



EUROPEAN UNION SELECT COMMITTEE

The Role of National Parliaments in the European Union

Written evidence

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Arto Aas, Parliament of 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?

I. 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 trilogies).

d.) COSAC works 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

Dr Gavin Barrett, University College Dublin—Written evidence

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 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.¹

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 Thirdly, history is not short of examples of misguidedly simplistic approaches to

¹ <http://www.oireachtas.ie/parliament/media/main/documentation/A-HISTORY-OF-OIREACHTAS-INVOLVEMENT-IN-EUROPEAN-UNION-AFFAIRS.pdf> .

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.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.”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.

³ See the cases cited in F. Zakaria, *The Future of Freedom* (Norton, New York, 2003), especially at pp 169-172 where he notes of reforms designed to improve the openness and responsiveness of Congress that “reforms designed to produce majority rule have produced minority rule”. For similarly critical examinations of the negative effects of the increasingly widespread use of referendums in the United States, see D. Broder, *Democracy Derailed – Initiative Campaigns and the Power of Money* (Harcourt, Orlando, Florida, 2000), R. Ellis, *Democratic Delusions* (University Press of Kansas, Lawrence, Kansas, 2002), P. Schrag, *Paradise Lost* (New Press, New York, 1998)

⁴ P. Kiiver, *The National Parliaments in the European Union: A Critical View on EU Constitution-Building* (Kluwer, The Hague, 2008) at p. 110.

- 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

⁵ *Democratic Control in Ireland of the European Council and Eurozone Summits* published in [http://www.europarl.europa.eu/RegData/etudes/etudes/JOIN/2013/474392/IPOL-AFCO_ET\(2013\)474392\(ANN02\)_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/JOIN/2013/474392/IPOL-AFCO_ET(2013)474392(ANN02)_EN.pdf) at p. 36 et seq..

Mr Mladen Cherveniakov, Chairman of the Committee on European Affairs and Oversight of the European Funds, National Assembly of the Republic 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.
- 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.

Dr iur Patricia Conlan, Member, Institute for the Study of Knowledge in Society, University of Limerick, Ireland—Written evidence

THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION⁶

SUMMARY

I. National parliaments in the EU framework:

I.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.

I.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.

I.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.

I.4 It is arguable that the democratic deficit complained of, would more accurately be addressed to the national, rather than (mainly) the European, level.

I.5 The majority of EU measures are not subject to (detailed) scrutiny.

I.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.

I.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.

⁶ 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 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

I. National parliaments in the EU framework:

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.⁷ 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).⁸

The scrutiny process in Ireland has evolved considerably since accession in 1973.⁹ 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.¹⁰ 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.¹¹ 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

⁷ Richard Sinnott, *Attitudes and Behaviour of the Irish electorate in the referendum on the Treaty of Nice*, available at http://ec.europa.eu/public_opinion/flash/fl108_en.pdf p. 24 - accessed 25 September 2013. See, wider political views see, *inter alia*, Martin Alioth in, the *Neue Zürcher Zeitung*, Mittwoch.14.06.2011 Nr 133 on former/then Attorneys' General criticism of the scrutiny process.

⁸ Some examples will be offered below.

⁹ For an overview of the *evolution* of domestic scrutiny of European affairs in the Oireachtas from 1972 to 2010 see, *inter alia*, Patricia Conlan, 'Ireland: enhanced parliamentary scrutiny of European affairs: but is it effective?', in John O'Brennan and Tapio Raunio (eds), (2007): *National Parliaments within the Enlarged European Union From 'victims' of integration to competitive actors?* (London and New York), Routledge, 178-201. Patricia Conlan, 'The Houses of the Oireachtas in the EU and other Organisations' in, Moirés MacCarthaigh and Maurice Manning (eds), (2010): *The Houses of the Oireachtas Parliament in Ireland*, (Dublin), Institute of Public Administration (IPA), 379-400, 383-387. See in same publication, John O'Dowd, 321-340 and Muirís MacCarthaigh, 358-379. See too Gavin Barrett (ed.), (2008): *National Parliaments and the European Union: the Constitutional Challenge for the Oireachtas and other Member State Legislatures*: Dublin, Clarus Press. Gavin Barrett, *The Oireachtas and the European Union: the Evolving Role of a National Parliament in European Affairs*, available on <http://www.oireachtas.ie/parliament/mediazone/pressreleases/name-18349-en.html> - accessed 11 October 2013. John Carroll, *Assessing the roles of the Irish parliamentarian in European affairs in Ireland*, paper presented to the PSAI 2010, DIT, Dublin, 9 October 2010 – available at <http://www.dit.ie/media/documents/psai/22ParliamentariansEuropeanAffairsJohnCarroll.pdf> - accessed 29 September 2013.

¹⁰ Joint Committee on European Affairs, *Annual Report on the Operation of the European Union (Scrutiny) Act, 2002, for the period 1 January 2011 to 31 May 2012*, July 2012 (9th Report) – available at http://www.oireachtas.ie/parliament/media/committees/euaffairs/9th-Annual-Report_Operation-of-Scrutiny-Act-2002.pdf - p. 5, accessed 2 October 2013. The 9th Report provides an overview of the operation of the scrutiny process post the 2011 General Election, p. 7.

¹¹ See 9th Report, p. 14.

have been the subject of ‘Statements’ in the Oireachtas, with ensuing full engagement of the members present.¹²

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.’¹³ 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.’¹⁴

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.¹⁵

. 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.¹⁶ 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.¹⁷

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.¹⁸ 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.¹⁹ 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.)

¹² 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> .

¹³ *Seanad Debates* Vol. 73, No. 11, Col. 837-838, 22 November 1972.

¹⁴ *Seanad Debates*, Vol. 73, No. 11, Col. 859-861 (in the main), 22 November 1972.

¹⁵ *Seanad Debates*, 20 August 2013.

¹⁶ Sinnott, *op. cit.*

¹⁷ *Seanad Debates*, Vol. 73, No. 11, Col. 837-838, 22 November 1972.

¹⁸ *Dáil Debates* Vol. 263, No. 6, Col. 1037-1051, 8 November 1972 – available at

<http://www.oireachtasdebates/oireachtas.ie>

¹⁹ See *op. cit.* Col. 1051-1058.

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’.²⁰

The early legislative approach to membership of the European Communities could allow the inference 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 Minister.²¹ It can also be seen in the original iteration of the European Communities Act, 1972 and the amending and confirmation statutes of 1973.²² 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.²³ 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.²⁴

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.²⁵ 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.²⁶ 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.²⁷ This process is not without its (external) critics.²⁸ However, as we shall see, it is not without its

²⁰ *Seanad Debates*, Vol. 73, No. 11, Col. 859-861 (in the main), 22 November 1972.

²¹ ‘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.

²² ‘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 Act of 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.

²³ See; *inter alia*, Conlan (2007), p. 182.

²⁴ Sinnott *op. cit.*

²⁵ <http://www.oireachtas.ie/parliament/media/committees/agriculturefoodandthemarine/Decision-List-A-and-B---JC-on-AFM---Meeting-of-24th-September-2013.doc>;

http://www.oireachtas.ie/parliament/media/committees/educationandsocialprotection/Decision-List---JC-on-ESP---Meeting-of-22nd-May-2013.doc#_Toc357163170; accessed 27 September 2013.

²⁶ See http://www.oireachtas.ie/parliament/media/committees/euaffairs/9th-Annual-Report_Operation-of-Scrutiny-Act-2002.pdf and [http://www.oireachtas.ie/parliament/media/committees/euaffairs/AnnualReportontheOperationofthe-EU\(Scrutiny\)Act2002.pdf](http://www.oireachtas.ie/parliament/media/committees/euaffairs/AnnualReportontheOperationofthe-EU(Scrutiny)Act2002.pdf). Last accessed 22 October 2013.

²⁷ 10th Report, p. 10.

²⁸ 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 either²⁹ 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 scrutiny³⁰ 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.³¹ 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’.³² 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 Scrutiny³³ had agreed that it did not require further scrutiny, but that it be forwarded to the Sectoral Joint Committee for information.³⁴ 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

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.

²⁹ *Seanad Debates*, 20 August 2013.

³⁰ 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.

³¹ The European Communities (Amendment) Act, 1973 had amended s. 4 of the 1972 Act.

³² 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.

³³ This had been the centralised scrutiny procedure then in operation; now amended with Sectoral Joint Committees being involved from the beginning (so-called *mainstreaming*).

³⁴ Joint Committee on European Scrutiny, 27 January 2009, ‘*It is recommended that COM (2008) 818 requires no further scrutiny but that it be forwarded to the Joint Committee on Health and Children for its information. Is that agreed? Agreed.*’, available at

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/SR12009012700003?opendocument> - accessed 21 October 2013. Transmission to the Joint Committee on Health and Children for its information, is not indicated in COSAC XLI – p. 22

episode serves to underline several aspects (some weaknesses, and some 'wish list') of the 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.'³⁵

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 Tropiclaelaps 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.'³⁶

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.

³⁵ *Seanad Debates*, 20 August 2013.

³⁶ *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.³⁷ 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.³⁸

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.³⁹ 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.⁴⁰

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

³⁷ COSAC XLVII, p. 199.

³⁸ 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.

³⁹ COSAC XLVII pp. 199-200. Interestingly, the question as to whether these are sent automatically, or have to be requested, is not answered.

⁴⁰ 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,⁴¹ 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 Base⁴². The debate in the Dáil demonstrated consensus on the decision reached by the Select Committee, namely that the measure infringed the principle of subsidiarity.⁴³ 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.⁴⁴

2.3 COSAC Reports⁴⁵ 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.⁴⁶ 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.⁴⁷ 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 proportionality⁴⁸ 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

⁴¹ See 9th Report, para 3(1) for the genesis of this Select Committee.

⁴² (COM) (2011)121 can be seen in the 11 May 2011 report of this Select Committee <http://www.oireachtas.ie/documents/committees3/1stdail/standingorder103/Report12052011.pdf> - accessed 26 September 2013.

⁴³ Dáil Debates, Vol. 732, No. 3, Col. 376-398, 17 May 2011.

⁴⁴ See contribution of Deputy Pádraig MacLochlainn to Dáil Debates, Vol. 732, No. 3, Col. 383-384, 17 May 2011.

⁴⁵ Examples drawn from COSAC XL VII-XL IX – some specific sources indicated.

⁴⁶ Examples are drawn from COSAC XL VII-XL IX.

⁴⁷ COSAC XLVII, p. 5.

⁴⁸ See, *inter alia*, COSAC XLVIII 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.'⁴⁹This 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.⁵⁰

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

⁴⁹ *Seanad Debates* Vol. 73, No. 11, Col. 838-839, 22 November 1972.

⁵⁰ COSAC XLVII p. 11.

submission of opinions or contributions to be strengthened, and to contain more considered and substantive responses, and in practical terms, to be more prompt.⁵¹

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.⁵²;

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 IPEX⁵³ 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.⁵⁴ 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).⁵⁵ 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.⁵⁶ 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.⁵⁷ The importance of the national parliaments' Brussels

⁵¹ COSAC XLVII p. 12.

⁵² Examples drawn from COSAC XL VII-XL IX.

⁵³ <http://www.ipex.eu/IPEXL-WEB/parliaments/institution/iesea.do> accessed 3 October 2013.

⁵⁴ COSAC XLIX p.29

⁵⁵ COSAC XLIX p.29

⁵⁶ COSAC XLVII p. 203.

⁵⁷ 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.⁵⁸ 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.⁵⁹ 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.⁶⁰ 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.⁶¹ 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

⁵⁸ A typical example of Orders of Reference for the Joint Oireachtas Committees is that available at - <http://www.oireachtas.ie/parliament/media/committees/agriculturefoodandthamarine/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.

⁵⁹ See, *inter alia*,

http://www.oireachtas.ie/parliament/media/committees/environmenttransportcultureandthegaeltacht/Decision-List-Schedules-A-and-B---JC-on-ECG---Meeting-of-23rd-April-2013.doc#_Toc360112066;
<http://oireachtasdebates.oireachtas.ie/debates%20authoring/DebatesWebPack.nsf/committeetakes/EUJ2013022100007?open=document> – both accessed 1 October 2013.

⁶⁰ COSAC XLVII p. 11.

⁶¹ *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.⁶² Essentially they propose open debate, goals to be achieved and wide involvement (including Opposition politicians).⁶³ 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,⁶⁴ 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.⁶⁵ It is not unusual for Committee members to express a lack of technical and other knowledge required to scrutinise an EU measure,⁶⁶ or to benefit from experts' presentations (allowing the members to pose a relevant question).⁶⁷ 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.⁶⁸ 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.⁶⁹ 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,⁷⁰ and those who reject any such analysis.⁷¹

62 Something of an echo can be found between Schäfer and Schulz and COSAC XLIX, P. 18, using existing structures, but
63 Axel Schäfer and Fabian Schulz, Eine Konferenz der Parlamente für Europa: Neue Wege interparlamentarische Zusammenarbeit, Perspektive, Friedrich –Ebert-Stiftung, Internationale Politikanalyse, Abteilung Internationaler Dialog, Berlin, <http://www.fes.de/ipa>, April 2013.

64 See response to question XXX

65 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.

66 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/JUJ/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.

67 See; inter alia,

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/DebatesWebPack.nsf/committeetakes/EUJ2013022100007?open document-> accessed 1 October 2013.

68 It would be invidious to give specific examples, but a perusal of Committees' debates will bear this out.

69 See; inter alia,

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/DebatesWebPack.nsf/committeetakes/EUJ2013022100007?open document-> accessed 1 October 2013.

70 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

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.⁷² 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.⁷³

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.⁷⁴ Added to this, there has been an increase in the use of the guillotine.⁷⁵

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.⁷⁶

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

treaties 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.

71 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>.

72 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.

73 <http://www.finance.gov.ie/documents/department/annualreview2012.pdf>

74 Julie Smith, Ariela Huff and Geoffrey Edwards, (for the) European Parliament, Directorate General for Internal Policies, Policy Department D: Budgetary Affairs, *Towards a more comprehensive, strategic and cost effective EU Foreign Policy - The Role of National Parliaments and the European Parliament*, p.41, available at <http://www.europarl.eu/studies> -accessed 14 March 2012.

75 <http://www.irishtimes.com/news/politics/oireachtas/proposals-for-d%C3%AAl-reform-just-don-t-cut-it> – accessed 27 September 2013. Barret op. cit. (2013).

76 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 formal⁷⁷ and informal.⁷⁸

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'.⁷⁹ 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.⁸⁰

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.

⁷⁷ For example, at meetings of COSAC – see, inter alia, Eighteenth Bi-annual Report COSAC XLVIII -Developments in European Union Procedures and Practices relevant to Parliamentary Scrutiny, , European Parliament Interparliamentary Committee meetings, - see European Parliament, Directorate General for the Presidency Relations with National Parliaments Legislative Dialogue, Unit, European Parliamentary Week, on the European Semester for Economic Co-ordination, 28—30 January 2013, where European Parliament Committees on Economic and Monetary Affairs, on Budgets and on Employment and Social Affairs were actively involved available at - <http://www.europarl.europa.eu/document/activities/cont/201301/20130124ATT59752/20130124ATT59752EN.PDF> - accessed 27 September 2013.

⁷⁸ 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).

⁷⁹ COSAC XLIX p. 17.

⁸⁰ Op. cit.

Richard Corbett—Written evidence

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 required⁸¹.

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.⁸²

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 fields⁸³. 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.

⁸¹ An exception is where Council has delegated powers to the Commission, though even here it usually retains a power to intervene

⁸² This also applies to "intergovernmental" activities, and to the European Council.

⁸³ 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.⁸⁴

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

⁸⁴ 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

understanding and increase the amount of information available to national parliamentarians. But the final decisions to be taken are for each parliament separately

Deepening EMU

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."⁸⁵

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

⁸⁵ Speech at the Brussels Think Tank Dialogue on 22 April 2013

Ian Cooper, University of Oslo—Written evidence

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

Parliament/Chamber	Number of Votes	Date of Decision to Draft/Adopt Reasoned Opinion	Date of Formal Adoption of Reasoned Opinion	Total Reasoned Opinions 2010-2012
Denmark	2	20 April	3 May	6
French Senate	1	25 April	22 May	11
Sweden	2	26 April	11 May	34
Polish Lower House	1	27 April	11 May	10
UK House of Commons	1	9 May	22 May	9
Luxembourg	2	14 May	15 May	13

Finland	2	15 May	15 May	2
Portugal	2	15 May	18 May	2
Latvia	2	18 May	21 May	1
Malta	2	21 May	22 May	3
Belgian Lower House	1	22 May	22 May	4
Netherlands Lower House	1	22 May	22 May	9
Total	19			

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 I 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 I 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 I); 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.

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.

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

I.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.

I.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 through the European Parliament.

I.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.

I.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.

I.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.

I.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.

I.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, involvement 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

Professor Adam Cygan, University of Leicester—Written evidence

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:⁸⁶

“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.

⁸⁶ 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 Barroso Initiative, contributes positively to the legislative process and that it may help to inject some improved democratic legitimacy into 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 deparliamentarisation, 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

Eduskunta, Parliament of Finland—Written evidence

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.

**John Erik Fossum, University of Oslo and Ben Crum, Vrije
Universiteit Amsterdam—Written evidence**

[Submission to be found under Ben Crum, Senior Lecturer in Political Science, Vrije
Universiteit Amsterdam and John Erik Fossum, Professor in Political Science, University of
Oslo – Written evidence](#)

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.⁸⁷ Whereas 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.⁸⁸ 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 objective⁸⁹ or, in fact, pursue another objective, different from the one enshrined in the legal basis provision.⁹⁰ 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.⁹¹
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 sensu* balancing, is one of the standard components of the proportionality principle test.⁹²
6. Besides the legal basis and proportionality of proposals, national parliaments frequently review the merits of Commission proposals,⁹³ conformity with

⁸⁷ 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.

⁸⁸ COM (2011) 344, COM (2012) 373, COM (2013) 566.

⁸⁹ Reasoned opinion of the Romanian Senatul (30.05.2011) and of the Italian Senato (25.05.2011) on COM (2011) 127.

⁹⁰ Reasoned opinion of the Danish Folketing of 15.11.2010 and of the Swedish Riksdag of 10.11.2010 on COM (2010) 486.

⁹¹ Reasoned opinion of the Polish Sejm of 13.05.2011 on COM (2011) 121.

⁹² Reasoned opinion of the Finnish Eduskunta of 16.05.2012 on COM (2012) 130.

⁹³ Reasoned opinion of the Hellenic parliament of 21.02.2013 on COM (2012) 788, reasoned opinion of the Italian Senato of

fundamental rights,⁹⁴ choice of the type of legal act (directive or regulation)⁹⁵ or the validity of the delegations to adopt a delegated or implementing act.⁹⁶

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.⁹⁷ 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.⁹⁸
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,⁹⁹ 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).¹⁰⁰ However, it should be noted that for a number of cases, the Commission simply

18.12.2012 on COM (2012) 576.

⁹⁴ Reasoned opinion of the Austrian Bundesrat of 17.04.2012 on COM (2012) 84.

⁹⁵ Reasoned opinion of the Belgian Chambre des Représentants of 31.01.2012 on COM (2011) 779, Reasoned opinion of the Romanian Senatul of 30.05.2011 on COM (2011) 127.

⁹⁶ Reasoned opinion of the Czech Poslanecka Snemovna of 24.01.2013 on COM (2012) 788, reasoned opinion of the Polish Senat of 3.03.2011 on COM (2010) 799.

⁹⁷ For a full account of these arguments see: F.Fabbrini, K.Granat, 50 *Common Market Law Review*, 115, at 122.

⁹⁸ See the reply of the Commission of 12.09.2012 to the reasoned opinions on COM (2012) 130.

⁹⁹ See COSAC Nineteenth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny, 17.05.2013.

¹⁰⁰ 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.

sent a 'template', an identical reply to all national parliaments concerned.¹⁰¹

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.¹⁰² 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.¹⁰³
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.¹⁰⁴ However, EP plenary debates on Commission proposals are more important to national parliaments.¹⁰⁵ 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.

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¹⁰¹ See Commission replies to reasoned opinions on COM (2010) 379 or COM (2012) 617.

¹⁰² See Commission reply of 27.07.2010 to the reasoned opinion of the Polish Senat on COM (2010) 61 or Commission replies of April 2011 to the reasoned opinions to the Lithuanian Seimas, Luxembourg Chambre des Députés, Polish Sejm and Polish Senat on COM (2010) 539.

¹⁰³ 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.

¹⁰⁴ Report of 24.07.2013 of the EP Committee on the Environment, Public Health and Food Safety on COM (2012) 788.

¹⁰⁵ COM (2011) on 18.04.2012, COM (2011) 370 on 11.09.2012, COM (2012) 380 on 1.07.2013, COM (2012) 617 on 11.06.2013.

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 parliaments¹⁰⁶ as well as the dialogue and scrutiny of EU policies by these institutions.¹⁰⁷ 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 EU¹⁰⁸ 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 favour of national parliaments, the results in practice since the coming into force of the Lisbon Treaty in 2009 have been disappointing.
 2. When analysing the "Annual report of the European Commission on relations between the European Commission and national parliaments"¹⁰⁹ and the "Annual report on subsidiarity and proportionality"¹¹⁰ 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.¹¹¹
 3. Commenting on the inadequacy of the current yellow and orange card procedures, several general difficulties can be highlighted:¹¹²
 - 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 parties' 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

¹⁰⁶ As described in Points 2. b. to e. of the call

¹⁰⁷ As described in Point 3 of the call

¹⁰⁸ This triangle consists of the Council of the European Union, the European Parliament and the European Commission, who are the traditional players in drafting and adopting legislative acts in the European Union.

¹⁰⁹ European Commission, COM(2013) 565 final; COM(2012) 375 final; COM(2011) 345 final

¹¹⁰ Ibid., COM(2013) 566 final; COM(2012) 373 final; COM(2011) 344 final

¹¹¹ Cf. *ibid.* COM (2013) 566 final, p. 6 ff.

¹¹² Cf. Gstrein and Zalewska, "National parliaments and their role in European integration: The EU's democratic deficit in times of economic hardship and political insecurity" Bruges political research papers, (28/2013), p.12 ff.; Cooper, "A virtual third chamber for the European Union? National Parliaments after the Treaty of Lisbon" ARENA working paper no.7 (2011), 10

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.¹¹³ 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.¹¹⁴ 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).¹¹⁵ However, of these 663 only 70 were in the form of reasoned opinions under the EWS in protocol no. 2.¹¹⁶ 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 2012.¹¹⁷ Evidently, therefore, there would appear to be a fundamental disconnect between national parliaments and the European legislative process with democratically elected representatives of member

¹¹³ Cf. on the topic Graser, "Einmal mehr: Zur Europäisierung der Sozialpolitik", *Europarecht Beiheft* 2013, 15, p. 15 – 31

¹¹⁴ Cf. Art. 8 of Protocol no. 2

¹¹⁵ Report from the European Commission, "Annual Report 2012 on relations between the European Commission and National Parliaments", p. 4

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.* p. 9

states routinely failing to exercise their right of ensuring proposed EU legislation complies with the principle of subsidiarity. Moreover, the large decrease in the 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 card¹¹⁸ and this is because each parliament tends to work slowly, according to its own timetable, and according to its own unique set of procedures.¹¹⁹

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.¹²⁰
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.¹²¹ 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?

¹¹⁸ Craig, “The Lisbon Treaty. Law, Politics, and Treaty Reform”, New York, (2011), p. 186

¹¹⁹ 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

¹²⁰ 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.

¹²¹ 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

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 subsidiarity has been violated under the EWS.¹²² 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?”*¹²³
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.¹²⁴ 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.¹²⁵ 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.¹²⁶
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.¹²⁷ 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.¹²⁸ In

¹²² Gstrein and Zalewska, p. 13

¹²³ 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

¹²⁴ Fabbrini and Granat, p. 121

¹²⁵ Kiiver, “The early warning system for the principle of subsidiarity. Constitutional theory and empirical reality” (Routledge, 2012) pp.98-100; Ritzer, Ruttloff and Linhart “How to sharpen a dull sword: The principle of subsidiarity and its control” *German Law Journal* (2006), pp. 737-738

¹²⁶ Trstenjak and Beysen, *Das Prinzip der Verhältnismäßigkeit in der Unionsrechtsordnung*, „EuR Europarecht“, no. 3/2012, p. 267

¹²⁷ Cf. Nguyen, p. 283, 293

¹²⁸ See Fabbrini and Granat, fn. 18

this case, several national parliaments challenged the legal basis,¹²⁹ necessity¹³⁰ and even the content¹³¹ 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.¹³² 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.¹³³ 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.¹³⁴ 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),¹³⁵ one submits that this is the correct manner in which to proceed.

C. What is the future of national parliaments in the EU?

¹²⁹ 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 chambre des représentants de Belgique, 30th May 2012, DOC 53 2221/001; Reasoned opinion of the Portuguese Assembleia da Republica, 18th May 2012

¹³⁰ 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

¹³¹ According to the Portuguese Assembleia, the proposals attempts at reconciling social and economic rights within the context of fundamental rights conflicted with Portuguese constitutional tradition and the jurisprudence of the Portuguese courts, see Reasoned opinion of the Portuguese Assembleia da Republica supra fn. 24

¹³² Once this “common understanding” is being applied there might be challenges from other European Institutions resulting in legal proceedings, but such a process might be positive in terms of fostering the development of a clear legal definition of the principle of subsidiarity.

¹³³ See www.cor.europa.eu/subsidiarity for details; Committee of Regions, Subsidiarity annual report 2012, R/CdR 1335/2013

¹³⁴ European Commission, Report from the Commission on subsidiarity and proportionality, COM(2009) 504 final, p. 4

¹³⁵ Committee of Regions, Subsidiarity annual report 2012, R/CdR 1335/2013, p.4 ff.

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.¹³⁶ 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.¹³⁷
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)¹³⁸ 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

¹³⁶ Euractiv, “Dutch ‘subsidiarity review’ strikes a chord with UK euro critics” Euractiv News, June 25th 2013, available at: <http://www.euractiv.com/future-eu/dutch-subsidiarity-review-strike-news-528833>

¹³⁷ London Evening Standard, “Hague urges EU red card system”, 1st June 2013, available at: <http://www.standard.co.uk/panewsfeeds/hague-urges-eu-red-card-system-8638827.html>; Douglas MP, “Britain’s future in Europe” speech delivered Thursday 17th January 2013 at Chatham House, London, transcript available at: <http://www.chathamhouse.org/events/view/188423>

¹³⁸ <http://www.ipex.eu>

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.

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.

Darren Harvey and Oskar Josef Gstrein —Written evidence

[Submission to be found under Oskar Josef Gstrein and Darren Harvey—Written evidence](#)

**Claudia Heffler, 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**

Summary

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

I. 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

2. 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

Member State	Ex-ante committee debate	Ex-ante plenary debate	Ex-post committee debate	Ex-post plenary debate
Austria	7	1	0	3
Belgium	7	0	9	0
Bulgaria	1	2	1	3
Cyprus	0	0	5	0
Czech Rep	1	2	1	3
Denmark	8	3	6	6
Estonia	9	0	1	0
Finland	9	1	9	1
France	1	5	5	0
Germany	8	4	8	1
Greece	0	0	2	2
Hungary	2	1	2	5
Ireland	0	7	1	7
Italy	4	1	1	1
Latvia	6	0	0	0
Lithuania	7	0	5	0
Luxembourg	1	1	1	2
Malta¹³⁹	0	0	0	0
Netherlands	0	9	0	2

¹³⁹ 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.

Poland	5	0	2	2
Portugal	7	1	7	5
Romania	0	0	0	0
Slovakia	7	0	1	0
Slovenia	6	0	1	0
Spain	2	2	1	3
Sweden	8	0	1	7
UK	0	1	1	7

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 undoubtedly a consequence of their frequency before – the time and energy of the MPs are

limited as well as the free slots on the agenda. Malta and Romania are the two member states where not one single debate either at plenary or at committee level has been held in the lower house ex-post; or ex-ante.

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

EX-ANTE	REDUCED INVOLVEMENT	COMMITTEE	PLENARY	INVOLVEMENT BOTH IN COMMITTEES AND PLENARY
EX-POST				
REDUCED INVOLVEMENT	LIMITED CONTROL MODEL Hungary Luxemburg Romania	“EUROPE AS USUAL” Czech Republic Estonia Italy Latvia Poland Slovakia	Netherlands	
COMMITTEE	Cyprus	EXPERT MODEL Belgium Finland Lithuania	France	POLICY MAKER Germany
PLENARY	GOVERNMENT ACCOUNTABILITY Bulgaria Malta Spain	Austria Sweden	PUBLIC FORUM Ireland	
INVOLVEMENT BOTH IN COMMITTEES AND PLENARY	Greece	Portugal		FULL EUROPEANISATION Denmark

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).

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

Hellenic Parliament, Committee on European Affairs—Written evidence

National parliaments in the EU framework

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 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.

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 Members 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.¹⁴⁰

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

¹⁴⁰ A.L. Högenauer (forthcoming), “The Dutch Parliament”, in: C. Heffler, C. Neuhold, O. Rozenberg, J. Smith and W. Wessels, *The Palgrave Handbook on National Parliaments and the European Union*, Palgrave.

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.¹⁴¹

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

¹⁴¹ Cf. A.L. Högenauer and C. Neuhold (2013), National Parliaments after Lisbon: Administrations on the Rise? *OPAL Online Paper* No. 12/2013; T. Christiansen, A.L. Högenauer and C. Neuhold (2013), National Parliaments in the Post-Lisbon European Union: Bureaucratization rather than Democratization?, *Comparative European Politics*, doi:10.1057/cep.2012.38, 14 January 2013

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.¹⁴²
4. Political scientists have argued that the formal powers of national parliaments and their actual activity are not necessarily congruent.¹⁴³ 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.¹⁴⁴ 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 citizens¹⁴⁵, the Parliament of

¹⁴² Winzen, T. (2012). National parliamentary control of European Union affairs: a cross-national and longitudinal comparison. In *West European Politics*, 35(3), pp. 657-672.

¹⁴³ Auel, K. and Benz, A. (2005). The Politics of Adaptation: Europeanisation of National Parliamentary Systems. In *Journal of Legislative Studies* 11 (3-4), pp. 372-393.

¹⁴⁴ Hörner, J. (2013). The Determinants of Debate on EU Affairs in National Parliaments: A Quantitative Perspective. Paper for Presentation at the Third Annual Conference of the European Political Science Association, 20-22 June 2013, Barcelona.

¹⁴⁵ Auel, K. and Raunio, T. (2011). Debating the State of the Union? A Comparative Analysis of National Parliaments in EU Affairs. *Paper prepared for the 6th ECPR General Conference, 25-27 August 2011, Reykjavik.*

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.¹⁴⁶ Research conducted by OPAL suggests that, in many countries, much of the important and timely

¹⁴⁶ COSAC 17th Bi-annual report, April 2012, p. 10

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.¹⁴⁷
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

¹⁴⁷ House of Lords, Scrutiny Overrides by Department, Jan-June 2012 [<http://www.parliament.uk/documents/lords-committees/eu-select/subsidiarity/jan-june-2012-Overrides.pdf>] and July-Dec 2012 [<http://www.parliament.uk/documents/lords-committees/eu-select/july-Dec%202012%20Overrides.pdf>], accessed 23/09/2013

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

Dr Joanne Hunt, Cardiff University —Written evidence

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 not fully 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

I. 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 than 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 subsidiarity 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.

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2 October 2013

The Italian Chambers of Deputies, Rome—Written evidence

National parliaments in the EU framework

I. 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-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 awareness 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 a 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. 16 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 sectorial 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 I, 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 considered within the framework of a revision of the Treaties aimed at achieving a political integration according to a federal approach.

25 September 2013

Heleen Jalvingh, UCL, School for Public Policy—Written evidence

1. *National Parliaments in the EU Framework*

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 crises (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'¹⁴⁸. 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 for opposition parties, as they often have easier access to information from other NPs, or

¹⁴⁸ 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)).

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

Davor Jancic, London School of Economics and Political Science— Written evidence

National parliaments in the EU framework

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.¹⁴⁹ 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”.¹⁵⁰ 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”.¹⁵¹

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 performs so well.

¹⁴⁹ 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.

¹⁵⁰ Article 12 TEU (emphasis added).

¹⁵¹ Recital 2 to Preamble to Protocol on the role of national parliaments in the European Union, annexed to the Treaty of Lisbon.

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.¹⁵² 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.¹⁵³ 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.¹⁵⁴

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.¹⁵⁵ 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 be achieved by applying internal confidentiality labeling rules.¹⁵⁶ This is why responsibility for

¹⁵² See a recent study on this in: European Parliament, DG for Internal Policies, Policy Department C (Citizens' Rights and Constitutional Affairs). *Democratic control in the Member States of the European Council and the Euro zone summits*, 2013.

¹⁵³ See more in: Kiever, Philipp. *The early warning system for the principle of subsidiarity: constitutional theory and empirical reality*, London: Routledge, 2012.

¹⁵⁴ Jančić, Davor. "The Barroso Initiative: window dressing or democracy boost?," *Utrecht Law Review*, Vol. 8, No. 1, 2012: 83.

¹⁵⁵ Articles 1 and 2 of Protocol on the role of national parliaments in the European Union, annexed to the Treaty of Lisbon.

¹⁵⁶ See the European Parliament's experience with this in: Curtin, Deirdre. "Official secrets and the negotiation of international agreements: is the EU executive unbound?," *Common Market Law Review*, Vol. 50, No. 2, 2013: 423–458.

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.¹⁵⁷ 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.¹⁵⁸

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.¹⁵⁹ 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.¹⁶⁰ 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 means that the early warning mechanism has not yet grown into a powerful tool for direct parliamentary input in EU decision-making processes.

¹⁵⁷ Article 5 of Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty of Lisbon.

¹⁵⁸ See to this effect also: Besselink, Leonard. "National parliaments in the EU's composite constitution: a plea for a shift in paradigm," in *National and regional parliaments in the European constitutional order*, by Philipp Kiiver (ed.), Groningen: Europa Law Publishing 2006: 128.

¹⁵⁹ 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," *Common Market Law Review*, Vol. 50, No. 1, 2013: 115–144.

¹⁶⁰ Jančić, Davor. "Representative democracy across levels? National parliaments and EU constitutionalism," *Croatian Yearbook of European Law and Policy*, Vol. 8, 2012: 263.

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 good will 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.¹⁶¹ 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.¹⁶²

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

¹⁶¹ See more in: Jančić, Davor. "The Portuguese Parliament: blazing the trail to the European scrutiny trophy?," *Interdisciplinary Political Studies*, Vol. 1, No. 1, 2011: 93-108.

¹⁶² See more in: Jančić, Davor. "The European political order and Internet piracy: accidental or paradigmatic constitution-shaping?," *European Constitutional Law Review*, Vol. 6, No. 3, 2010: 430-461.

EU decision scrutinized.¹⁶³ 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".¹⁶⁴ 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.¹⁶⁵ 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,¹⁶⁶ 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

¹⁶³ Contrast for instance Chapters 9 and 11 in: Jančić, Davor. *National parliaments and European constitutionalism: accountability beyond borders*, PhD Dissertation, Utrecht University, 2011.

¹⁶⁴ Joint Declaration on Practical Arrangements for the Codecision Procedure (2007/C 145/02), *Official Journal of the European Union* C 145/5 of 30.6.2007, point 11.

¹⁶⁵ House of Lords, EU Committee. "The Treaty of Lisbon: an impact assessment – Vol. I: Report", *HL Paper 62-I*, 10th Report of Session 2007-08 of 13 March 2008, para. 11.53, p. 245.

¹⁶⁶ See more on subsidiarity checks in: Jančić, Davor. "Representative democracy across levels? National parliaments and EU constitutionalism," *Croatian Yearbook of European Law and Policy*, Vol. 8, 2012: 246.

COSAC.¹⁶⁷ 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.¹⁶⁸ 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.

¹⁶⁷ Tordoff, Lord. "The conference of European affairs committees: a collective voice for national parliaments in the European union," *Journal of Legislative Studies*, Vol. 6, No. 4, 2000: 7.

¹⁶⁸ Auel, Katrin. "Democratic accountability and national parliaments: redefining the impact of parliamentary scrutiny in EU affairs," *European Law Journal*, Vol. 13, No. 4, 2007: 494.

26 September 2013

**Professor Dr iur. Hermann-Josef Blanke, University of Erfurt,
Germany—Written evidence**

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.¹⁶⁹ 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."¹⁷⁰ 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 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

¹⁶⁹ 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/JP_Week_1/German%20ConstCourt%20Maastricht.pdf

¹⁷⁰ Cf. BVerfG – 2 BvE 2/08 (30 June 2009) para. 246, referring to BVerfG – 2 BvR 2134/92 – Maastricht – http://www.bundesverfassungsgericht.de/entscheidungen/es20090630_2bve000208en.html. As a result of this judgment the Deutsche Bundestag has enacted the "Law on the taking of responsibility for integration by the Bundestag and the Bundesrat in matters of the European Union" of 22nd September 2009 (BGBl. I p. 3022), amended by Article 1 of the law of 1st December 2009 (BGBl. I p. 3822).

enrichment of the EU decision-making process or, on the contrary, would lead to a potential new brake in its functionality.¹⁷¹

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.¹⁷² 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.¹⁷³ 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

¹⁷¹ C. Fasone/N. Lupo, in: Blanke/Mangiameli (eds.), *The Treaty on European Union (TEU) – A Commentary*, 2013, Protocol No. 1 para. 179.

¹⁷² 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."

¹⁷³ Cf. P. G. Casalena, in: Blanke/Mangiameli (eds.), *The Treaty on European Union (TEU) – A Commentary*, 2013, Protocol No. 1 para. 33.

level, it is reasonable that the national Parliaments take part in the economic dialogue that has been created through the so-called Six-Pack 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.¹⁷⁴ 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.¹⁷⁵ 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

¹⁷⁴ Cf. also C. Fasone, in: Blanke/Mangiameli (eds.), *The Treaty on European Union (TEU) – A Commentary*, 2013, Protocol No. 1 para. 159.

¹⁷⁵ Cf. in the case of Germany BVerfG – 2 BvR 1390/12 (12 September 2012) para 211 – http://www.bundesverfassungsgericht.de/entscheidungen/rs20120912_2bvr139012en.html.

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 services¹⁷⁶ 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.¹⁷⁷
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

¹⁷⁶ COM(2012) 130 final.

¹⁷⁷ Cf. Olivetti, in: Blanke/Mangiameli (eds.), *The Treaty on European Union (TEU) – A Commentary*, 2013, Art. 12 para. 58.

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)¹⁷⁸ – 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 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

¹⁷⁸ 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.

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).¹⁷⁹

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.¹⁸⁰ 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.¹⁸¹

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

¹⁷⁹ Cf. Blanke/Mangiameli, in: Blanke/Mangiameli (eds.), *The Treaty on European Union (TEU) – A Commentary*, Protocol No. 2 para 156 et seqq.

¹⁸⁰ Cf. for this proposal Lupo, in: Blanke/Mangiameli (eds.), *The Treaty on European Union (TEU) – A Commentary*, 2013, Protocol No. 1 para. 136 et seqq. (143).

¹⁸¹ Fasone, in: Blanke/Mangiameli (eds.), *The Treaty on European Union (TEU) – A Commentary*, 2013, Protocol No. 1 para. 173.

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.”¹⁸² Therefore, in its composition, each committee has to reflect the political proportions of the plenary at large.¹⁸³

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¹⁸² BVerfG – 2 BvE 8/11 (28 February 2012) para. 125 with reference to BVerfGE 94, 351 (369) – http://www.bundesverfassungsgericht.de/entscheidungen/es20120228_2bve000811en.html.

¹⁸³ Vgl. BVerfG – 2 BvE 8/11 (28 February 2012) para 127 – http://www.bundesverfassungsgericht.de/entscheidungen/es20120228_2bve000811en.html.

Mr Gediminas Kirkilas, Chair of the EU Affairs Committee of the Seimas of the Republic of 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

Valentin Kreiling, Jacques Delors Institute, Claudia Heffler, University of Cologne, Olivier Rozenberg, Centre d'études européennes, Sciences Po (Paris), and Wolfgang Wessels, University of Cologne—Written evidence

[Submission to be found at Claudia Heffler, research assistant at the Jean Monnet Chair, University of Cologne, Valentin Kreiling, 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](#)

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

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.¹⁸⁴ 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-

¹⁸⁴ Presidency Conclusions of the Conference of Speakers of EU Parliaments, Nicosia 21-23 April 2013, <http://www.ipex.eu/IPEXL-WEB/dossier/files/download/082dbcc53dbcb6ed013e3b68418b5327.do>, pp. 4-6.

parliamentary conference on Economic and Financial Governance, Protocol n°1 of the EU treaties and Article 13 TSCG provide a sufficient legal basis.¹⁸⁵

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

¹⁸⁵ 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.”

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 (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 2013¹⁸⁶ 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.

¹⁸⁶ Working Paper of 11 January 2013, <http://www.ipex.eu/IPEXL-WEB/dossier/files/download/082dbcc53b70d1c2013ccdb9a8692a61.do>

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

The Senate, Miroslav Krejča, Parliament of Czech Republic— Written evidence

I would like to thank you for the information regarding the inquiry undertaken by the House of Lord 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 address 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

Professor Norbert Lammert, President of the German Bundestag— 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.

Thomas Larue, the Committee on the Constitution, Sveriges Riksdag—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) 111, 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 2002¹⁸⁷ 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

¹⁸⁷ 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

CoC drew attention to this observation in view of the risk that this doctrine could be 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.

The Rt. Hon. David Lidington MP, Minister for Europe, Foreign and Commonwealth Office —Written evidence

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 May¹⁸⁸ 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).¹⁸⁹ 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.

¹⁸⁸ <http://www.pewglobal.org/2013/05/13/the-new-sick-man-of-europe-the-european-union/>

¹⁸⁹ <http://www.openeurope.org.uk/Content/Documents/PDFs/130917briefingpoll2.pdf>

3. 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.¹⁹⁰ 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), and consider proposals to give national parliaments working together the power to force

¹⁹⁰ 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 TSCG 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."
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/134353.pdf

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.¹⁹¹ 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 663¹⁹² 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.¹⁹³ 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 Representative’s *EEAS Review*¹⁹⁴, or the Lords report on the future of enlargement

¹⁹¹ 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.

¹⁹² These include the 70 reasoned opinions received under the subsidiarity control mechanism.

¹⁹³ See Contribution of the XLIX COSAC, Dublin, 23-25 June 2013 <http://www.parleu2013.ie/wp-content/uploads/2012/12/Contribution-EN.pdf>

¹⁹⁴ The political decision that created the European External Action Service required that the High Representative should review the Service by mid-2013.

(March 2013) published ahead of discussion of the Annual Enlargement Package at the December European Council.

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. Analysis¹⁹⁵ 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.
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

¹⁹⁵ 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

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.¹⁹⁶ 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

¹⁹⁶ <http://www.parliament.uk/documents/lords-committees/eu-sub-com-e/eupolicycriminalprocedure/ucEUE191211ev3.pdf>

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 2013¹⁹⁷ 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 website¹⁹⁸ (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.
24. As I have suggested previously¹⁹⁹, 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

¹⁹⁷ <http://www.cosac.eu/49-ireland-2013/plenary-meeting-of-the-xlix-cosac-23-25-june-2013/>

¹⁹⁸ 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.

¹⁹⁹ 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/130716h0001.htm>

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 legislation. But, there has been some concern that bypassing all legislative stages after first reading might reduce the already tight timescales for national parliaments to contribute their views.
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,²⁰⁰ 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

²⁰⁰ See <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/uc109-iii/uc10901.htm> and <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/uc711-i/uc71101.htm>

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 subsidiary, 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.
11. 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; it 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.

Professor Stelio Mangiameli, University of Teramo —Written evidence

I. National parliaments in the EU framework

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 parliamentary 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.

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

[Dr. Anna-Lena Högenauer, Postdoctoral Researcher, Maastricht University and Prof. Christine Neuhold, Special Chair for EU Democratic Governance on behalf of the OPAL research team Maastricht University- Written evidence](#)

Dr Eleni Panagiotarea (D. Phil, Oxon.)—Written evidence

Dr. Eleni Panagiotarea is a Research Fellow of the Hellenic Foundation for European and Foreign Policy (ELIAMEP)²⁰¹. Her recent publication is 'Greece in the Euro: Economic Delinquency or System Failure?' (ECPR Press, 2013).

- I. 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

²⁰¹ The evidence is submitted on a personal basis

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 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 assuage 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

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

I. 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.²⁰²

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.²⁰³ 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.

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

²⁰² D. Beetham, *The legitimation of power* (Basingstoke, Macmillan, 1991).

²⁰³ The Gini coefficient is a statistical index from 0 to 1 to measure inequality.

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

	‘Yellow card’ procedure	‘Orange card’ procedure
		<i>Only for ordinary legislative procedure</i>
Threshold	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.	A number of negative opinions representing at least a simple majority of the votes allocated to national parliaments.
Effect	The initiating EU institution (usually the Commission) must review the proposal. It can maintain, amend or withdraw it.	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.

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.²⁰⁴ 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

²⁰⁴ Annual Report 2012 on Subsidiarity and Proportionality, European Commission, COM (2013) 566 final.

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 in 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.²⁰⁵ 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.²⁰⁶ 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.²⁰⁷ 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.

²⁰⁵ *Sixteenth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny*, COSAC, October 2011.

²⁰⁶ *Eighteenth Bi-annual Report: Developments in European Union Procedures and Practices relevant to Parliamentary Scrutiny*, COSAC, October 2012.

²⁰⁷ *Communication from the Commission to the European Council: A citizens' agenda. Delivering results for Europe*, European Commission, COM (2006) 211 final.

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

	Total submissions	Reasoned Opinions	Political Dialogue	Variation %	Chambers not participating
2010	387	34	353	55	10
2011	622	64	558	61	4
2012	663	83	580	7	0

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

Asteris Pliakos²⁰⁸ —Written evidence

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

1. *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

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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 though 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 is not conducted”. (See the Conclusions of COSAC, Nicosia 14-16 October 2012). In any case the abovementioned necessity of defining common criteria allowing to assess 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 practise, 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.)

11. 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 consider 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 of 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.

Olivier Rozenberg, Centre d'études européennes, Sciences Po (Paris), Claudia Heffler, University of Cologne, Valentin Kreiling, Jacques Delors Institute, and Wolfgang Wessels, University of Cologne– Written evidence

[Submission to be found under Claudia Heffler, research assistant at the Jean Monnet Chair, University of Cologne, Valentin Kreiling, 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 –](#)

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

[Submission to be found under Valentin Kreilinger, Research Fellow, Notre Europe, Jacques Delors Institute, Claudia Heffler, research assistant at the Jean Monnet Chair, University of Cologne, 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](#)

Maroš Šefčovič, Vice President of the European Commission— 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 subsidiarity²⁰⁹—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.²¹⁰ 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 593²¹¹) 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.

²⁰⁹ See for instance COSAC 18th Bi-annual Report on EU Practices and Procedures, <http://www.cosac.eu/documents/bi-annual-reports-of-cosac/>

²¹⁰ See the Annex to the Commission's Annual Report 2012 on Subsidiarity and Proportionality, http://ec.europa.eu/smart-regulation/better-regulation/documents/2012_subsidarity_report_en.pdf

²¹¹ See the Annex to the Commission's Annual Report 2012 on relations between the European Commission and national Parliaments,

http://ec.europa.eu/dgs/secretariat_general/relation/relation_other/npo/docs/ar_2012_en.pdf

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 Parliament²¹². 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, publicly 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 Commission sees this as a very positive engagement for the benefit of the EU as such and, most importantly, for its citizens.

²¹² Further to a request made in the conclusions of the Speakers Conference in April 2013 in Nicosia.

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 has been discussed many times at the meetings themselves and also through its bi-annual 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, 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).²¹³
4. The issue in the 1980s was one of perceived deparliamentarisation, 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

²¹³ 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.

the EP in successive treaty reforms from 1970 onwards.²¹⁴ 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.

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.

²¹⁴ 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.

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.*)²¹⁵ 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

²¹⁵ Vedel Report, ‘Report of the Working Party examining the problem of the enlargement of the powers of the European Parliament’, *Bulletin of the European Economic Community* April 1972 (Luxembourg: Office for Official Publications of the European Communities), Chapter I, accessed via www.cvce.eu

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.

**Wolfgang Wessels, University of Cologne, Claudia Heffler,
University of Cologne, Valentin Kreilinger, Jacques Delors Institute,
Olivier Rozenberg, Centre d'études européennes, Sciences Po
(Paris)—Written evidence**

[Submission to be found under—Claudia Heffler, 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](#)

Mr Edmund Wittbrodt, Committee of the Polish Senate—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.

