservice consultations and of course the discussion among the Cabinets and the Commissioners.

On the yellow card, I would like to add that we had different discussions on these proposals at the expert level with the member states, but there was also a preliminary discussion at the political level with Justice Ministers, and the fact is that there is quite a solid majority supporting these proposals. I fully understand that for you it is very important that we respect each national parliament, and this is what we are trying to do. We are showing our respect by having prepared a very detailed response to the reasoned opinions, and we are showing respect to parliaments that support this proposal.

I will, if you will allow me, Lord Boswell—I will not dwell on this for too long—I will give you a little of the sense of why we believe that this is such a pressing issue. I know that the UK is one of the countries that permanently insists, and rightly so, on the correctness of spending of European finances on proper prosecutions and is criticising low recovery data when it comes to fraud investigations. To give you a couple of figures, in the five years between 2006 and 2011 the number of actions in which no judicial decision in the member states had been taken was 54.3%.

On top of this, we clearly see that there is a lack of deterrence, because more than half the actions transferred by OLAF to the judicial authority of the member states were dismissed before the trial. Average conviction rates remain very low, at around 42%. The final figure I would use concerns the equivalence of the protection of the Union’s financial interests across the member states, because here we see that the judicial authorities have very different conviction rates, ranging 19.2% and 91.7%.

I think the statistical evidence is clearly proving that we have a big problem when it comes to investigation and prosecution in European finances. We have a big problem with evidence admission, with cross-border co-operation, and with co-operation between the national prosecutors and the partners in OLAF or in other member states. Therefore, we tried a
hybrid structure whereby the European Prosecutor’s Office will not only be created but will be composed of delegated European prosecutors, which will actually be national prosecutors, which will make sure that co-operation is much better and much smoother.

Therefore, we see that we had a very clear legal base, which was very much discussed in the convention before the Lisbon treaty was adopted and ratified by all member states and the national parliaments, we have a majority of the member states that would like to go further with this proposal, and we have ample evidence that there are problematic parts of this proposal, which I believe will be tackled in the course of the ongoing negotiations between the co-legislators.

The last item that I would highlight, although I am sure you are very well aware of this issue, is that the UK has opted out on this area, so this proposal does not concern the United Kingdom and the UK will not vote on this proposal in the Council.

**Q91 The Chairman:** Thank you. I will just make two points in comment and then ask one question. The first point is that we have recently, through our sub-committee, done a piece of work on the extent of fraud, and we are very much with you on the objectives. It is worth noting that in a number of cases where national parliaments may wish to record reasoned opinions, they are not objecting to the substance, they are objecting to the process or the subsidiarity. The second point concerns the handling of this by the Commission—and I realise that this is history, in a sense. As you rightly say, this was foreshadowed in the Lisbon treaty four years ago, but it has taken four years for a proposal to come up and then generate a yellow card, and the Commission has turned around and rejected the objections very quickly.

My question in the light of that perhaps reflects one of the things that disillusions people about the democratic process, which is that they feel it makes no difference. Can you give us the assurances, and I think you already have, that even if the Commission wants to persist with this proposal—clearly there are, as you say and I acknowledge, member states that are in favour of proceeding on whatever basis—at least the views that have been taken as to the detail, such as the interaction with national fraud and prosecutor offices, will be respected? In other words, it will not have been a waste of time for those who have issued their reasoned opinions.

**Vice-President Šefčovič:** Thank you very much, Lord Boswell, for the subsequent supplementary question. Of course I can assure you that all the proposals, the reservations or the amending suggestions that have been part of the reasoned opinions we receive from the member states are very carefully studied. I believe that in most cases, although not all, they will be also presented by the Ministers in the Council, because we receive a reasoned opinion from one particular chamber of one particular member state and we have very strong confirmation from the Government that they very much insist upon having this proposal on the table. I believe that in most cases the reservations that have been presented by the chambers of the national parliaments will be taken on board by the national Ministers and they will present them in the course of the co-legislative process.

On the side of the Commission, I can assure you that all the reservations that have been presented are part of our dossier or file that we prepared on this particular proposal, and I am sure that they will serve as a source of ideas when we are looking for political agreement in the negotiating process.

You will ask me how this happened, and the question I am getting a lot is how the work of the national parliaments can be measured in concrete action and reflection. To give you one
example, which I am sure could serve as the description of what we might expect in the
discussion on this proposal, the ECI—the European Citizens’ Initiative—conducted the
negotiation on this issue. There again we received, as I am sure you will remember, quite a
few proposals, suggestions and opinions from the national parliaments. For example, at that
time the House of Lords suggested that we should fully use the opportunities provided by
the internet by allowing the statement of support to be collected online, and this was taken
on board. Luxembourg and the German Bundestag suggested the revision of the whole
proposal and the regulations because we did not know how the technology would evolve or
how the citizens would then use this initiative. I think it was a very wise decision, because we
had already learnt about some of the ECI’s shortcomings, and this was also taken on board.
There was a suggestion, for example, by the Greek Parliament that when it comes to data
protection we should make sure that the statements of support are destroyed at the end of
the process so they cannot be abused in some kind of data trading or abuse of the statement
of support for the initiatives.

Those are just a couple of very concrete examples that I can give you of how the ideas from
the parliaments have been taken on board when negotiating. I am sure that the suggestions
that came from the national parliaments will be very much taken on the board when the
work of the co-legislators starts.

Q92  The Chairman: Thank you. There is only one other question from me, certainly at
this stage, Commissioner, and that is prompted by your remarks about the European
Citizens’ Initiative. I think there is a commitment there for a Commission response within
three months to a successfully tabled initiative, not just in relation to reasoned opinions but
in relation, for example, to the political dialogue that we exchange when we table our inquiry
reports with you. Can we have the assurance—I think you are already beginning to meet
this—that there will be prompt responses from the Commission as well, particularly as we
look forward to the new Commission? I think you will be aware that the British
Government’s commitment is to respond to parliamentary inquiries within a two-month
period, typically. That may be a little optimistic for a Commission, but can you at least get
into the same ballpark?

Vice-President Šefčovič: Are you speaking about the political level or about the ECI?

The Chairman: I was making the point that with the ECI there is a commitment to
respond in three months. When parliamentary commissions or inquiries are tabled with the
Commission, we might not be able to expect a three-month response but we should have a
prompt response.

Vice-President Šefčovič: Thank you very much for that question. This is clearly the
intention, and I will not hide from you that at the beginning of the legislature we were quite
overwhelmed by the number of opinions we were receiving. I have the numbers here. It
went from 160 opinions in 2007 to 663 opinions in 2012, so this was quite substantial
growth. The opinions from the national parliaments have been of better and better quality.
They have been much more detailed and much more extensive, and therefore we have to
match the quality of the questions with the quality of the responses. We had delays in the
first years of the quality co-dialogue where the average delay was five and a half months. I
know also of cases where it took much longer, and I think we made it very clear to our
services that this is not good administration of the files when it takes us such a long time to
respond to opinions from the national parliaments. So we changed the system and the
procedure. We put new information technology on this, and in the last month of last year
we have been able to respond to the opinions from the national parliaments in less than
three months. It is clearly the intention to maintain this now and in the future, because I believe we have a system in place that will guarantee that there is a response within three months.

Q93 Lord Bowness: Good afternoon, Commissioner. Can I stay on this subject of the yellow cards but look particularly at subsidiarity itself? It is obvious that different national parliaments take different views as to what is or is not subsidiarity. In your response to the yellow cards on the EPPO, the Commission excluded some arguments on the grounds that what was being advanced was not an argument on the grounds of subsidiarity. First, do you think it is appropriate for the Commission to sit in judgment on itself on the particular issue as to whether something is or is not subsidiarity? I appreciate that in asking the question one must ask: if you do not do it, who will? Do you think there is any scope for reaching agreement as to a definition of subsidiarity?

While I am on this particular topic, referring to your own annual report you noted yourself that the reasoned opinions vary greatly in form and the type of arguments that are put forward. Do you think that is because national parliaments just use the opportunity to express their concern to the Commission about particular proposals or because they do not understand, with great respect to others, what subsidiarity is? Indeed, could you get a common approach when the practices and traditions in the parliaments of all member states are so different?

Vice-President Šefčovič: Thank you very much, my Lord, for that question. When it comes to subsidiarity, I would say that the starting point is that this is a fundamental democratic principle. A guiding line for the Commission is Article 5 of the Lisbon treaty, which says that the Union should act only if “the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”. For us I would say that there are two parts of this subsidiarity test, which are very thoroughly examined by our impact assessment board. The first part is whether the action the Commission is proposing can or cannot be sufficiently achieved by the member states acting on their own, and the second part is whether the action can be, by reason of its scale or effects, better achieved at the Union level.

The fact that we pay a lot of attention to the subsidiarity check can be proven by the way we completely overhauled the impact assessment that we do in the Commission. As you probably know, we did not have that a couple of years ago. We established the new impact assessment board. As far as I can judge, the board works very well. It is very strict. It sends back more than 30% of the initial proposals from the services. When you compare the quality of the impact assessment with other similar institutions in Europe or the world, it shows that they are doing a pretty good job. Of course, the subsidiarity check is one of the binding principles of the treaty, so we pay enormous attention to it. Therefore, we feel quite strongly that when we presented the proposal the subsidiarity principle was respected.

I would add that there always might be the possibility that a national parliament or national Government would see the subsidiarity in a different way, that they would have a different perception of the subsidiarity, and therefore the subsidiarity check mechanism was introduced because this gives the national parliaments the possibility to voice, “This is how you see the subsidiarity of this proposal, but we have a different opinion. Let us have an honest argument about it. Let us discuss it. Let us put our arguments on the table”. I think this is what was achieved by the subsidiarity check mechanism.
Why are there such different approaches to the subsidiarity reasoned opinions? Partially, as you rightly said, it is because there are different traditions in the national parliaments and partially I think that in some national parliaments the subsidiarity reasoned opinions are somehow substituting the opinions of the national parliaments that want to say, “We do not agree to the proposal. We do not like it. We do not like the substance”. They feel that if they send it under the subsidiarity check mechanism, even though they are not criticising the subsidiarity as such or substance or parts of the proposal, it will get more attention, it will be studied more closely and has greater political weight.

Therefore, sometimes we receive such mixed opinions in the Commission when very often the subsidiarity part is not mentioned at all or is mentioned in one sentence or one word, and the rest of the opinions concern the substance of the proposal or a criticism of the structure that is offered or the action that will be taken. Sometimes we receive opinions of very different quality, and therefore we stated very clearly from the beginning that despite the content or the quality of the opinions, once the national parliaments send us an opinion that is entitled a reasoned opinion, we will take it as such.

Q94 Lord Foulkes of Cumnock: Commissioner, you gave us some very helpful answers on the yellow card procedure, but of course that is a very negative power. What do you think about the possibility of giving national parliaments the positive power of proposing new policy initiatives? Would you support that and how do you think it could be done?

Vice-President Šefčovič: Of course I believe that this would be the best way of proceeding. This is something that I proposed to the national parliaments from the beginning. What do I mean by that? One of the ways in which the national parliaments could most influence the quality or type of European legislation would be by much more active participation in the prelegislative phase. We introduced the prelegislative phase as a way to respond to some of the concerns from the national parliaments, and from the public, and we devote a lot of time and resources to the prelegislative phase of our proposals and as part of the smart legislation concept.

The fact is that this is somehow—excuse me for being so open—not politically attractive enough so far for the national parliaments. We receive very few opinions or proposals from the national parliaments in the prelegislative phase. This is the time when the public and the stakeholders are consulted, and when the different kind of associations send us their opinions. I can assure you that if we received opinions, suggestions, comments from the group of national parliaments at this stage, it would have very important political weight in these proposals.

Lord Foulkes of Cumnock: Why do you think you are not getting very many of them?

Vice-President Šefčovič: I think there are several reasons. The first is that it is not that politically attractive at this stage because it does not have the same political weight if we just issue, let us say, a yellow card statement, but also partially, I believe, because the national parliaments are not very aware of this service. Therefore, it was suggested by COSAC—and I think one of the most prominent parties proposing this was Lord Boswell in our discussions last year—that we should make it much clearer to the national parliaments when these public consultations are taking place.

Over the last year we changed the way we inform national parliaments about what we do, so now we send to all chambers of the national parliaments all the legislative proposals at the same time as we send them to the Council or the European Parliament. We send all the documents to the national parliaments that we send to the Council, because we have been
told that in some national parliaments it is very difficult to get those documents for their own national Governments, so we just send it out automatically to all national parliaments. Then we send the impact assessment to all national parliaments, but because they are sometimes quite extensive documents we also include so-called executive summaries at the beginning of the impact assessment, which we have to translate into all 24 languages, which we do, and we send it out. The last thing we have added to our information packages that we send out to the national parliaments are the alerts for when and what kind of public consultations will take place. This is a new thing that we have been doing for only a couple of months.

I hope this will help the national parliaments to be more involved and participate more in this area, because I believe this would be very important input and an important contribution to how the Commission legislates and in what areas.

Lord Foulkes of Cumnock: Unless I misunderstand, that is still for something that is initially proposed by the Commission. What I was suggesting, and what I think Lord Boswell has suggested, is that national parliaments could come up with completely new initiatives or proposals and should then go through the kind of process that you are discussing. There is no procedure for that at the moment. Could you pick that up? Would that be something that you would want to take forward?

Vice-President Šefčovič: Just as a quick reaction to the first part of your question, it is not always true that the public consultations are only on the way we are going to propose something. There are two concepts: a Green Book and a White Book discussion. The Green Book discussion is where we ask, “Do we need to legislate? Do you want us to legislate? Is it a good idea to present a legislative proposal?” If the response is yes, we follow that with a second public consultation that is, “This is how we suggest we should legislate. What do you think about it?”

I know that what you are asking is different. Your question is how we should react if a group of national parliaments comes up with a proposal. I would say that there are two limitations. The first is that if we were to speak legally on this issue, the institutional balance of the European construction is, of course, very much covered by the treaties and the fact that although the Commission has the exclusive right, the initiative is part of the balance. I think that most probably it will stay like this for the future.

The second is that when it comes to the European Parliament, it has the possibility to adopt some legislative resolution, meaning that when it adopts it we have to respond within three months on how we would like to treat the resolution. Do we want to act, do we want to reflect upon it, or do we not think that it is a good idea? So I would say that when it comes to some kind of legal right for the national parliaments to get the same right, we probably need to change the treaties.

Having said all that, of course the Commission is living in the real world and we are living in a political atmosphere and political circumstances. I am sure you know very well that in, let us say, the European Council conclusions, very often the language of the European Council is about inviting the Commission to present this proposal or consider that proposal. I think that if the national parliaments can generate the political momentum and come up with a proposal that also has the backing of the Government and can create a positive atmosphere for this or that proposal—of course the Commission is here to serve the European citizens, the member states and the European general interest—if there was a positive momentum with positive ideas, the Commission would be very happy to act on it, but I would say that the legal basis to do it would be very difficult.
The Chairman: I am conscious of the time, Commissioner. I think we have a little franchise to continue, but I am anxious to get through the points.

Vice-President Šefčovič: No, I am here for you, so it is fine.

Q95 The Chairman: That is great. I think it might be sensible, as we are rather at the heart of this dialogue with the Commission, if I ask two colleagues to contribute. I also have a comment of my own to make. I will make that first and then bring them in and you can respond.

My comment is that there is a kind of asymmetry between the European Parliament, where people are elected to spend their time on matters connected with Europe, and the national parliaments, where parliamentarians have other mandates and are basically concerned about their domestic political situation but may have an interest in Europe. Sometimes even an interest in Europe will be regarded as rather eccentric or even rebarbative, unpleasant, to some of our electors, who ask why we are there. If that is the case, how do we get enough resources or how do we prioritise the work that national parliaments might do as part of the political dialogue? Clearly we are going to find it difficult to do everything. That is my question.

Q96 Lord Wilson of Tillyorn: Commissioner, thank you. I think most of the question I was going to ask has already been answered in what you said to Lord Foulkes, but could I just be clear in my own mind? As I understand it, there are some mechanisms at the moment for reflecting ideas in the policymaking process, for instance through COSAC contributions to the Commission, joint letters by groups given and so on, but I have understood you to say, given that it would have to be slightly informal, that direct communications from parliaments to the Commission would also be welcome. Did you have in mind that it would be direct communications from, for instance, Committees like ours: the House of Lords Select Committee on the European Union? You also mentioned that that would be fine if it dovetailed with what the Government of that country were putting forward. Could one envisage, or were you envisaging, the idea that Committees like ours could put forward ideas and new thoughts, or that at a very early stage comments on legislation that might be going through should come from a Committee like our Committee?

Q97 Lord Maclellan of Rogart: Commissioner, in your written submission to us regarding this inquiry, you indicated that the Commission encourages the early involvement of national parliaments by the submission of contributions to public consultations and possible new and modified legislation. You have expanded on that this afternoon, but how far upstream could national parliaments contribute to the policymaking process before you have necessarily achieved draft legislation? Do you think it would require some new protocol to authorise this, and indeed to solicit this? I hear your strong support for early interventions, but what is the most effective procedure that could be followed by national parliaments to give effect to your goal?

Vice-President Šefčovič: Thank you very much for all the questions. I will answer first the question from Lord Boswell concerning the asymmetry. From one side, I fully understand that there is such a perception, but from another side I would say that in several member states, especially those that are in the eurozone, we will see more and more of an overlap between European and national interests. I see it on a daily basis when we talk to the national parliaments on economic governance and when I come to national parliaments to present country-specific recommendations. We see the analysis of the European-wide recommendations, and then the transposition into the national reform programmes and
specific recommendations. With the recommendations, we can see that one comes from the European level but that the transposition of the application, the actual support on the ground, is and will always remain a national responsibility. I would say that you have a quite clear overlap in that respect.

I think that your House studied how much of the national legislation stems from European legislation and the difference in member states depending on the level of the depth of the integration. In some of the member states the percentage is pretty high. My suggestion is always—and this would be extremely helpful for the public perception of the European Union and good quality co-operation—much better interaction between members of the national parliament and the members of the European Parliament. Very often, I can tell you openly, members of the same political party from the same country have totally different opinions on the position in the European Parliament and to the position in the national parliament, which, as you can imagine, is not easy for us to navigate through. Very often, of course, there is a different perspective or a different angle on how you see the situation. Therefore I would say that ongoing interaction between national parliaments and the European Parliament would be extremely helpful for better understanding and for smoothing the edges of the different proposals. I think it would also create better perception about how we legislate, how we assure democratic accountability and how the citizens concerned are represented in the European legislative process.

The second point is how to deal with the EU agenda, which I agree with you is vast. I know that this is not a problem for the House of Lords, because you do a very good job in scrutinising it and in sending us high-quality opinions. This morning I had Members of the Irish Parliament here, and I know that for the smaller member states especially the administrative support that they can get for their services in the EU office is rather limited, and therefore the best advice I can give you is to work on different levels.

The first thing, which I think you do quite well in your House, is to continue sifting through the Commission’s work programme to look at the plan not only for this year but for next year, select what you feel is a more sensitive or more important issue for you, and then decide how in depth you would like to go in the discussion with the Commission. From our side, I can assure you that we would be ready to respond on an expert level. We would be ready to respond on the political level. If you would like to have a hearing on a particular issue and you would like to invite the Commissioner or experts, we will be very happy to respond to those questions, come to Westminster, do it through the video conference or continue our correspondence. We are very ready for that dialogue.

Another issue that I think is quite important is the question of expanding a little the coverage of supersensitive issues for national parliaments and the respective expert committees. If it concerns aviation, the transport committee would be involved. If it concerns agriculture, the agriculture committee would be involved. It would not stay an exclusive domain of the European affairs committees, because other national MEPs can feel a little locked out of this process and are then surprised with all this coming from Brussels in their respective areas because they are not informed.

This year will be very important for you, because it is to be the year of institution renewal: there will be big changes in the Commission, the European Parliament and the European Council. The new President of the Commission and the new College of Commissioners will have to present the political priorities. They will then present the political manifesto, and of course the Commissioners’ work programme will have to be based on this. That will be the time to get involved and interact and highlight what is important for your parliament, and of
course to be involved in this political process, which I am sure will take place in the second half of this year.

On the question from Lord Wilson, I have two very important points to make. When it comes to the Governments and the Council, we have to be treated as a co-legislator. Once we put our proposal on the table it is out of our hands and we serve, to the best of our abilities, the role of the honest broker, because of course the negotiations, which very are often very difficult, are done within the Council. I think there is a strong role for the national parliaments because you know very well what the position of your Government is on an expert level and on a political level, what kind of position to propose and what kind of suggestion to make. I know that your diplomats are extremely able in getting the points across and I think you are very effective and efficient in the Council. I would say that that is where this very exclusive relationship between national parliaments and your Council representatives is very much in position. We already felt in the Commission in 2006 that we simply needed to have a much closer relationship with the national parliaments. We want it and it is useful, because we know that the citizens very much refer to their national parliaments and that national parliamentarians are directly elected representatives. To a great extent, you are the opinion-makers about how the European Union is seen and how the co-operation is perceived. Therefore we would like to listen to you and to your concerns.

We also would like the national parliaments to have much stronger national ownership of what is going on here, because we believe that this is our common task. Therefore we started with a political dialogue, which creates the platform of exchange of correspondence, but we would not like to see it limited to the exchange of the letters. You send us an opinion and we respond to it. That is all. Very often you are not happy because very often we do not agree with your opinion, but in that case it is more than likely that you end there. If you still feel that you would like to have more information on this or that, we would be very happy to continue in that discussion or, let us say, to move it up to a higher level. Let us have a meeting/discussion/hearing/presentation in the Committee. We would be ready for that because it would help us to create a much better picture of the understanding. It is not only about the Government; we very much value the opinions of the parliaments and we would be very happy to continue receiving them.

Lord Maclennan asked how far upstream the parliaments would be the most effective. As I said, with the new proposals, the most efficient and weightier arguments could be presented before the drafting is started. This is really the legislative phase when the arguments, the reservations, the proposals get a lot of attention because the drafters of the legislation are gathering ideas on whether to legislate, and indeed how, to legislate—how to draft the proposal.

When the national parliaments send us their opinion, we work with them on a continuous basis, but once the proposal is done, as I said it is a little out of our hands because it is then up to the co-legislator. Then, I would say, the key role is played by the Council negotiators and the European Parliament negotiators when the Commission is the one that is offering different kinds of compromises. The compromises are very often inspired by the opinions that we receive from the national parliaments. As I demonstrated with the ECI example, very often the good ideas for the compromises for getting the qualified majority to support the proposals come from the opinions received from the national parliaments, because they help us to make bridging proposals and offer us the solutions that are very often accepted by the Council and also by the European Parliament.
**Lord Harrison:** Commissioner Šefčovič, good afternoon to you and to your three colleagues. Originally I was going to ask you about the informal political dialogue with national parliaments and how we could improve them, and for any examples that you could give where you as the Commission have shifted policy generation or indeed legislation proposals. I was going to give you the example of my Committee, which is the Economic and Financial Affairs Committee that reports to Lord Boswell, and indeed is on what Lord Maclelann is calling for, which was an early look at a Green Paper on shadow banking. We had an outstanding example of an expert from the Commission informing my Committee very well. In a subsequent meeting with Her Majesty’s Treasury, I felt that we taught it more than they could teach us about shadow banking, partly primed as we were, but I am abandoning those because you said something very instructive and important about your dialogue with national parliaments. You said that as a result of the European semester and indeed the examination of the now 18 members of the eurozone, you and your colleagues were beginning to have to have intensified dialogues with national parliaments. Is not what many of us have feared coming to pass: that where we have been bound together by the single market of 28 of us, we are now beginning to separate because there is an intensity of dialogues between national parliaments, the European Parliament and the Commission because of the ever-separate development of the euro and the eurozone? By all means write on the other subjects, but I think that is going to be something that all of us have to think about, because quite clearly you are saying that the national parliamentarians are waking up to the fact that the eurozone and all that is involved is going to engage them and you in turn are going to have to respond to them.

**Vice-President Šefčovič:** Thank you very much, sir, and thank you very much for the example of shadow banking. That is exactly one of the ideas I had in mind, because the experience is a very similar to that of some national parliaments. Here, to be quite honest, we are very much in your hands, because in this case this is something that you thought would be useful and we are very glad that we could provide you with our experts. Of course I am very happy that you liked it and you found it useful. At the same time, if I tried to impose this type of position on you, you probably would not like it. Therefore, we are a little in your hands as to how you would like to structure that dialogue or what level of interaction you would prefer.

In this case, I am sure that it was better to have our best expert respond to shadow banking because I am sure that the Commissioner most probably would not be able to provide you with all the details. He would probably not have them with him to answer all the questions. Sometimes the dialogue is much shorter. It would be much more frank if you just had this business-like dialogue or exchange of views with the expert who is working on the legislation.

I can tell you that I am very much encouraging these exchanges because it is also very instructive for the services to be exposed to the political reality of how the scrutiny is done in other countries and what the political or administrative limits are in other member states. Therefore, I would say that it is mutually very enriching. In the future if you have any proposal like this, I am sure that we will be very happy to respond to it and again to send you the best expert we have in that field.

On the potential dividing line, I can tell you that we are very much aware of this concern, this fear, and that not just the UK Government but all other Governments of other countries who are not in the eurozone are very vocal on this issue. We fully realise and fully respect the fact that the European Commission is for all 28 member states, and when it comes to any type of legislation, our starting point is how to prepare it so that it covers all
28 or does not create any artificial or real dividing lines between member states that are in the eurozone and those that are not.

At the same time, the fact that we have the eurozone and the Eurogroup means that for the countries that are in the eurozone there are much stronger obligations and expectations. There is the financial contribution to all these mechanisms and different kinds of bailout funds. They are also accepting the new way of how economic governance within the eurozone is carried out. You are able to understand as a Lord that if the British Government were to send us the draft national budget and we told you, “We do not like this and we do not like that”, you would like to hear from us, “Why? What is the reason for that and what is the reasoning behind this opinion?” This is what we do for the eurozone member states, so I would say that there is this genuine concern coming from the national parliamentarians: “Look, national budgeting is a national severity measure. It is the national parliament that decides on the budget and now the Commission is coming with an assessment of the draft national budget”.

It is quite clear that they would also like to hear from us the reasoning behind our assessment, why we phrased it like that or why we suggested this or that. Of course we always make it absolutely clear that it is the sovereign decision of the national parliaments to adopt the budget. What we want to assure in our assessment of the national budget is that we avoid the situation in the past where, under different structures of the budget and different kinds of budgetary expenses being hidden, the timeline was not respected and so we had a late budget. We are bringing additional transparency, additional expertise and an independent look at the proposal presented by the national ministries for finance. Of course, it is up to the national parliaments to adopt the budget.

The same goes for the country-specific recommendations. This is still a new process. We have already done it for three semesters, and the fact is that when it comes to the country-specific recommendations, usually you find recommendations that are politically very, very sensitive. Why is that so? You know how it is: if you have to touch the school system, the pension system or unemployment schemes, these are such sensitive issues that the Governments prefer to postpone them, do them later or not do them at all. Therefore, we introduced this economic governance system where we use the shared sovereignty, the collective reason for proposing politically very sensitive and difficult topics on the table, because these generate the political debate in those member states. This creates the political atmosphere for working on these issues. I can tell you, because I presented it in French at the Assemblée Nationale and in the Bundestag, that these are quite difficult discussions. Again, it very much depends on the parliamentary traditions and parliamentary cultures. Parliament prefers to have the debate with the Commission on the country-specific recommendations, and we try to accommodate the requests of the national parliaments.

Q99 The Chairman: Thank you. Our final question relates to interparliamentary cooperation. The familiar vehicle for that in now 50 iterations is COSAC, of course. I have already mentioned you have been most assiduous in your attendance at COSAC meetings, which is appreciated, but since then I think a number of things have changed, partly reflecting the pressures that colleagues have identified during this question session. You have the new conferences on the common foreign and defence policy; you have the new Article 13 conference on economic affairs, and you have a renewed interest within COSAC itself in the possibility of specialist activities, rather along the lines of the Danish Folketing’s proposal for some specialist meetings which that they have held and involved others that we have seen.
How do you see that particular palette of individual and collective interparliamentary activities developing from the original COSAC formula? How can we add value to the European decision-making process? Also, as I rather indicated earlier, how can we be selective enough to have some effect on the process?

**Vice-President Šefčovič:** Thank you very much, Lord Boswell. I would like to thank you, too, for your active participation. I also thank you for bringing new ideas to the process. The session you called during the lunch break was the most popular one, because it was very interactive, the people could speak up and we did not have to wait for a speaking time. It was very lovely and, I would say, very dynamic, and I am sure that subsequent sessions will be organised in this manner on other topics as well.

It is also very important to say, and I am very pleased to do that now, that we see such constructive but positive and creative tension between the European Parliament and the national parliaments. It was not always like this. There was a bit of tension before, but when I read the conclusions of COSAC, opinions from the national parliaments and statements from the European Parliament, I saw some kind of fear, which Martin Schulz refers to as the "deparliamentisation of the process". I think you will see a mobilisation of parliamentarians and parliaments at the national and European levels. This positive attitude led us to finding the solution for the CFSP/CSDP conference, where one of the issues was what the key would be to participation. That was resolved.

I would also say that the economic governance and this clear feeling that these matters have a lot of importance and pertinence not only on the European level but on the national level led to the interparliamentary framework that was created and that will continue in January by the parliamentary Article 13 conference organised by the European Parliament and then by the autumn conference organised by the presidency.

Then, of course, there are our COSAC meetings where, as you rightly pointed out, you see the demand for the sort of spontaneous, lively debates that were organised last time. You also see an appetite for a specialised, likeminded group of the national parliaments discussing particular issues, which were organised by the Danish Folketing. I would say that we are now in such a growing process of different parliamentary formations, which cover European issues and European policies, and I think this is good and positive.

As you rightly pointed out, I think in the future we will see the need to be more selective, to streamline the process and to put it into a more established framework. I would not say that I have a super-precise idea of how this could be done because it will be a gradual process, but I think that COSAC is very much an accepted trademark. I think that it works and is accepted by everyone: national parliamentarians, European parliamentarians and the European institutions. Maybe in the future it could serve as some kind of umbrella organisation for co-ordinating, co-organising or creating the platforms for the different types of interparliamentary exchanges, be it a likeminded group on this or other issues or discussions on issues that are also related to economic governance.

I believe that budgetary issues will be very much on the agenda of European and national parliamentarians in the future. That would probably be the format that we could use—the already established structure—for adjusting to these new needs, which have been brought out by the economic governance progress and by the national parliaments striving to be much more involved in other political issues.

**The Chairman:** Commissioner Šefčovič, I think that is an appropriate moment to draw these conclusions to a close. This has been a very positive session on our part. We are grateful for some of the commitments you have made on behalf of the Commission, and no
doubt some of your colleagues, about engaging with the national parliaments. We are also grateful for the attendance of your staff and indeed for the readiness you have shown to make Commission staff available to assist our own national inquiries. This is clearly something you attach importance to, as of course we do in coming to see you. We are particularly grateful for the fullness of your answers and the length of time you have been able to commit to us this evening. It is very helpful. I hope it will play into our report, that you will read it with interest when it is submitted to you, and that it will make a positive contribution towards the future development of what I think we all agree is an important area of policy and indeed scrutiny development.

On that note, I would like to thank you again both for your answers and for your hospitality in this building, and we look forward to future exchanges. Thank you.

_Vice-President Šefčovič:_ I would also like to thank you for your active participation in our political dialogue, for your communication and exchanges with the European Commission, and for your personal active participation. Again, I, too, very much look forward to future contacts with you and with your representatives.

_The Chairman:_ Thank you very much.
National Council of Slovenia—Written evidence

THE ROLE OF THE NATIONAL PARLIAMNETS IN THE EUROPEAN UNION

Member states of the EU did not renounce their sovereignty but we only transferred the exercise of part of our sovereign rights to the EU. National Parliaments are still the legislators of the member states and we were given a task by the voters to pass such legislation that would benefit our society. We the parliamentarians of each of member states were given a task to cooperate with other states to make our common area the area of prosperity for all. For easier execution of this assignment we transferred it to our national governments whose members actually decide our fate at the Council. It is parliaments’ obligation to remind our governments that they answer to us and the voters and that our role is not only to transfer EU decisions into national legislation. It is crucial that we do not become only means of transferral.

In my opinion members of the National Council and other parliamentarians have sufficient information to base upon their decisions, but it is on each person to seek the relevant information. We have an opportunity to search databases of the EU institutions, communicate with our governments and their services, have meetings with members of EP from our countries. Relevant information is always available; it depends on the person how much effort one puts in obtaining it. Also we should not forget about our relations with MPs from other EU countries; political parties in the EU do have more or less official relations with like-minded parties, there are possibilities to exchange the information (official or unofficial) at the numerous meetings organized in the framework of the EU and outside. My opinion is that with every Treaty EU institutions were instructed to have a more close relationship with the national parliaments. This cooperation could still be improved; again it is not all in what is written in the Treaties. A lot depends on the national parliaments: how much time they spend on quality scrutiny of EU matters, on relations with national government, namely how binding is parliament’s decision for the government, and also how good is your diplomacy with other parliaments when trying to persuade EU institutions to do or not do something.

One platform for the exchange of views, practises, is COSAC. Topic on what role should it have been discussed many times at the meetings themselves and also through its biannual reports. My opinion is that at the meetings participants do not have enough time to really debate. There is always a time limit around 2 minutes per speaker and in such a short time it is difficult to have a discussion. It is rather a presentation of opinions and not so much a debate.

I support the tradition on inviting members of the European Commission to the COSAC meetings so that participants have an opportunity to exchange their views directly with them.

18 October 2013
Dr Julie Smith, Senior Lecturer, Cambridge University—Written evidence

1. National parliaments’ engagement with the EU differs from country to country and from chamber to chamber within Member States, as the UK example highlights most effectively, given that the House of Commons and the Lords approach European questions in quite different ways. The case of the House of Lords is, of course, unique and offers far more scope for effective engagement on European affairs than is the case in any other national parliamentary chamber. The fact that peers are not elected means that they are not subject to the same constituency/electoral demands that face parliamentarians elsewhere. Combined with the fact that the appointed chamber comprises many former diplomats, including former Permanent Representatives to the EU, this means that the upper house enjoys considerably more expertise and willingness to engage on European matters than could be expected in most elected chambers. In other chambers knowledge of the EU may be brought by parliamentarians who have previously been MEPs but their focus will inevitably be on the national level once they have been elected to their home parliament.

2. This submission relates primarily to questions 1, 2a and 3b. It draws on work undertaken in the framework on the OPAL project on the role on national parliaments after Lisbon, undertaken by the Universities of Cambridge, Cologne, Maastricht and Sciences-Po, Paris, and funded by the respective national funding councils, in the case of Cambridge the ESRC (RES-360-25-0061), as well as research undertaken by the present author and two colleagues, Dr Ariella Huff and Dr Geoffrey Edwards, for a study presented to the European Parliament’s Budgets Committee in March 2012.

National Parliaments in the EU

3. For over a quarter of a century academics and practitioners have raised concerns about the so-called ‘democratic deficit’ in the European Union, which it is asserted arises from the fact that powers previously held at the national level have shifted to the European level, where decisions that were formerly taken by national parliaments are now taken by members of national executives sitting in the Council of the European Union (formerly the Council of Ministers).

4. The issue in the 1980s was one of perceived deparlimentarisation, a loss of power and influence for (national) parliaments within the European Community as it then was. The solution advocated by the European Parliament (EP), perhaps unsurprisingly, was that the parliamentary gap should be filled by granting new powers to the EP, as the representative body of the peoples of Europe. This view was apparently accepted by the Heads of State and Government, who repeatedly granted additional powers to the EP in successive treaty reforms from 1970 onwards. Meanwhile, the role of national parliaments declined at every stage of formal and informal integration prior to the Lisbon Treaty, as the use of qualified majority voting (QMV) and co-decision were increased.

---

214 Aside from the vast academic literature in this field the matter was formally discussed by the European Parliament in 1988 - EP Resolution on the democratic deficit in the European Community, see OJEC No C 187/229-31. The earlier Vedel Report had also addressed this issue in 1972 prior to the introduction of direct elections.

215 The EP’s powers were first expanded in the budgetary sphere in 1970 and 1975, rather earlier than the landmark treaties of Maastricht and beyond.
5. Granting the EP more powers only responded to one element of the democratic deficit, however. It ensured that there was a parliamentary dimension to legislative and budgetary decisions within the EU but it did not tackle the problems associated with holding national ministers to account for their actions within the Council of the EU. This was, and remains, primarily a task for national parliaments. How well national parliaments are able to fulfil this role depends in part on the formal powers of NPs under the Treaties but also on political will and resources within the various national chambers.

**Formal role of national parliaments**

6. As noted in para. 4 above, the role of national parliaments in European affairs was seen to decline over the years as repeated treaty reforms empowered national ministers and the EP. The Lisbon Treaty, by contrast, was hailed by many as giving powers back to national parliaments. For many MPs this might have come as a surprise as the nature of European integration has been little debated in many national parliaments, and the loss of powers had gone unremarked.

7. In practice, Lisbon has been a mixed blessing for national parliaments. If increased or repatriated powers were the headline, there is a paradox that went unnoticed, namely a further constraint on national parliaments. Article 115A of the Lisbon Treaty refers to the importance of (national) budgetary discipline for Eurozone states. If adhered to, this constrains both national governments and national parliaments in their budgetary decisions, at least for Eurozone states. This situation was compounded in March 2012 with the signing by 25 countries of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG), which demands ‘balanced budgets’ of signatory states, thereby reducing their room for fiscal manoeuvring.

8. While the TSCG lies outside the formal EU treaty framework, its genesis as a response to the Eurozone crisis makes it appropriate to group this Treaty alongside the EU treaties in terms of impact on national parliaments. This is especially so given the related decision by the Speakers of national parliaments in June 2013 to establish an interparliamentary forum for discussing economic and financial matters, which I am aware is the subject of evidence submitted to this inquiry by Valentin Kreilinger and Olivier Rosenberg.

**Capacity of national parliaments - political will and resources**

9. In many cases national parliaments could scrutinise European legislation more fully. The issue is not a lack of formal powers; it is a lack of political will among national parliamentarians for whom other concerns, typically domestic, prevail.

10. Nor do all parliaments or parliamentarians share the same perspectives on the role that NPs should play within the EU. This depends in part on their perceptions of what their own roles as representatives of the people are and may also depend on their attitudes towards European integration, with Eurosceptics believing in a more significant role for national parliaments. Conversely, for some Eurosceptics there is a tendency to ignore the shifts in formal powers to the European level and, hence, not to engage in EU affairs in any meaningful way – rhetorical opposition replacing meaningful scrutiny of either the EU institutions or national governments’ activities at the EU level.

11. There is increasingly a view in national parliaments that European affairs should be ‘mainstreamed’, i.e. brought within the purview of sectoral committees rather than
European affairs committees. How well this works in practice, however, depends very much on the political will of parliamentarians and the administrative support they enjoy. Thus, the experience of the Dutch Tweede Kamer stands out as a positive example, where mainstreaming has worked very well. By contrast, attempts to mainstream European policy in either chamber of the Irish Oireachtas has been rather less successful. A key difference between these two experiences appears to be one of resources. It is also worth bearing in mind that Irish politics is notoriously ‘local’ and thus the value of focusing on European affairs may be relatively less.

Dialogue and scrutiny of EU policies

12. Forty years ago, the Vedel Report argued that: ‘It is true that some of the problems mentioned could be solved through the relationships between the European Parliament and the national Parliaments. By a sort of coming and going between the European Parliament and their national Parliament, Members of the European Parliament could build a bridge between national democracy and Community democracy.’ (Vedel Report, Chapter III, Section II.4.)\(^{216}\) In many ways this remains an attractive view of interparliamentary relations. However, Vedel was writing before direct elections when the dual mandate was the rule.

13. The loss of the dual mandate marked the end of the direct linkages between the national and European levels. Prior to direct elections to the European Parliament (EP), there was a direct connection between national parliaments and the EP. Direct election weakened this link as some MEPs were elected only at the European level but the dual mandate remained a possibility for some years and some MPs thus continued to bring knowledge of European policy-making to national parliamentary arenas. The decision formally to end the dual mandate weakened the connection between NPs and the EP. In some parliaments, such as the Irish, the right for MEPs to participate in national parliament committees could in theory help overcome this disconnect. In practice, such rights are rarely taken up as the diaries of national and European parliamentarians rarely permit attendance in the home parliaments.

14. Closer cooperation between national parliaments and the EP would be desirable in order to bridge the ongoing democratic deficit. Quite how that can best be achieved is an open question, however. The interparliamentary coordination envisaged by the Lisbon Treaty and now in place in the fields of CSDP/CFSP and economic and financial governance clearly offers scope for both vertical and horizontal communication and, perhaps, coordination between parliaments. Whether they can become more than talking shops is less clear. In the past, national parliamentarians have been sceptical of attending meetings in Brussels if they are simply a venue to ‘be talked at’ and have a lunch. The current choice to hold interparliamentary meetings in the capital of the country holding the rotating Council Presidency might prove more attractive to parliamentarians (Autumn 2013 will be important in this regard as there are at least three interparliamentary gatherings in Vilnius), but there is always the danger that political tourism rather than hard politics will prevail with meetings in certain venues more popular than others.

October 2013

---

Thomas Larue, Committee Secretary, Committee on the Constitution, Riksdag, Sweden—Written evidence

1. First, considering the prevailing constitutional system in Sweden the Committee on the Constitution (CoC) has emphasised that the Swedish Government has the main responsibility and prerogative to represent Sweden in all matters of foreign policy. The CoC has also pointed out that the Instrument of Government (regeringsformen) lacks any explicit rule with regard to the Riksdag’s possibility to communicate directly with international organisations. Though this does not prevent individual Committees within the Riksdag to contact the Commission in order to gain additional information on matters connected to subsidiarity control when performing subsidiarity checks.

2. The CoC has pointed out that political dialogue between Sweden and the Commission according to current Swedish constitutional rules should take place via the Government, which is accountable to the Riksdag. Only within the framework of powers which existing treaties bestow on national parliaments (through Protocol [no 2] on the application of the principles of subsidiarity and proportionality, hereafter referred to as the Protocol) is the Riksdag given the opportunity to communicate directly (in the manner provided for by the Riksdag’s internal procedures) with the Commission regarding the application of subsidiarity.

3. Second, the internal working of the Riksdag implies that the main work regarding shaping and controlling the Swedish Government’s negotiating positions in Brussels is handled by the individual Committees together with the European Affairs Committee (EU-nämnden).

4. The CoC has also noted that the Commission’s decision to consult national parliaments on all Commission communications and proposals, whether of a legislative or other nature, can contribute to a more in-depth debate on European issues within the member states. The CoC thus pointed out that the Riksdag’s internal procedures imply that scrutiny reports are issued for all green and white papers and for some other EU documents, with the exception of draft legislative acts. The CoC welcomed deliberation and examination of pre-legislative documents by national parliaments. This may contribute to both an early in-depth debate in member states about the Union’s development and an increased knowledge about the positions of national parliaments. In this way the parliaments’ positions could be taken into account, for example through their governments, in the continued legislative process at EU level.

5. The CoC has clarified that the Riksdag’s committees’ statements made with regards to scrutiny reports issued for green and white papers and for some other EU documents should thus be considered as preliminary viewpoints of a constitutionally non-binding nature. The CoC underlined that the Riksdag’s consideration of a committee’s statement (with the exception of statements regarding the subsidiarity control mechanism, which become legally and constitutionally binding reasoned opinions, see below) ends when the Chamber puts the statement on file.

6. Thirdly and with regards to the subsidiarity control mechanism or subsidiarity checks, the Riksdag’s CoC has made several comments (see below) throughout the years since the entry into force of the Lisbon Treaty. The CoC has been given the yearly follow-up of the Riksdag’s examination of the application of the principle of subsidiarity. This in order to
highlight the impact of the outcome of subsidiarity checks on the division of competence between the Union and member states. Some preliminary observations on this aspect have been made (see paragraphs 10-11).

7. The CoC has repeatedly and with increasing intensity underlined the fact that the absence of or insufficient subsidiarity justifications in proposals (mainly from the Commission) makes it difficult for the Riksdag to fulfil its treaty obligation to ensure compliance with the principle of subsidiarity in accordance with the procedure set out in the Protocol. The CoC concurred with the assessment contained in the European Parliament’s resolution on better legislation, subsidiarity and proportionality and smart regulation from the 14 September 2011 on how important it is that the Commission’s subsidiarity justifications are detailed and understandable. Detailed subsidiarity justifications without stereotyped elements improve the conditions under which national parliaments can control the compliance of draft legislative acts with the principle of subsidiarity. Incomplete or missing subsidiarity justifications constitute a serious flaw in the Union’s legislative process. Lately the CoC has showed growing discontent with the system of subsidiarity checks (see paragraphs 12-14 below).

8. The CoC’s second annual follow-up of the application of the subsidiarity principle showed that over a third of the draft legislative acts falling under the subsidiarity control mechanism during the period 1 July 2010–31 December 2010 lacked or contained insufficient subsidiarity justifications. Compared with the Committee’s first follow-up (cf. the Committee’s scrutiny report 2010/11:KU26 concerning COM(2010) 547), which covered the period 1 December 2009–30 June 2010, the proportion of insufficient or non-existent subsidiarity justifications was almost unchanged.

9. The CoC’s third annual follow-up of the Riksdag’s examination of the application of the principle of subsidiarity showed that approximately one sixth of the draft legislative acts that were examined for compliance with the principle of subsidiarity during the period 1 January to 31 December 2011 lacked or contained insufficient justification in relation to the principle of subsidiarity. Compared with the Committee’s two previous follow-ups, the proportion of draft legislative acts containing insufficient or lacking justification had decreased. Nevertheless, and in view of the absolute obligation of the Commission and other proposing parties to justify their legislative proposals, the CoC once again, and emphatically, pointed out that insufficient justifications makes it difficult for the Riksdag to fulfil its obligation to ensure compliance with the principle of subsidiarity under the subsidiarity protocol.

10. Despite the difficulties of qualitatively assessing the impact of the outcome of subsidiarity checks on the division of competence between the Union and member states, the CoC noted that the Riksdag’s Committee on Taxation had brought attention to an actual transfer of competence in the implementation of certain proposals, and that the Committee on Justice had stressed the importance of noting the combined impact of various proposals together, which can be difficult to see in connection with subsidiarity checks of individual proposals. In addition, the Committee on Finance had noted that the overall outcome in the field of financial markets and regulation of economic and monetary policy in the Union has meant that legislation at EU level has been strengthened.

11. Another reflection made from the Riksdag’s committees is that it is more common today that proposals are presented in the form of regulations as opposed to directives. This
points to the importance of monitoring how the long-term development of Union law affects the division of competence between the EU and the member states within the framework of the treaties’ provisions. The CoC stated that it will therefore continue to monitor these important issues. In this context, the CoC pointed out the analysis work that had been initiated by the Government of the Netherlands. The CoC looked forward to the findings of this analysis and the following discussions in the EU on issues relating to the application of the principle of subsidiarity.

12. Fourthly, the Riksdag’s CoC has become more and more doubtful about the effectiveness of the subsidiarity checks as they are organised today. One aspect is the extent to which the Riksdag’s objections regarding the application of the principle of subsidiarity are taken into account when legislation is adopted. A related aspect which the CoC acknowledged was the UK’s House of Commons’ question about the general impact of its reasoned opinions on negotiations in the Council. The CoC considered that it is important that the Riksdag, through its committees, monitors the handling of the principle of subsidiarity in the continued legislative process, especially in cases where a reasoned opinion has been submitted.

13. The Riksdag’s CoC has noted that both the Commission’s Impact Assessment Board and the European Parliament have highlighted shortcomings regarding the Commission’s justifications with regards to subsidiarity. The Committee is opposed to national parliaments being assumed to examine proposals for compliance with subsidiarity when no justification has been provided. In the opinion of the CoC, failure to provide justification may be regarded as a failure to comply with the subsidiarity protocol. The CoC considered that a possible procedure regarding proposals that do not provide any justification could be that they would be returned to the proposing party to be completed in accordance with the treaty and its protocols.

14. A further aspect regarding the effectiveness of the subsidiarity checks is according to the CoC the relatively short time available for these checks. The CoC shared the opinion of the European Parliament that it is important to examine, within the framework of a review, whether the current timescales are sufficient. Regarding these aspects, there is according to the Riksdag’s CoC possibly room for improvement in the current system. A longer time frame would, for example, make it easier for more parliaments to examine a greater number of proposals and would facilitate interparliamentary cooperation. It should be possible to consider both the level of the thresholds in the subsidiarity protocol for yellow and orange cards and the effects of these thresholds being reached in a review of the kind proposed by the European Parliament on the alleviation of the impediments to national parliaments’ participation in the subsidiarity check mechanism. The question of making it possible for the national parliaments to return proposals that lack any subsidiarity justification to the proposing party should also be included in this review.

15. Fifthly and with regards to the proportionality and subsidiarity principles, the Riksdag has deemed that they are intertwined. In a reasoned opinion regarding the Commission’s proposal for EU regulatory framework for the protection of personal data, COM(2012) 11, the Riksdag stated the following (excerpt): “Moreover, it is the opinion of the Riksdag that the objective of an effective system for the protection of personal data in the EU is generally better achieved when such measures are undertaken at Union level rather than by means of measures from the member states, and that an action at community level,
because of its scope and its effects, would in general be clearly advantageous compared with a measure at member-state level. Having said this, the Riksdag wishes to highlight the expression only if and in so far as in Article 5 the Treaty on European Union. According to this article, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the member states, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. According to the Riksdag, the words only if and in so far as should be taken to mean that a subsidiarity check includes a proportionality criterion and that it follows from this that the proposed action may not exceed what is necessary to achieve the objectives pursued. In a judgement from 2002 the EC Court (now the Court of Justice of the EU), after first having found that the objective of the proposed action could better be achieved at Community level, stated the following with regard to whether a directive had been adopted in accordance with the principle of subsidiarity.

Second, the intensity of the action undertaken by the Community in this instance was also in keeping with the requirements of the principle of subsidiarity in that, as paragraphs 122 to 141 above make clear, it did not go beyond what was necessary to achieve the objective pursued.

In view of this, the Riksdag wishes to assess whether the Commission's choice of legislative instrument for the proposed action, a Regulation, goes farther than what is necessary to achieve the objectives pursued. In so doing, the Riksdag is paying particular attention to the fact that a new directive, instead of a Regulation, when it is incorporated, would typically provide a larger scope for member states to take into account national conditions, for example relating to different authority and managing structures in different individual member states.

Bearing in mind what is said above, it follows that a regulation in the form of a directive would mean that the form of the action is as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement. It is thus the opinion of the Riksdag that a regulation of the protection of personal data and the free movement of such data in a Regulation containing what has now been proposed would go farther than what is necessary to achieve the objectives pursued and is therefore not compliant with the principle of subsidiarity.”

16. Yet another aspect raised by the CoC is the IPEX database and its function in the above-mentioned subsidiarity checks. In the opinion of the CoC, it is important that measures are taken to enable the database to offer better support to the national parliaments' subsidiarity checks.

17. The CoC has also raised some observations made by the Riksdag's EU Coordination unit (EU-samordningen) about the development of a "doctrine" on a form of exclusive competence in areas of a particular kind, that is, that other areas besides those explicitly mentioned in Art. 3 of the Treaty on the Functioning of the European Union could, on account of their specific nature, represent areas of exclusive competence for the EU. The CoC drew attention to this observation in view of the risk that this doctrine could be

217 Judgement of the EC Court from 10 December 2002 in case C-491/01 British American Tobacco (Investments) Ltd and Imperial Tobacco Limited, REG 2002, pp. I-11550
improperly applied. Even if this doctrine is, as such, in many ways logical, it can be difficult to approve if the proposing party introduces elements extending beyond the special nature that the doctrine derives from. The discussions that have taken place in some of the member states’ parliaments on the European Parliament’s draft proposal for a regulation on the European Parliament’s right of inquiry gives reason to reflect on the above-mentioned risk. In this context the CoC noted that the issue of the demarcation of the Union’s exclusive competences is touched upon in a then current case in the EU Court of Justice [Since then the Court has delivered its judgement, see C–274/11 and C–295/11, especially paras 23-24].

18. As regards the application of subsidiarity checks to amended proposals, the CoC highlighted the Riksdag’s EU Coordination unit’s examination of all the forwarded amended proposals (24) since the Lisbon Treaty came into force. The CoC noted that just over half of these (13) had been subject to a subsidiarity check. In this context, the CoC stressed the absolute obligation of the Commission and other proposing parties, under Art. 4 of the subsidiarity protocol to the treaty, to forward their draft legislative acts and their amended drafts to the national parliaments at the same time as they are forwarded to the EU legislators.

19. The Riksdag’s CoC has also made statements about the misuse of the reasoned opinions given that the Commission reported that some parliaments within the framework of the subsidiarity checks also informed the Commission about their positive opinions. According to article 6 of the Protocol, any national parliament may, within eight weeks, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. The CoC considered that reasoned opinions should be reserved for those situations addressed in the Protocol.

20. Finally the CoC recalled (in accordance to similar statements made by the European Parliament and the Italian Chamber of Deputies) that the essence of the principle of subsidiarity enables Union measures to be implemented within the framework of the Union’s competence when circumstances so require and, conversely, that measures are limited or restricted when they are no longer justifiable.

September 2013