



The Role of National Parliaments in the EU after Lisbon: Potentialities and Challenges

Olivier Rozenberg

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DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



Constitutional Affairs

Justice, Freedom and Security

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Petitions

**The Role of National
Parliaments in the EU after
Lisbon: Potentialities and
Challenges**

STUDY FOR THE AFCO COMMITTEE



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT C: CITIZENS' RIGHTS AND CONSTITUTIONAL
AFFAIRS

CONSTITUTIONAL AFFAIRS

The Role of National Parliaments in the EU after Lisbon: Potentialities and Challenges

STUDY

Abstract

This study was commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the Committee on Constitutional Affairs of the European Parliament. It assesses the implementation of the Treaty of Lisbon provisions on national parliaments as well as other related developments since 2009. The issues that are specifically investigated include the treaty provisions regarding national parliaments, Early Warning Mechanism, dialogue between national parliaments and the European Commission, the extending networks of inter-parliamentary cooperation, the parliamentary dimension of the budgetary and economic coordination and finally, the challenges raised by the on-going developments of the European legislative procedure.

ABOUT THE PUBLICATION

This research paper was requested by the European Parliament's Committee on Constitutional Affairs and was commissioned, overseen and published by the Policy Department for Citizens' Rights and Constitutional Affairs.

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LIST OF ABBREVIATIONS

AFCO	Committee on Constitutional Affairs of the European Parliament
BUDG	Committee on Budgets of the European Parliament
CFSP	Common and Foreign Security Policy
CSDP	Common Security and Defence Policy
COSAC	Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union
ECON	Committee on Economic and Monetary Affairs of the European Parliament
EMPL	Committee on Employment and Social Affairs
EMU	Economic and Monetary Union
EP	European Parliament
EU	European Union
EWM	Early Warning Mechanism
IPEX	Interparliamentary EU Information Exchange
JPSG	Joint Parliamentary Scrutiny Group
MEP(s)	Member(s) of the European Parliament
MP(s)	Member(s) of National Parliament
OPAL	Observatory of National Parliaments after the Lisbon Treaty
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TSCG	Treaty on Stability, Coordination and Governance
WEU	Western European Union

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EXECUTIVE SUMMARY

Background

The **Treaty of Lisbon** provided a legal recognition of the democratic significance of national parliaments. It mentions national parliaments on several occasions related to their information rights, their participation in the procedures of revision of the treaty, their control over the field of Freedom, Security and Justice and their possibility to cooperate with each other and with the European Parliament (EP).

The Treaty also introduced a new procedure related to the early control of the principle of subsidiarity. The **Early Warning Mechanism (EWM)** enables each assembly to assess whether a legislative proposal made by the Commission infringes upon the principle of subsidiarity. If one third of the parliaments state that action at the EU level is not legitimate (the so-called “yellow card”), then the Commission is required to provide further justification.

Apart from the implementation of the Treaty of Lisbon in 2009, the issue of the European role for national parliament has been salient on the agenda during the last years. The official discussions before the **Brexit** questioned if national parliaments should be granted the possibility to block early draft legislation – what has been called a “red card”. The progressive and complex reform of the Eurozone and the budgetary supervision opened the debate about the **parliamentary control the economic governance of the EU**. New forums of inter-parliamentary cooperation in economic affairs have been created while a debate is open in Europe on how to strengthen or modify them.

This survey assesses those numerous evolutions while also considering the impact of the on-going trends related to the European legislative procedure on the capacity of the national parliament to control EU affairs.

Results

Regarding the EWM, the survey notes that this innovative procedure has been made almost **redundant** with the unprecedented context of legislative downfall at the EU level. Moreover, the detailed account of the three yellow cards raised so far in 2012, 2013 and 2016 reveals that the procedure suffers both from its contingency and from the proximity between parliamentary majorities and national governments.

This rather negative assessment contrasts with the **dynamism of the informal system of dialogue** between national parliaments and the Commission. Within ten years, the political dialogue has generated more than 4,000 opinions sent to the Commission. The procedure can be understood as a way to produce information related to the actors’ preferences in the multi-levels setting of the EU. A proposal is therefore formulated in view of systematising the consultation between national parliaments and the Commission at an earlier stage of the procedure.

The survey also considers two emerging kinds of collective action from national parliaments:

- The initiative of a “**green card**” allowing national parliaments to suggest a legislative initiative to the Commission was informally launched in 2015. Despite its pro-active feature, the proposal seems to fail to identify issues for which a sufficient number of assemblies could be mobilised on.

- In February 2016, the discussions over the special status of the UK lead the European Council to accept a system that would block a draft proposal rejected by a majority of parliamentary assembly. However, the agreement regarding this kind of “**red card**” has become obsolete.

Recently, the structures of **inter-parliamentary cooperation** have become numerous: the COSAC (created in 1989), the Inter-Parliamentary Conference on CFSP and CSDP (2012), the Inter-Parliamentary Conference on Stability, Economic Coordination and Governance (2013), and, to be arranged in 2017, a Joint Parliamentary Scrutiny Group (Europol). Beyond those formal settings, a multiplicity of initiatives can also be noted.

- Despite such organizational creativity, the survey identifies the **breaks** to the development of a genuine and fruitful cooperation between parliaments in Europe: the divergences of views between national parliaments, the institutional competition between national parliaments and the EP, the lack of interaction and real debates within those fora, the various coordination costs...
- Therefore, recommendations are formulated in view of improving inter-parliamentary cooperation. A **committee-based approach**, based on existing standing committees within parliaments, seems more likely to develop “a feeling of ownership” among networks of national and European parliamentarians.

Regarding the field of budgetary and economic coordination, the survey highlights the **important variations** in the involvement of national parliaments in the preparation of Stability or Convergence Programmes and National Reform Programmes. Yet, beyond the divergences of focus and of the extension of parliament rights, those issues are closely followed within national parliaments.

The **inter-parliamentary conference foreseen by Article 13 TSCG** has met eight times since late 2013. After long negotiations, a compromise was found on its rule of procedure in November 2015: the conference meets twice a year and the size and composition of the parliamentary delegations to the conference are not fixed. Both the duration of those negotiations and their result lead to be **pessimistic** about the capacity of this new fora to establish a genuine democratic control over the economic governance of the EU and especially of the Eurozone. Therefore, several options are discussed:

- A true Eurozone Parliament, distinct from the EP, in charge of taking major budgetary and financial decisions affecting the Euro Area;
- A less far-reaching Eurozone Assembly made of MPs and MEPs;
- A euro area component in the Inter-Parliamentary Conference on Stability, Economic Coordination and Governance;
- A euro area subcommittee within the EP established through an informal agreement between political groups;
- A strengthened scrutiny of those issues within national parliaments.

Faced with all those options, the survey strengthens that the scenarios of inter-parliamentary cooperation are not mutually exclusive and that a key aspect of the success of any option lies in their organisational details and the profile of members. In that sense, **budget specialists** within parliaments seem the most able to develop a solid inter-parliamentary network.

To finish, this report develops a series of other contemporary challenges that national parliaments are facing in relation to the EU and formulates some recommendations:

Challenges	Problems	Recommendations
Opposition	How to associate opposition parties to European activities and inter-parliamentary network?	<ul style="list-style-type: none"> - Promotion of best practices at the domestic level; - Pluralist composition of any parliamentary delegation; - Minority opinions sent to EU institutions.
Inter-parliamentary cooperation	How to avoid useless talking shops?	<ul style="list-style-type: none"> - (Standing) committee-based compositions of parliamentary delegations; - Renewed working methods; - Clever timing of the conferences.
Rhythm	How can national parliaments supervise a legislative procedure that last nearly two years?	<ul style="list-style-type: none"> - Stop solely focussing on the early period of legislative bargains.
Transparency	How can national parliaments improve such an unclear decision-making process?	<ul style="list-style-type: none"> - More transparency regarding trilogues meetings; - Communication link connecting the future common legislative data base of the three institutions with the IPEX; - More transparency regarding the Council activities (political agreements, parliamentary reserves, agenda shifts...).

1. INTRODUCTION: THE UNEASY INVOLVEMENT OF NATIONAL PARLIAMENTS IN EU AFFAIRS

KEY FINDINGS

- National Parliaments have **many assets** and features that call for their active participation in the European political system: their democratic quality, their capacity to voice national concerns and their veto power over EU treaties.
- Yet, their empowerment is **problematic** seeing that the constitutional organisation of Member States is a matter of national sovereignty. The diversity of the chambers also makes their collective mobilisation difficult.

The subject of the involvement of national parliaments in the European Union (EU) decision-making process has **long been discussed**¹. Within several Member States, the aftermath of the Single Act was a decisive period for the development of provisions related to the European activities of national parliaments². Constitutions and Standing Orders were reformed in order to allow parliaments to be informed of draft European legislation and to give them more or less binding opinions about it. The shared view concluded that national assemblies should be able to scrutinize the European policy of their government as ministers were acting as lawmakers in Brussels.

Less decisively and more lately, national parliaments have also been taken into account **directly at the EU level**. Since Maastricht, national parliaments have been mentioned in the protocols annexed to EU treaties. With the treaty of Lisbon, they were specifically granted some prerogatives – notably through an original procedure of aggregation of their individual views related to the respect for the principle of subsidiarity on each legislative proposal formulated by the European Commission (Commission). Different kinds of inter-parliamentary forums have also been developed over the recent period, relating to the practices of parliamentary scrutiny, to foreign and security affairs or to economic and budgetary issues.

1.1. The appeal of national parliaments

The willingness to give a say to national parliaments was driven by two distinct factors. One is related to democratic norms and the other to strategy.

First, the concerns associated to the popular legitimacy and the democratic quality of the EU fed the view that the system should be “parliamentarised”. The empowerment of the European Parliament was strongly supported by this claim. Yet, it soon became clear that the parliamentarisation at the EU level was not sufficient and should be expanded at the national level. **This view was based both on the democratic quality and proximity given to national parliaments and on their capacity to identify and promote national interests and features** in a period where the EU level was suspected of neglecting them. Thus, the Laeken declaration of 15 December 2001 that put the issue of national parliaments in the European agenda mentioned the possibility that they could

¹ Maurer, A. and Wessels, W. (eds), 2001. National Parliaments on their Ways to Europe: Losers or Latecomers?. Nomos Verlagsgesellschaft.

² Rozenberg, O. and Heffler, C., 2015. Introduction. In Heffler, C., Neuhold, C., Rozenberg, O. and Smith, J., eds., The Palgrave Handbook of National Parliaments and the European Union. Palgrave Macmillan, pp. 1-39, here: pp. 9-10.

realise a “preliminary checking of compliance with the principle of subsidiarity”.³ In short, national parliaments were considered both as a parliamentary body and as national organisations.

There is another, more strategic, if not cruder, reason for the focus of the European institutional debate on national parliaments’ issue. It is the fact that, except if the uncertain procedure of referendum is used, **national parliaments wield the power of veto regarding treaty revision**. With their consent necessary to change the rules, it is clear that those rules foresee giving them a special role – even if this role is peripheral or anecdotal. In that perspective, the increasing problems of governability of European states politically strengthen the veto power of the parliamentary assemblies. Treaty ratifications could have been taken for granted in the past. It is no longer the case in the age of backbench rebellions and compound parliamentary majorities. The best illustration of that is that most of the institutional analyses now integrate the view that treaties could or should not be changed.

1.2. A Europeanisation under constraint

Despite those specific assets, national parliaments long appeared to be the “losers” of European integration. The depth of the integration of Europe has challenged both their roles of lawmaker and of government scrutiniser. The primacy of EU law put a major constraint over many decisions taken domestically. More recently, the improvement of budgetary coordination and control at the EU level created new and subtler boundaries for parliamentary action. National governments, accountable to the parliament in all European democracies except Cyprus, were also tempted to strategically use the European dimension to impose their agenda on their parliamentary majority. In summary, although European integration was not the only factor for the trend toward “de-parliamentarisation” at the domestic level, it certainly contributed to it.

Two major reasons may explain why it was so difficult for national parliaments to “fight back”.⁴ First, **collective action at national parliaments’ level is limited by their diversity**. This diversity is internal as parliaments are made of various groupings of parties that must compete electorally. Considered from a comparative perspective, the notion of diversity also accounts for all the 41 parliamentary chambers. National parliaments have difficulties acting jointly given the differences of political majorities between them. The variations related to the extent of their constitutional power constitute a major limitation as well. In that context, the decision taken in 1979 that the European Parliament members would no longer be selected among national parliaments’ benches contributed to isolating them from the policy-making process.

Secondly, the **constitutional sovereignty** of the Member States leads to drastically limiting the possibility of involving national parliaments in the EU policy-making process. As recalled by the first sentence of the Protocol No. 1 on the role of national parliaments in the EU, “the way in which national Parliaments scrutinise their governments in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State”.⁵ The key criteria for imposing new rights for national parliaments is

³ Presidency Conclusions, European Council meeting in Laeken, 14 and 15 December 2001.

⁴ Raunio, T. and Hix, S., 2000. Backbenchers learn to fight back: European integration and parliamentary government. *West European Politics*, 23 (4), pp. 142-168.

⁵ Protocol No. 1 annexed to the Treaty of Lisbon (Official Journal of the European Union, C 83/206, 30.3.2010). See Annex 1.

therefore their legal and political acceptability within all Member States – a logic that encourages sticking to the lowest standard.

1.3. Outline of the study

The contraction between the democratic and strategic appeal of national parliaments and the difficulties of finding them a role backed by prerogatives defined at the EU level makes the assessment of their contemporary European activities crucial. The failure of the European Constitution in 2005 opened a period of informal cooperation between the Commission and the assemblies. The Lisbon Treaty, which came into force in 2009, foresaw new rights for national parliaments. Among them, an original procedure – the Early Warning Mechanism (EWM) related to the assessment of the respect for the principle of subsidiarity – can be considered as a combination between individual and collective logics of participation of the assemblies as thresholds pertaining to the parliamentary opinions are fixed. As a result of the consequences of the great economic crisis that started in 2008, new rules were implemented regarding the control over budget deficit. Among them, the Treaty of Stability, Convergence and Governance, enforced in 2013, foresaw new types of inter-parliamentary cooperation.

The last recent years were actually marked by a real **creativity regarding the rules, practices and procedures related to national parliaments**. Whereas the 1990s saw the reform of domestic Constitutions and Standing orders pertaining to the role of national parliaments, the recent period saw the multiplication of rights and forums at the EU level. This survey proposes to assess those recent developments considering first the new rules set by the treaty of Lisbon. Following, the various types of relations between the national parliamentary assemblies and the Commission, including EWM and the so-called “political dialogue”, are assessed. The fourth chapter considers the latest developments related to inter-parliamentary cooperation, including the relations with the European Parliament. The fifth chapter focuses on the emerging role for national parliaments regarding economic and budget coordination at the EU level. The last chapter concludes by addressing certain contemporary challenges and formulating recommendations to face them.

2. NUMEROUS BUT NOT DECISIVE? THE LEGAL PROVISIONS OF THE TREATY OF LISBON RELATED TO NATIONAL PARLIAMENTS

KEY FINDINGS

- The Treaty of Lisbon **ended with the traditional view** that national parliaments should mainly be active at the domestic level.
- Although national parliaments are mentioned in several parts of the Lisbon Treaty, the main new element addresses an **original procedure focussed on subsidiarity checks**.
- However, there are **many minor points** that give a specific role or ambition to national parliaments.

2.1. Numerous provisions

Breaking with the past, the Treaty of Lisbon mentions national parliaments on many occasions. Table 1 lists all of the cases where this is done, either in the body of the treaties or in its Protocols 1 and 2 which are annexed to the Treaty and form an integral part of it: **Protocol on the Role of National Parliaments in the European Union** (Protocol No. 1) and **Protocol on the Application of the Principles of Subsidiarity and Proportionality** (Protocol No. 2).⁶ Table 2 quotes all of the related articles.

⁶ For the full text of the two Protocols, please see Annexes 1 and 2.

Table 1: The provisions of the Treaty of Lisbon related to national parliaments: an overview

1. A symbolic recognition

- Mention of the democratic accountability of European governments to national parliaments.
- Mention of the fact that national Parliaments contribute actively to the good functioning of the Union.

2. The control of the subsidiary principle

- The yellow card of the EWM: one-third of the parliaments state an infringement of the subsidiarity proposal. The Commission decides to maintain, amend or withdraw it and must justify its choice.
- The orange card of the EWM: if a majority of the parliament finds an infringement, it is easy for the co-legislators to reject the proposal.
- Once a piece of legislation is adopted, governments may notify an infringement of the subsidiarity principle to the European Court of Justice on behalf of their national parliament "in accordance with their legal order".

3. Information rights

- Direct transmission of all documents by the Commission.
- A security period of eight weeks (previously six) between the Commission proposal and the Council meeting – with exceptions.
- Notification of applications for accession to the EU.
- Notifications of many activities from other institutions: proposals to amend the treaties (Article 48(2) TEU), evaluation of the implementation of the Union policies in the area of freedom, security and justice (Article 70 TFEU), proceedings of the standing committee of the Council in charge of internal security (Article 71 TFEU), aspects of family law with cross-border implications adopted by the ordinary legislative procedure (Article 81(3) TFEU), agenda and decision of the Council (Article 5 Protocol No. 1).

4. Participation in the revision of the treaty

- For the ordinary revision procedure: generalization of the Convention model.
- A veto on the Passerelle clauses: when the European Council has decided that a new area should be subject to qualified majority voting in the Council and/or to the ordinary legislative procedure, the possibility exists for each national parliament to veto the decision within six months.

5. A specific role for Freedom, Security and Justice

- A lower threshold of one-quarter of national parliaments in the EWM.
- An invitation to inter-parliamentary cooperation in the political monitoring of Europol and the evaluation of Eurojust's activities.
- See point 3 for more information.

6. An acknowledgment of inter-parliamentary cooperation

- Invitation to cooperate each other and with the EP.
- Freedom allowed to the national parliaments and the EP in the organisation of inter-parliamentary cooperation.
- Mention of the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC).
- Invitation to cooperate on two fields: Common Foreign and Security Policy (CFSP) and Commission Security and Defence Policy (CSDP); and Freedom, Security and Justice.

Source: Author

Table 2: The provisions of the Treaty of Lisbon related to national parliaments: extracts from the treaties

1. A symbolic recognition

- Article 10(3) TEU: "[...] 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."
- Article 12 TEU: "National Parliaments contribute actively to the good functioning of the Union: [...]."

2. The control of the subsidiary principle

- Article 12 TEU: "National Parliaments contribute actively to the good functioning of the Union [...] by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality [...]."
- Principle: Article 3 Protocol No. 1.
- Procedure: Articles 6-7 Protocol No. 2.
- Court of Justice: Article 8 Protocol No. 2: "The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article 263 of the Treaty on the Functioning of the European Union by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber thereof."

3. Information rights

- Acts: Article 12 TEU: "National Parliaments contribute actively to the good functioning of the Union through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union [...]."
- Applications: Article 12 TEU: "National Parliaments contribute actively to the good functioning of the Union [...] by being notified of applications for accession to the Union, in accordance with Article 49 of this Treaty [...]."
- Article 49 TUE: "[...] The European Parliament and national Parliaments shall be notified of this application. [...]."
- Direct transmission: Article 2 Protocol No. 1: "Draft legislative acts originating from the Commission shall be forwarded to national Parliaments directly by the Commission, at the same time as to the European Parliament and the Council."
- Security period: Article 4 Protocol No. 1: "An eight-week period shall elapse between a draft legislative act being made available 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. [...]."

4. Participation in the revision of the treaty

- Convention: Article 12 TEU: "National Parliaments contribute actively to the good functioning of the Union [...] by taking part in the revision procedures of the Treaties, in accordance with Article 48 of this Treaty [...]."
- Convention: Article 48(3) TEU: "If the European Council, after consulting the European Parliament and the Commission, adopts by a simple majority a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of representatives of the national Parliaments, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission [...]."
- Passerelle clauses: Article 48(7) TEU: "[...] Any initiative taken by the European Council on the basis of the first or the second subparagraph shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six

months of the date of such notification, the decision referred to in the first or the second subparagraph shall not be adopted. In the absence of opposition, the European Council may adopt the decision."

5. *A specific role for Freedom, Security and Justice*

- Article 12 TEU: "National Parliaments contribute actively to the good functioning of the Union [...] by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article 70 of the Treaty on the Functioning of the European Union, and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles 88 and 85 of that Treaty [...]."
- Article 85(1) TFEU: "[...] These regulations shall also determine arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust's activities."
- Article 88(2) TFEU: "[...] These regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments."

6. *An acknowledgment of inter-parliamentary cooperation*

- Article 12 TEU: "National Parliaments contribute actively to the good functioning of the Union [...] by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament, in accordance with the Protocol on the role of national Parliaments in the European Union."
- Freedom: Article 9 Protocol No. 1: "The European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union."
- COSAC and CFSP/CSDP: Article 10 Protocol No. 1.

Source: Author

Despite the high number of mentions and the EWM put aside, **no major procedures or rights** seem to emerge from the various treaty provisions related to national parliaments. The multiplicity of the references could even be seen as proof that no determinant way of embedding them into EU affairs has been found. The symbolic mention of national parliaments does not grant them a specific role. The mention of the various information rights for national parliaments can also be considered a limited type of provision as information is not a guarantee of influence. In addition, the direct transmission of EU documents had already been informally implemented since 2006. Likewise, inter-parliamentary cooperation is welcome in several provisions of the treaties but no decisive procedure is foreseen.

Yet, as stressed by Cristina Fasone and Nicolas Lupo⁷, those multiple provisions should be interpreted as a major **shift**. What is at stake in the multiple references to national parliaments is the view that their direct participation in the European decision-making system is legitimate. Direct relations are indeed foreseen with EU institutions:

- The Commission with the direct transmission of documents from the Commission to national parliaments and through the EWM;
- The European Parliament with various invitations to cooperate on a stable and institutionalised way;

⁷ Fasone, C. and Lupo, C., 2016. Conclusion. Interparliamentary Cooperation in the Framework of a Euro-national Parliamentary System. In *Interparliamentary Cooperation in the Composite European Constitution*. Hart Publishing, pp. 345-360.

- The European Council given the veto rights over the *passerelle clause*;
- More indirectly, the European Court of Justice regarding the infringement of the subsidiarity principle;
- Collectively, the three institutions of the ordinary legislative procedure are also impacted due to a defining eight-week period during which no formal agreement is made possible.

The addition of those atomized rights states that national parliaments count among the European players, especially regarding major issues such as the revision of the treaties (through the generalisation of the Convention model) and specific policy-fields such as Freedom, Security and Justice.

As indicated by tables 1 and 2, national parliaments are granted with a specific role regarding two issues: the multiple procedures of the **revision of the treaties** on one hand and the field of **freedom, security and justice** on the other hand. Regarding the revision of the treaties, the veto power over the *Passerelle* clauses that enable the modification of the procedures without a formal treaty change can be understood as a compensation for the loss of compulsory parliamentary ratification granted by a revision of the treaties. National parliaments still possess a veto power but their vote is not compulsory. Such provision could assist a government facing a reluctant parliamentary majority, as it may be easier to avoid a vote in parliament than to obtain a formal approval during a parliamentary ratification. The provisions related to freedom, security and justice resulted in both the development of EU legislation in those fields since the years 2000s and the shared sentiment that these issues belong to the core of national parliamentary competencies.

2.2. The principles of the Early Warning Mechanism

The special rules related to subsidiarity checks are undoubtedly the most original ones. According to Protocol No. 1 and Protocol No. 2, national parliaments have **eight weeks** to deliver a reasoned opinion if they consider that draft legislation does not comply with the principle of subsidiarity. **Each national parliament possesses two votes**. In bicameral parliamentary systems, each of the two chambers possesses one vote. Each chamber is entitled to issue reasoned opinions independently.

If at least **one third** of national parliaments (18 of the 56 votes) share the opinion that the draft legislation does not comply with the subsidiarity principle, it must be reviewed, therefore resulting in a "yellow card". The threshold falls to one quarter for a draft legislative proposal submitted on the basis of Article 76 TFEU (judicial cooperation in criminal matters and police cooperation). After the 'yellow card' review, the authoring institution (usually the Commission) may decide to maintain, amend or withdraw the legislation. Legally, the procedure does not thus impose to withdraw the text. Yet, in the case where the proposal is maintained or even amended, the procedure forces the Commission to justify why there is no infringement of the subsidiarity procedure.

Under the ordinary legislative procedure, if a **simple majority** of national parliaments consider that the draft legislative proposal does not comply with the principle of subsidiarity, the draft must be re-examined by the Commission, therefore resulting in an "orange card". After such a review the Commission may decide to maintain, amend or withdraw the proposal. If the Commission decides to keep the proposal it must justify its position. The European Parliament and Council must then consider, before concluding the first reading, whether the proposal is compatible with the principle of subsidiarity. If the

Parliament by a simple majority of its Members or the Council by a majority of 55% of its members consider that the proposal does not comply with the principle of subsidiarity, it is dropped. Specifically, in a case where a majority of national legislatures expresses a doubt on a subsidiarity matters and are not heard by the Commission, it will be easy for the Council or the EP to delete the draft proposal.

This new procedure calls for several remarks:

- It places national parliaments in an **implicit role as the protector of national sovereignty**. They are indeed supposed to act in view of protecting a principle based on the primacy of the most proximate level of government.
- Rather oddly, the protocols do not allow for an assessment based on other criteria such as the respect for the principle of proportionality, the share of competencies or the legal base of the act.
- The procedure mixes the **individual and collective logic** of participation. Formally, the assessment is individually done but is all the more influential if several individual opinions are convergent. This combination introduces the issue of a possible coordination to reach the thresholds.
- The procedure is **strictly bound by an eight-week period**. While it may seem long for this kind of assessment, it is actually a severe constraint, given: a. the fact that legislatures are not always in session; b. the necessity to validate internally the parliamentary opinion; c. the possibility to organize coordination between assemblies.
- In federal and heavily decentralised Member States a procedure of involvement of regional parliaments is made possible which creates further coordination costs.

3. AN UNBALANCED DIALOGUE: NATIONAL PARLIAMENTS & THE COMMISSION

KEY FINDINGS

- Within ten years, the political dialogue between national parliaments and the Commission has generated more than **4,000 opinions** that have been sent to the Commission. A rather positive assessment of the procedure is achieved by understanding it as a way to **generate information** related to the actors' preferences in the multi-levels setting of the EU.
- The assessment of the EWM is more negative. This innovative procedure has been made almost **redundant** with the unprecedented context of legislative downfall at the EU level. Moreover, the detailed tale of the three yellow cards raised so far reveals that the procedure suffers both from its **contingency** and from the **proximity** between parliamentary majorities and national governments.

This chapter first considers the Political dialogue. Political dialogue refers to an informal system made of parliamentary opinions sent to the Commission as well as the replies drafted by the Commission's services. This chapter then proposes a synthetic assessment of the EWM initiated by the Treaty of Lisbon that is supposedly focussed on subsidiarity issues. A short final section mentions other kinds of relations between national parliaments and the Commission.

3.1. The political dialogue

In 2006, José Manuel Barroso, acting as President of the Commission, launched an initiative in view of setting new, direct, informal and dense relations with national parliaments. The assemblies were invited **to address questions and comments on the legislative initiatives** of the Commission to which the Commission committed to answer.⁸ A few months after the failure of the European Constitution, the initiative aimed at politicizing the decision-making process and reducing the gap between national politics and Brussels.

The Commission also decided to **send directly** to national parliaments all the documents it produces including the proposals for legislation. Before that, the draft laws were required to transit through national bureaucracies, which resulted in delays and restrictions. As previously mentioned, once in force in December 2009, the Treaty of Lisbon made this direct transmission compulsory.

Beyond the procedural details, the "Barroso initiative" was symbolic of a willingness to consider that national parliaments could – and maybe *should* – participate directly to the EU decision-making process, and not only through "their" government. In a way, the initiative **ended with the view that there would be a monopoly** in the political defence and representation of national interests.

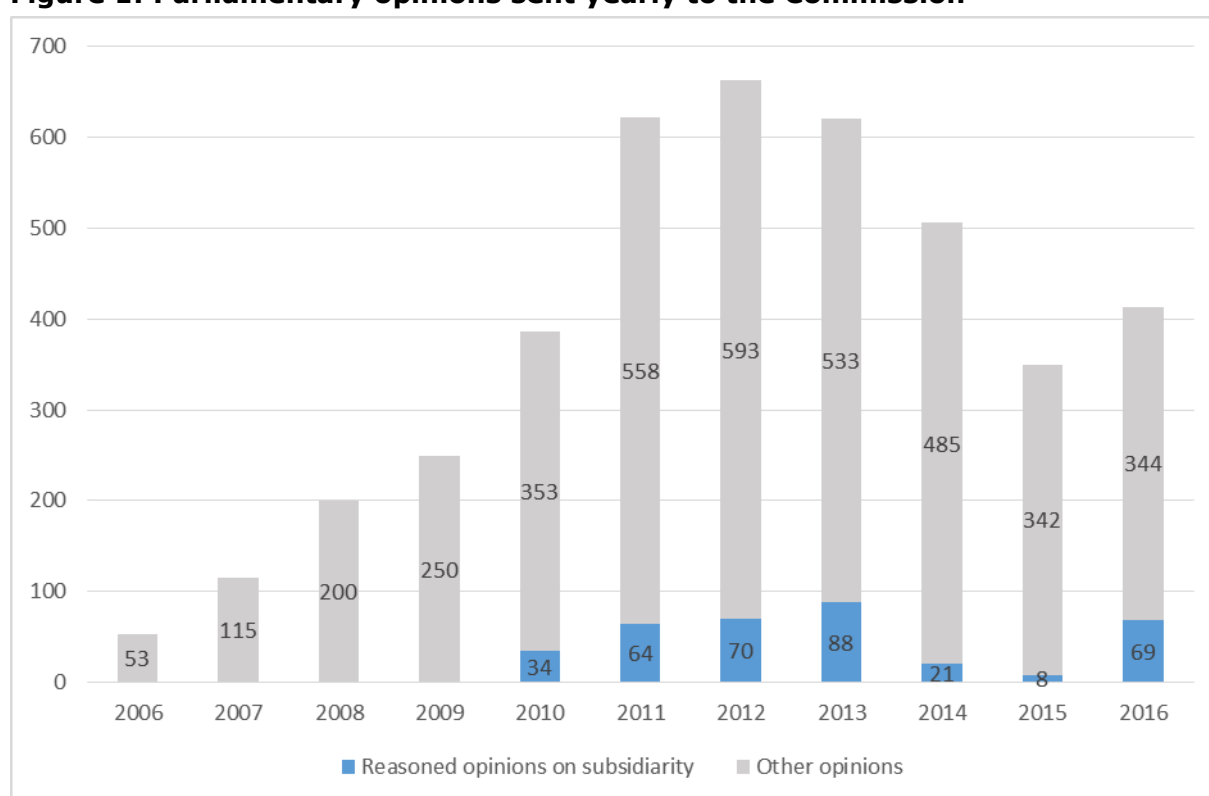
⁸ European Commission, 'A Citizens' Agenda: Delivering Results for Europe', COM(2006) 211. See also: Jančić, D., 2012. The Barroso Initiative: Window Dressing or Democracy Boost?. Utrecht Law Review 8(1), pp.78–91.

3.1.1. Quantitative assessment

More than ten years later, a **rather positive assessment** can be made regarding this initiative; the most positive point being that the initiative still exists. Whereas many institutional innovations tend to be neglected once they lose the attractiveness of their novelty, the procedure is still frequently used. Between 2006 and 2016, more than 4,000 opinions have been sent to the Commission.

In details, Figure 1 indicates that after having constantly progressed from 2005 to 2012, the number of political dialogue opinions tends to slightly regress. This is a trend that can be explained in part by the lower number of legislative proposals formulated by the Juncker Commission.⁹

Figure 1: Parliamentary opinions sent yearly to the Commission



Note:

- The number of reasoned opinions on subsidiarity has been taken from the Commission reports. Figures taken from other sources may differ given: a. the subjective assessment regarding the fact that parliamentary opinions should be regarded as subsidiarity ones or not; b. the fact that the Commission does not count proposals that have arrived after the 8-week period.

Source:

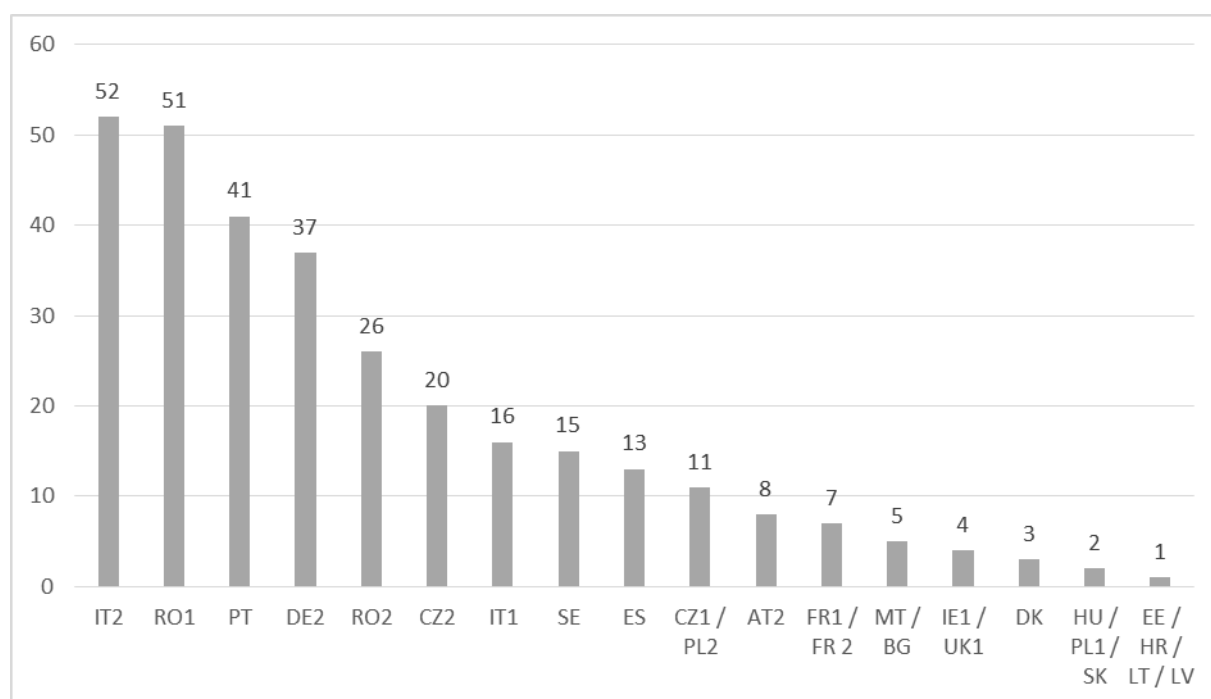
- 2006-2015: European Commission, *Annual Reports on the relation with national parliaments*.
- 2016: European Commission http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm and European Commission General Secretariat.

The aggregate data related to the letters sent to the Commission hides strong variations between assemblies as indicated in Figure 2. In 2016, more than half of the opinions sent

⁹ The lower number of opinions sent by the "champion" of this procedure - the Portuguese assembly - also explains partly the trend.

originated from only four assemblies. Fourteen assemblies (out of 41) did not send any document to the Commission during that year – including the powerful German Bundestag.

Figure 2: Opinions sent to the Commission by parliamentary chambers in 2016



Note:

- Assemblies are indicated through the official EU country code, adding 1 for the lower assembly and 2 for the higher one in case of bicameral parliaments.
- The parliamentary chambers that did not send any opinions in 2016 are AT1, BE1, BE2, CY, DE1, EL, FI, IE2, LU, NL1, NL2, SI1, SI2, UK2.

Source: European Commission

http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm

If we compare the parliamentary activity regarding opinions sent to the Commission in 2016 to the previous years, a picture of stability emerges¹⁰. A few evolutions are worth noticing:

- The **Portuguese** assembly (PT) that sent an opinion for acknowledging the transmission of almost all legislative proposals has stopped doing so since 2015.
- Both **Romanian** assemblies (RO1 and RO2) tend to be quite active in the dialogue with the Commission although their participation has been irregular since their accession to the EU.
- A contradictory trend emerges in the **Czech Republic**: the Senate (CZ2) that used to be deeply involved is now less involved, whereas the opposite is true for the lower house (CZ1).
- Several assemblies that were fairly active in the political dialogue seem to have decreased their activity in 2016. This is the case for the House of **Lords** (UK2) in the special Brexit context and, to a lesser extent, of the **Luxembourgish** chamber (LU) and the **Dutch** Eerste Kamer (NL2).
- By contrast, the **German** Bundesrat (DE2) tends to be more active.

Regarding the content of the opinions, it should be noted that most of them are focussed on the legislative proposals. Yet, recently, an increasing number of opinions sent have dealt with non-legislative documents like communications and green papers. The Commission indicates that, in 2015, "Eleven of the nineteen Commission documents that received most

¹⁰ The correlation regarding the number of opinions sent by parliamentary chamber between the 2010-2015 period and the year 2016 is 0.85 (Portugal excluded, Pearson's r).

opinions from national Parliaments fell within these categories”.¹¹ This is the case for the Commission work programme for which the highest number of opinions (10) was sent in 2015.

3.1.2. Motivations for action

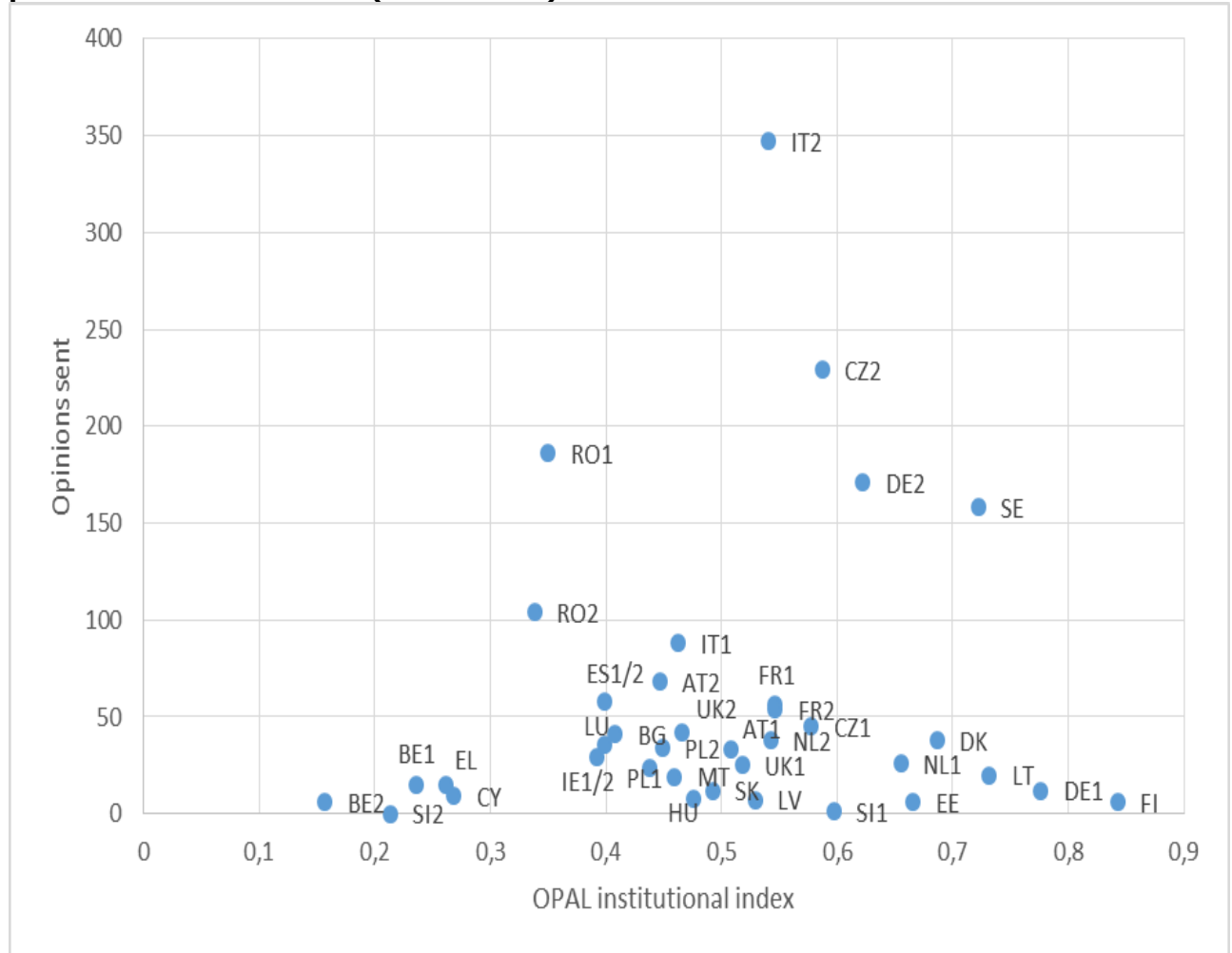
Two observations can be formulated to address the reasons for unequal participation in parliamentary chambers to the dialogue with the Commission.

- **The involvement in the dialogue with the Commission is not related to the general level of formal prerogative of a given assembly on EU affairs.**

Within the framework of OPAL (Observatory of national Parliaments after the Lisbon Treaty), an international team of academics has ranked all parliamentary chambers according to their institutional prerogatives in EU affairs. They took into account many institutional criteria pertaining to the access to information, the scrutiny of the infrastructure of the assembly and the oversight rights for the period 2010–2012. Figure 3 relates this score for each parliamentary assembly to the number of opinions it has sent to the Commission from 2010 to 2016.

¹¹ European Commission, 2016. Annual Report 2015 on Relations between the European Commission and National Parliaments COM(2016) 471, p. 3.

Figure 3: The opinions sent to the Commission and the institutional power of parliaments in EU affairs (2010–2016)



Note:

- The opinions sent cover both reasoned opinions on subsidiarity and political dialogue opinions.
- Portugal does not appear in the graph (927 opinions, 0.43 on the index).
- A single point was given both to Spain and Ireland due to the joint feature of the participation of their bicameral parliaments.

Source:

- Opinions sent 2010-2015: Auel, K. and Neuhold, C., 2016. Multi-arena players in the making? Conceptualizing the role of national parliaments since the Lisbon Treaty. *Journal of European Public Policy*.
- Opinions sent for 2016: European Commission http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm
- OPAL institutional index: Auel, K., Rozenberg, O. and Tacea, A., 2015. Fighting Back? And if Yes, How? Measuring Parliamentary Strength and Activity in EU Affairs. In Heffler, C., Neuhold, C., Rozenberg, O. and Smith, J., eds., *The Palgrave Handbook of National Parliaments and the European Union*. Palgrave Macmillan, pp. 60-93.

Figure 3 clarifies that the **institutional EU strength of an assembly is not related to the engagement in a dialogue with the Commission**. There are influential parliaments that decided to focus on the dialogue with their own government (DE1, FI, LT, DK), and some powerful assemblies that decided to add the direct involvement with EU institutions to their already active domestic role in EU affairs (SE, DE2, CZ2). Conversely, among the less endowed chambers, some parliaments are neglecting the dialogue with the Commission (BE, EL, CY) while others seemingly seek to restore their influence or reputation through the EU card (RO, PT).

These results hold true if we distinguish the participation in the political dialogue and the reasoned opinions on subsidiarity.

- **European parliamentary assemblies have diverse reasons for engaging in the dialogue with the Commission.**

What pushes an assembly to participate in the political dialogue or the EWM differs from one group of assemblies to another.

Some assemblies are seemingly willing **to appear as active** on European issues both for a domestic and international audience. In that perspective, sending an opinion or even a letter to the Commission does not cost much and it enables to feed the yearly reports.

Others tend to appear as active players at European level in order to overcome a domestic position of institutional inferiority. It appears that **higher assemblies tend to be more active** in the dialogue with the Commission as shown by the German, Czech or Italian cases.

Finally, earlier studies established that sending political dialogue opinions (rather than subsidiarity ones) correlated fairly well with issuing EU resolutions. Over the 2010–12 periods, the correlation rate was 0.44¹². Put differently, **the assemblies that send many parliamentary resolutions to their government on EU affairs tend also to be active in sending opinions to the Commission**. In contrast, a similar connection cannot be observed for other types of EU parliamentary activity, regardless of their relation to the meetings of the European Affairs Committees or the plenary debates organized. Therefore, national assemblies that put emphasis on the concrete scrutiny of EU documents, rather than the public debate or the communication to the public, are more likely to send their views to the Commission.

3.1.3. Qualitative assessment

The procedure has been **blamed** for being purely formal.¹³ Some national parliaments occasionally complained about the superficiality of the answers from the Commission.¹⁴ While this point is subjective, it can be noted that many answers are now more developed (often over 3 pages) and detailed. This being stated, it is true that there is indeed the threat that an innovative procedure developed in order to respond to democratic legitimacy concerns, could become a purely bureaucratic routine. The “political dialogue” is sometimes neither political nor a dialogue.

However, our own assessment is more positive. Several elements plead for this dialogue:

- The **procedure is not costly** for national parliaments. It does not require *inter-parliamentary* coordination. It generally necessitates a limited *intra-parliamentary* coordination. Usually, the Speaker must only deliver a formal agreement to a letter or an opinion prepared within the European Affairs Committee or a standing committee.
- The **flexibility** of the procedure is also appreciable. The opinions sent by the parliament can be general or focussed, based on legal or purely political concerns. They can be supportive or critical. Contrary to the EWM, the implicit philosophy of

¹² Auel, K., Rozenberg, O. and Tacea, A., 2015. Fighting Back? And if Yes, How? Measuring Parliamentary Strength and Activity in EU Affairs'. In Heffler, C., Neuhold, C., Rozenberg, O. and Smith, J., eds., *The Palgrave Handbook of National Parliaments and the European Union*. Palgrave Macmillan, pp. 60-93, here p. 90.

¹³ Jancic, D., 2015. The Game of Cards: National Parliaments in the EU and the Future of the Early Warning Mechanism and Political Dialogue. *Common Market Law Review* 52(4), pp. 939-976.

¹⁴ COSAC, 2012. Eighteenth Bi-Annual Report: Developments in the European Union Procedures and Practices Relevant to Parliamentary Scrutiny.

the procedure does not postulate that national assemblies would seek to block European integration. No time limit applies. Although rare, there is the possibility for an assembly to answer to the Commission's reply and thus continue the dialogue.

- More generally, the political dialogue should be understood as a **two-fold information provider procedure**. First, it induces the Commission to provide details about its projects, strategies and objectives. It can therefore be considered as a classical accountability mechanism similar to parliamentary written questions addressed to governments. Second, the opinions received by the Commission are as a signal sent by national assemblies informing on the sensitivity of a given legislative project within a Member State. The signal is not only sent to the Commission but also to the government of the country and even to other Member States.

An asset of the procedure being its flexibility, it is not obvious that a recommendation for improving its functioning is needed. Yet, one can ask whether the political dialogue could be stimulated **early during the consultation procedure** by opening a special phase during which the Commission officially welcomes parliamentary reactions to its legislative projects. Although relevant, such a reform should not limit national parliaments' participation to only the early phases of the EU policy cycle (see 6.3).

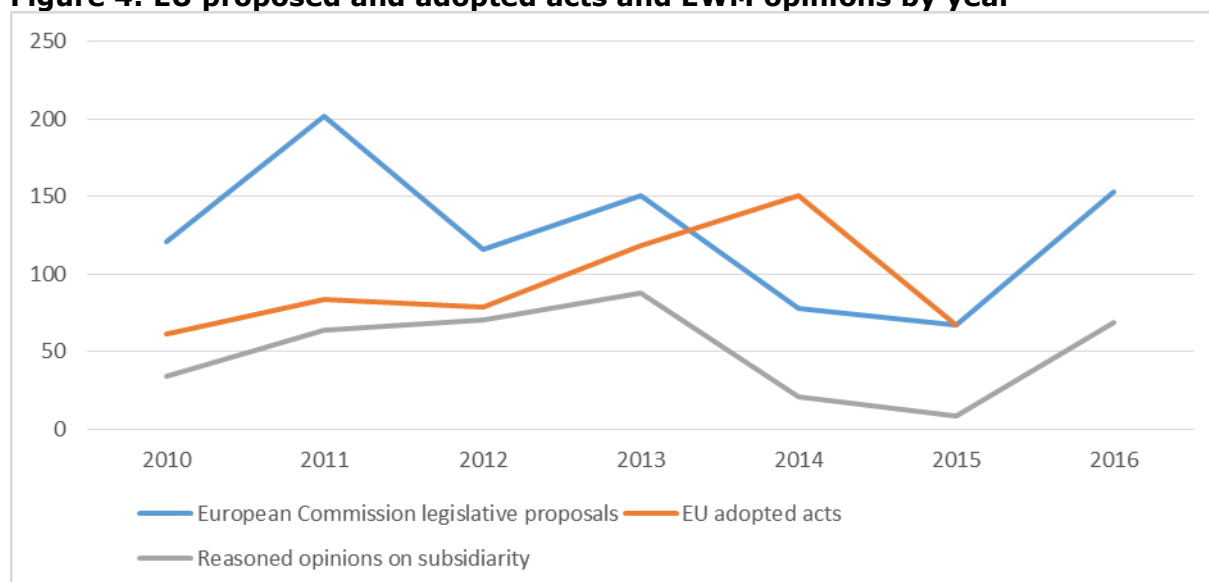
3.2. Early Warning Mechanism

3.2.1. A redundant procedure in the age of better regulation?

The Early Warning Mechanism has generated 354 opinions between the period from 2010 to 2016 (included) – and more precisely 354 opinions that the Commission validated. As for the political dialogue, **this average of 50 opinions a year covers important variations**. Over the six years of existence of the procedure, the most active chambers have been the Swedish parliament (56 opinions) followed by the French Senate (25) and the Dutch lower (22) and higher (18) assemblies.¹⁵ All but one of the 41 parliamentary assemblies have issued at least one opinion. Some active chambers on EU issues, such as the Finnish parliament (3), decided to neglect the tool, as did the lower assemblies of the two biggest Member States with 3 opinions respectively for the Bundestag and the *Assemblée nationale*.

The number of subsidiarity opinions sent yearly depends on the number of legislative proposals that the Commission has made (see Figure 4). By contrast, given the time needed to agree on a legislative proposal (now almost two years), the number of subsidiarity opinions does not correlate with the number of adopted acts (see 6.3).

¹⁵ Auel, K. and Neuhold, C., 2016. Multi-arena players in the making? Conceptualizing the role of national parliaments since the Lisbon Treaty. *Journal of European Public Policy*, advanced online publication.

Figure 4: EU proposed and adopted acts and EWM opinions by year

Note: The number of adopted legislative acts in 2016 is unavailable.

Source:

- Reasoned opinions on subsidiarity: European Commission, *Annual Reports on the relation with national parliaments* (2010-2015) and European Commission General Secretariat (2016)
- Adopted acts: EU Legislative Output 1996-2014 [database], Centre for Socio-political Data (CDSP, CNRS - Sciences Po) and Centre d'études européennes (CEE, Sciences Po) [producers], Centre for Socio-political Data [distributor]. Based exclusively on the monthly summary of Council acts.
- Proposed acts: EUR-Lex database.

The fact that the volume of subsidiarity opinions follows closely the number of legislative proposals partly explains their **limited number**. Indeed, the legislative productivity decreased suddenly in 2010. From 2010 to 2016, the Commission proposed an average of 127 texts yearly versus 271 for the previous seven years. Likewise, from 2010 to 2015, the EU adopted an average of 92 texts versus 205 during the six preceding years.

In short, **a system aiming at limiting an excess of legislation at the EU level was implemented precisely at a time when the EU system entered into a period of legislative slowdown**. This does not mean that the EWM is responsible for this trend but, in fact, that both phenomena are illustrative of the same global evolution: the EU's increasing fridity towards legislation as a public policy instrument. Be it assumed or imposed, this new spirit is well captured by the better regulation agenda – one of the top priorities of the Juncker administration¹⁶. If the principle of subsidiarity is not the only credo of the better-regulation agenda, it is still central to it. Therefore, the progressive implementation of this agenda means that the Commission has also developed tougher internal instruments and procedures aiming at avoiding infringement to the principle of subsidiarity. This has presumably contributed to lower the significance of the EWM. As said by a senior clerk from the French Sénat in 2015: "We don't really need to implement subsidiary checks as the Commission already does the job".¹⁷

¹⁶ Kassim, H., 2016. What's new? A first appraisal of the Juncker Commission. *European Political Science*, advanced online publication.

¹⁷ Interview in Paris, 16 July 2015.

3.2.2. The three yellow card

Thus far, the threshold of one third of the parliamentary assemblies has been reached on three occasions only.

In 2012, a yellow card was raised for the first time on a proposed regulation on the exercise of the **right to take collective action**. Case studies have indicated that the fortuitous meeting of the COSAC during the 6-week period helped for reaching the sufficient number of opinions.¹⁸ This shows that the EWM does not merely rely on each assembly's separate assessment but requires a kind of collective action. The Commission denied any breach of the principle of subsidiarity but decided to withdraw the proposal. Indeed, as the text requires a unanimous agreement within the Council, the yellow card was interpreted as a signal of likely opposition from some governments.

In 2013, a second yellow card was triggered in relation to the Commission's proposal for a regulation establishing the **European Public Prosecutor's Office**. An in-depth analysis of the opinions showed that the assemblies were motivated by a great variety of views¹⁹. Some were opposed to the proposal and took subsidiarity as a pretext. Others were in favour of the Public Prosecutor but concerned by the control of the Commission over it – which means that the notion of subsidiarity was more relevant in their case. Others also used subsidiarity as a pretext as the proposal was not ambitious enough in their view. Faced with this patchwork, the Commission decided to leave the proposal unchanged. Yet, the signal sent by national parliaments most likely induced EU actors to accept significant amendments during the subsequent legislative procedure.²⁰ Nearly four years after, the file is still blocked; a likely outcome being the creation of an enhanced cooperation.²¹

In May 2016, in total 14 parliamentary chambers objected to the Commission's proposal for a revision of the **Posted Workers Directive**. This highly salient issue was especially a matter of concern in Central and Eastern countries as indicated by the parliaments raising opinions (Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia).²² The parliaments from those countries were therefore voicing national concerns, hand in hand with the governments from this area. Under the pressure of Western Member States in which the issue of posted workers is also salient (but for different reasons) and President Juncker's commitment to build a more social Union, the Commission decided again to maintain the proposal unchanged. The legislative process is ongoing.

¹⁸ Cooper, I., 2015. A yellow card for the striker: national parliaments and the defeat of EU legislation on the right to strike. *Journal of European Public Policy*, 22(10), pp. 1406-1425.

¹⁹ Fromage, D., 2016. The second yellow card on the EPPO proposal: An encouraging development for Member States parliaments? *Oxford Yearbook of European Law* 35 (1), pp. 5-27.

²⁰ Interview in Brussels, European Commission, 6 July 2014.

²¹ See: <http://www.consilium.europa.eu/en/press/press-releases/2017/02/07-epo-enhanced-cooperation/>

²² Krelinger, V., 2016. National parliaments' 3rd yellow card: A preliminary assessment, Euractiv.com, 12 May. <https://www.euractiv.com/section/social-europe-jobs/opinion/national-parliaments-3rd-yellow-card-a-preliminary-assessment/>; Krelinger, V., 2016. A 'yellow card' and the damage done, Euractiv.com, 20 July. <https://www.euractiv.com/section/social-europe-jobs/opinion/national-parliaments-3rd-yellow-card-a-preliminary-assessment/>

3.2.3. A rather negative assessment

The main positive outcome of the EWM is certainly **the improvement of the justification** put by the Commission regarding the principle of subsidiarity.²³ This covers not only the three cases where a yellow card was raised but also other legislative proposals given the anticipatory effects of the procedure and the official instructions given by the Commission leaders.

Beyond this positive element, several critics have been formulated. While some of them can be relativized, two negative points emerge.

The **limited number of cases where the threshold was reached is not itself a sign of failure**.²⁴ As said, the Commission may have been taking better care of respecting subsidiarity, partly due to the existence of the EWM. It could also be argued that the scarcity of yellow cards strengthens the political significance of the cases where they are triggered. Likewise, maintaining the proposal by the Commission in two cases out of three is not a sign of failure either, as a yellow card may have a more subtle impact in the course of the legislative procedure.

The EWM has been blamed by specialists mainly on two aspects. First, it would be too costly in terms of **parliamentary resources** for an uncertain outcome.²⁵ The available time of the clerks would be more constructively oriented towards the most prevalent issues of the day, and among them, the control over budgetary and economic issues. The objection to that critic is that many assemblies have already organized an in-depth and comprehensive assessment of the (not so numerous) legislative proposals of the Commission. Also, the drafting of a reasoned opinion on subsidiarity is not so costly. One page is sufficient and no legal expertise is required.

This remark touches upon the second critic made related to the **focus on subsidiarity**. Members of national parliaments (MPs) may not be the best experts on this subject. They may primarily be interested by the content of the issue rather than the legal categorization, which could lead them to divert the procedure. However, objections can be formulated to that critic. The political logic of the subsidiarity concept may justify a political preliminary assessment. Judging whether the EU level provided an added value to political action is largely subjective. Also, the procedure has worked so far rather well despite the ambiguity over the necessity to genuinely focus on subsidiarity. Many opinions that were using this notion as a pretext were still useful to signal to the Commission that a proposal raised political problems within a Member State. In a letter from the 1st of December 2009 addressed to national parliaments, President Barroso expressed that the Commission would "consider all reasoned opinions raising objections as to the conformity of a legislative proposal with the principle of subsidiarity (...), even if the different reasoned opinions provide different motivations as to the non-compliance with the principle of subsidiarity".²⁶

²³ Kiiver, P., 2012. *The Early Warning System for the Principle of subsidiarity: constitutional Theory and Empirical Reality*. Routledge.

²⁴ Barrett, G., 2012. Monti II: The subsidiarity review process comes of age... or then again maybe it doesn't. *Maastricht Journal of European and Comparative Law* 19.

²⁵ de Wilde, P., and Raunio, T., 2015. Redirecting national parliaments: Setting priorities for involvement in EU affairs, *Comparative European Politics*.

²⁶ http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_fr.htm. See also European Commission, 2012. Report from the Commission on Subsidiarity and Proportionality COM(2012) 373, pp. 4-5.

However, at least two elements from the incident relating to three yellow cards can be more negatively assessed. First, there is a **high degree of contingency** in reaching the threshold. Materially, sending opinions in due time from one third of the parliamentary assemblies may depend on the fortuitous physical meeting of representatives from many national parliaments. Cognitively and politically then, the aggregations of the reasoned opinions on subsidiarity hide significant disagreements between assemblies on the content of the proposal. To a great extent, a procedure that depends so much on chance on the one hand and misunderstandings on the other is fundamentally unsatisfactory.

Second, the three yellow cards and other case studies related to the parliamentary procedure for adopting a subsidiarity opinion in many parliaments²⁷ indicate a high degree of **proximity between executive and legislative power** at national level. This does not come as a surprise given the highly ingrained feature of parliamentary regimes in Europe (see 6.1). Yet, the frequent fusion between the parliamentary majority and the executive power raises the suspicion that the whole EWM process could be, at least in some cases, manipulated by members of the Council of the EU. This evokes at least two problems: **the rupture of the institutional balance within the ordinary legislative procedure** and **the democratic justifications for associating national parliaments**. As stated, the involvement of national parliaments in EU affairs was justified on the base of democratic grounds. Parliaments were, at least implicitly, expected to bring some of their democratic virtues within the game, whether it is called proximity, representativeness, pluralism or oral debates. Their capacity to do so is actually questioned, to say the least, when ministers hide behind them to make the most of EU bargains at an early phase.

3.3. Hearings and meetings between national parliaments and the Commission

There are multiple informal or less institutionalised types of contacts between the Commission and national parliaments. MPs from all Member States frequently travel to Brussels. Some organise hearings in the frame of a parliamentary report or an inquiry committee. Others wish to lobby many different types of decision-makers with a goal of obtaining subsidies or amending legislation. Some network according to party, regional or policy fields logics. Many use the opportunity of those ventures **to meet Commission representatives, at administrative level or a higher level**. The permanent parliamentary representatives in Brussels are in charge of organizing those meetings. Beyond the information received by MPs on the Commission project, the meetings also enable Commission officials to comprehend more precisely the sensitivity of a given file in a given country.

Commissions are also frequently heard within the buildings of national parliamentary assemblies. The hearings normally take place at the committee stage but floor debates may occasionally be organised as well. The last report of the Commission on the relations with national parliaments indicate that Members of the Commission paid more than 200 visits to national Parliaments during the course of 2015.²⁸ President Juncker had officially asked for a greater frequency of this type of event after assimilating that the multiple on-going crises the EU is facing necessitates the deepening of dialogue with national parliaments at a political level. However, the occasionally low parliamentary attendance to those hearings and the limited press exposure lead to a moderation of such ambition.

²⁷ See national contributions to: Hefftlar, C., Neuhold, C., Rozenberg, O. and Smith, J., eds., 2015. The Palgrave Handbook of National Parliaments and the European Union. Palgrave Macmillan.

²⁸ European Commission, 2016. Annual Report 2015 on Relations between the European Commission and National Parliaments COM(2016) 471, p. 2.

Top representatives from the Commission also participate in the various existing inter-parliamentary structures. In 2015 the first vice-President participated in two COSAC meetings; President Juncker chaired a meeting of the parliamentary week and the High Representative of the Union for Foreign Affairs and Security Policy, Federica Mogherini, attended both sessions of the Inter-Parliamentary Conference on CFSP/CSDP.²⁹ Within the increasingly dense network of inter-parliamentary relations, developed in chapter 4, the Commission plays, therefore, various roles as an observer, a scrutinized body, a consensus builder, and a **delegate**. The initiative of “green card”, developed below (4.2.3), launched in 2015, has also been officially welcomed by the Commission which indicates in its 2016 report:

“The Commission recognises that national Parliaments, as the representatives of Europe’s citizens at national level, play an important role in bridging the gap between European institutions and the public. The Commission continues to respect the balance between the institutions active on a European level, and is mindful of its right of initiative. However, it has demonstrated that it is ready to consider suggestions from national Parliaments, like their joint initiative on food waste, that indicate where action at European level could bring added benefit.”³⁰

Lastly, the Commission periodically takes commitment toward the comprehensiveness of the information made available to national parliaments. In 2016, an **Inter-institutional agreement on better law making** was agreed. The document mentions national parliaments on two occasions.³¹ First, the Commission commits to make available to them the impact assessments of its legislative and non-legislative proposals. Second, and more importantly, the agreement recognizes the need for more transparency within the legislative procedure (see also 6.4, especially for the decisions taken within the EP). The text mentions that: “The three Institutions agree that the provision of information to national Parliaments must allow the latter to exercise fully their prerogatives under the Treaties” (37). Although very general, a parliamentary assembly or a group of assemblies could use this sentence in the future in order to obtain salient information related to the latest development of the bargains within trilogues meetings.

²⁹ Ibid, pp. 13-14.

³⁰ Ibid, pp. 14-15.

³¹ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ 2016 L 123, p. 1, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016Q0512%2801%29>

4. PARLIAMENTARY NETWORKING AS THE NEXT STEP OF EUROPEAN INTEGRATION? INTER-PARLIAMENTARY COOPERATION

KEY FINDINGS

- Relations between national parliaments and the European Parliament have become diversified; **better coordination** between them **could be highly beneficial** for each party.
- **COSAC** is facing divergences of views about its role as well as a lack of resources and responsiveness.
- The initiative to have a **"green card"** (allowing national parliaments to suggest a legislative initiative to the Commission) has been able to generate support, while legitimacy and effectiveness of a **"red card"** (giving national parliament an implicit blocking possibility) have been questioned.
- **New inter-parliamentary forums** were created, in CFSP/CSDP in 2012, in Economic governance in 2013, and are to be arranged in 2017 (for Europol). The dominating plenary format can lead to a lack of interaction and real debate that has been successfully addressed on certain occasions.
- Inter-parliamentary coordination **could work more smoothly** if it adopted a committee-based approach, if it received additional resources, if the timing of meetings and conferences was better and if technological advances were used. Some of these changes might require the revision of certain Rules of Procedures.

This chapter broadly addresses the issue of the relations between national parliaments and the European Parliament before detailing the various existing types of cooperation between national parliaments and then within inter-parliamentary conferences and forums. The last section formulates recommendations with the purpose of improving inter-parliamentary cooperation.

4.1. National parliaments and the European Parliament

Members of national parliaments constituted the existential link between parliamentary representation at the national and European level until 1979, when the European Parliament was directly elected for the first time. In 1952, Members of the Common Assembly of the European Coal and Steel Community chose to sit along ideological instead of national lines and thus created a transnational assembly. The discontinuation of "double hatted" MPs, although decided for good reasons, has over time led to issues of cooperation between the two levels. The European Parliament has been gradually empowered at every treaty revision since the Single European Act, e.g. with the extension of the co-decision procedure and its role related to the investiture of the Commission. At the same time, national parliaments felt marginalized in the EU and started to 'fight back' against their own executives³², and to some extent, the European Parliament as well. Both parliamentary levels have tried to jealously guard or extend their respective competences and have even

³² Raunio, T. and Hix, S., 2000. Backbenchers learn to fight back: European integration and parliamentary government. *West European Politics*, 23 (4), pp. 142-168.

understood parliamentary prerogatives in the European multi-level system as a zero sum game. Inter-parliamentary relations have oscillated between conflict and cooperation.³³

However, national parliaments and the European Parliament also maintain cooperative relations at various levels, in various formats and constellations. These relations are direct if the specific purpose is cooperation between Members of the European Parliament (MEPs) and MPs or between civil servants. These relations are also direct with third countries and/or linked to international organisations if this cooperation is a goal in itself. These relations are indirect if, for example, their foundations are structured upon the parliamentarians' party affiliation, and only create parliamentary networking as a by-product.

Political parties are the most obvious indirect link between MEPs and MPs from the same country who are members of the same (national) political party.³⁴ Even though MEPs belong to transnational political groups in the European Parliament, their selection and re-election are in the hands of national political parties that must present them as candidates. MPs and MEPs – as the elected representatives in parliaments at different levels of the EU's multi-level system – regularly meet each other in their home countries as well as at gatherings of the different Pan-European political party families. In that case, parliamentary networking is not a goal in itself.

Cooperation is the specific purpose of **inter-parliamentary conferences and inter-parliamentary meetings** (see 4.2, 4.3 and 5.2). They unite MPs and MEPs from the same committees or those working on the same specific issues in order to discuss and exchange the best practices. Such meetings are organised either by the respective committee of the European Parliament and its Directorate for Relations with National Parliaments, by the "Presidency Parliament", or by an individual national parliament. Alongside these networks that are part of the institutional system of the EU, there are Inter-Parliamentary Institutions³⁵: for example, the Parliamentary Assembly of the Union for the Mediterranean has MPs and MEPs as participants.

However, not only parliamentarians network with each other, but also the **civil servants of parliamentary administrations**.³⁶ The highest-ranking officials of parliaments (the Secretary Generals) meet twice a year. One of the strongest networks between officials is between National Parliaments' representatives in Brussels who meet every Monday morning and who are responsible for exchanging with their peers and liaise with EU institutions.³⁷ The European Parliament does not partake in those meetings.

Finally, over the last few years, **parliamentary networks have become more differentiated and clustered**.³⁸ For instance, the French National Assembly hosted inter-parliamentary meetings on EU trade policy in June 2015 and on Corporate Social

³³ Neunreither, K., 2005. 'The European Parliament and National Parliaments: Conflict or cooperation?'. *The Journal of Legislative Studies*, 11 (3-4), pp. 466-489.

³⁴ See for instance: Wonka, A. and Rittberger, B., 2014. The ties that bind? Intra-party information exchanges of German MPs in EU multi-level politics. *West European Politics* 37(3), pp. 624-643.

³⁵ Costa, O., Dri, C. and Stavridis, S., eds., 2013. *Parliamentary dimensions of regionalization and globalization: the role of inter-parliamentary institutions*. Palgrave Macmillan.

³⁶ Högenauer, A.-L., Neuhold, C. and Christiansen, T., 2016. Transnational Bureaucratic Networks in the EU: The Role of Parliamentary Officials in Inter-Parliamentary Coordination and Control. In *Parliamentary Administrations in the European Union*. Palgrave Macmillan, pp. 51-68.

³⁷ Neuhold, C. and Högenauer, A.-L., 2016. *An information network of officials? Dissecting the role and nature of the network of parliamentary representatives in the European Parliament*. *The Journal of Legislative Studies*, 22(2), pp. 237-256.

³⁸ Fromage, D., 2016. Increasing Inter-Parliamentary Cooperation in the European Union: Current Trends and Challenges. *European Public Law*, 22(4), pp. 749-772; here: pp. 761-762.

Responsibility in May 2016.³⁹ Another example are two meetings related to Article 13 of the Treaty on Stability, Coordination and Governance (TSCG) that the Danish Folketing organised in December 2012 and April 2013 in order to discuss the foundation of what is now known as the Inter-Parliamentary Conference on Stability, Economic Coordination and Governance.⁴⁰ Some of these new and informal networks no longer include participants from all Member States and some of these networks exclude the European Parliament in order to allow for the coordination that takes place exclusively between national parliaments.

These examples demonstrate that the **relations between national parliaments and the European Parliament have become diversified**. Many networking activities transpire. A recent example is provided by an initiative taken in 2014 by the President of the EP in order to elaborate shared assessments of the European legislation with national parliaments.⁴¹ The following sections investigate in details different aspects of parliamentary networking: the coordination mechanisms between national parliaments (4.2), the multiplication of parliamentary forums (4.3), and the possibilities to improve inter-parliamentary coordination (4.4) are examined in greater detail.

4.2. Coordination between national parliaments

The existing scheme to involve national parliaments into the political process of the EU relies to a large extent on coordination between national parliaments. This was a deliberate choice, as alternative models, such as creating a “third chamber” composed of national parliamentarians, were not pursued at the European Convention.

According to Article 12 TEU, national parliaments “contribute actively to the good functioning of the Union [...] by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament”.⁴² The precise legal basis for inter-parliamentary cooperation can be found in **Protocol No. 1**: “the organisation and promotion of effective and regular inter-parliamentary cooperation within the Union shall be determined by the European Parliament and National Parliaments”.⁴³

4.2.1. The COSAC

Article 10 of Protocol No. 1 specifies the following:

“a conference of Parliamentary Committees for Union Affairs [...] shall [...] promote the exchange of information and best practice between National Parliaments and the European Parliament, including their special committees. It may also organise inter-parliamentary conferences on specific topics [...]. Contributions from the conference shall not bind National Parliaments and shall not prejudice their positions”.⁴⁴

This provision of the Protocol No. 1 recognises the **COSAC**, which was established in 1989 and started an incremental process of strengthening the coordination of national

³⁹ Ibid

⁴⁰ Ibid, p. 760.

⁴¹ European Parliament, 2016. Relations between the European Parliament and national Parliaments under the Treaty of Lisbon, Annual report 2014/2015, p. 14.

⁴² Article 12 TEU.

⁴³ Protocol No. 1 on the Role of National Parliaments in the European Union annexed to the European Union Treaties, Article 9.

⁴⁴ Protocol No. 1 on the Role of National Parliaments in the European Union annexed to the European Union Treaties, Article 10.

parliaments.⁴⁵ Since then, COSAC has helped to narrow differences in parliamentary scrutiny between national parliaments. This has led to strengthening the provisions for timely and complete information to national parliaments for the ministerial and subsidiarity-related control, both in national provisions and when the EU Treaties were revised. While some national parliaments would welcome boosting the collective influence of parliaments or creating joint scrutiny, COSAC has, if at all, only marginally contributed to this.

This is due to the **divergence of views** of national parliamentary delegations regarding both the role that this forum should take and the topical European issues for discussion. Some chambers traditionally advocate a minimal role and want to focus on information exchange about parliamentary practices while others, such as the French chambers, support a more active version.⁴⁶

Another reason for COSAC's weakness is that it suffers from a **lack of resources**: The small COSAC Secretariat and the national parliament of the Member State holding the rotating Council Presidency (the "Presidency Parliament") share the organisational burden of inter-parliamentary coordination, together with the preceding and the future Presidency Parliament and the European Parliament's "Directorate for Relations with National Parliaments".

An additional weakness of COSAC is that its **meetings are not responsive** to recent developments, as their agenda is set in place well in advance. An exception is the attempt of the Luxembourg Presidency Parliament to "welcome" the EU's migration agenda in COSAC's non-binding contribution in late 2015 (issued and addressed to the EU institutions after each meeting), but parliamentarians from some Central and Eastern European countries opposed this wording.⁴⁷ Eventually a compromise was found:

"COSAC acknowledges that a majority of Parliaments welcomes the European Commission's proposal for a permanent relocation mechanism of refugees; looks forward to the proposal for a permanent resettlement scheme and to the reform of the Dublin Regulation. At the same time, COSAC acknowledges several Parliaments' reservations regarding these measures proposed by the European Commission".⁴⁸

Addressing topical questions in inter-parliamentary coordination and prioritizing it in the overall EU institutional calendar could encourage MPs and MEPs to participate more actively in COSAC. In addition to that, even though the format of COSAC has served as a blueprint for the other inter-parliamentary conferences, COSAC plenary sessions offer little room for spontaneous discussions because they are dominated by prepared speeches. It would be easily possible to adapt the **working methods** in these plenary sessions and other inter-parliamentary conferences. Whether the Dutch Presidency Parliament's more interactive formats of early 2016 (e.g. shorter statements and presentations, parallel working groups during a session) will serve as a model for future Presidency Parliaments remains to be discovered.

Initially created only as a place to exchange information and best practices, COSAC has nevertheless become a place for coordination that **can make a positive difference for**

⁴⁵ See the COSAC website: <http://www.cosac.eu/en>

⁴⁶ See for example Thomas, A., and Tacea, A., 2015. The French Parliament and the European Union: Shadow Control through the Government Majority. In Heffler, C., Neuhold, C., Rozenberg, O. and Smith, J., eds., 2015. The Palgrave Handbook of National Parliaments and the European Union. Palgrave Macmillan, pp. 170-90.

⁴⁷ Gostynska-Jakubowska A., 2016. The role of national parliaments in the EU: building or stumbling blocks? Policy Brief, Centre for European Reform, p. 9.

⁴⁸ Contribution of the LIV COSAC, Luxembourg, 30 November to 1 December 2015, Official Journal of the European Union (2016/C 29/01).

reaching the threshold for a “yellow card”⁴⁹. It is also at the inter-parliamentary forum where reform proposals that would help to improve the coordination between national parliaments, e.g. the “green card” (see below), have been regularly discussed.

4.2.2. Red cards

In 2015, as one of its demands for reforming the EU, the UK government had suggested the idea to introduce a “red card” that would **enable national parliaments to block draft EU legislation**. The proposal that the President of the European Council offered in February 2016 sought to make the EWM more efficient: 55% of national parliaments would be able to challenge a draft legislative act; it would then be discussed in the Council of the EU which would discontinue the consideration of the draft legislative act in question unless the draft was amended to accommodate the subsidiarity concerns of national parliaments.⁵⁰

The substantiality of the very idea to introduce such a “red card” and the effectiveness of the proposal has been widely questioned.⁵¹ It should be noted that the decision of February 2016 was less radical than the initial request made by the British government. No automatic parliamentary veto over a draft act is explicitly foreseen since the Council of the EU is given the possibility to decide. Yet, what would change under this new agreement was the possibility to by-pass the Commission view on the issue of the infringement of subsidiarity – a point that is not negligible given its past reactions when yellow cards were raised. In addition, in the context of the Brexit and the British sensitivity for parliamentary sovereignty, the common understanding of this decision was that a draft legislative act would be discontinued should the 55% threshold be reached.

Even though the agreement has become obsolete after the British referendum on 23 June 2016 saw a majority voting to leave the EU, the topic has not disappeared from the political agenda. For instance, the “red card” was mentioned in a background note for the COSAC plenary in November 2016 that had been prepared by the Slovak Presidency Parliament.⁵²

4.2.3. Green cards

The “green card” is another example of an initiative to strengthen national parliaments. It refers to the possibility for national parliaments to **suggest a legislative initiative to the Commission**. It would add a possibility for willing national parliaments to play a proactive role in the EU agenda-setting process and to further contribute to the good functioning of the EU in addition to the already existing forms of parliamentary scrutiny and involvement. Many supporters of a stronger role for national parliaments prefer this “green card” mechanism that would strengthen the “political dialogue” to the idea of a “red card”.

⁴⁹ Cooper, I., 2015. A yellow card for the striker: national parliaments and the defeat of EU legislation on the right to strike. *Journal of European Public Policy*, 22(10), pp. 1406-1425.

⁵⁰ European Council, 2016. Draft Decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union. EUCO 4/16, Section C. <http://www.consilium.europa.eu/en/european-council/president/pdf/new-settlement/>

⁵¹ Rozenberg, O., 2013. Killing the EU rather than quitting it. Policy Network. <http://www.policy-network.net/articles/4484/Killing-the-EU-rather-than-quitting-it> ; Kreiling, V., 2015. David Cameron’s proposal to give national parliaments a ‘red card’ over EU laws is deeply flawed. LSE EUROPP Blog. <http://blogs.lse.ac.uk/euoppblog/2015/11/10/david-camerons-proposal-to-give-national-parliaments-a-red-card-over-eu-laws-is-deeply-flawed/> ; Hagemann, S., Hanretty, C. and Hix, S., 2016. Red card, red herring: Introducing Cameron’s EU ‘red card’ procedure will have limited impact. LSE EUROPP Blog. <http://blogs.lse.ac.uk/euoppblog/2016/02/13/red-card-red-herring-introducing-camerons-eu-red-card-procedure-will-have-limited-impact/>

⁵² Plenary Meeting of the LVI COSAC, Bratislava 13 – 15 November 2016, Discussion Note, Session 2: Strengthening the Role of National Parliaments in the EU.

In 2015, the Luxembourg Presidency Parliament was mandated to establish a COSAC working group on strengthening the political dialogue by introducing a “green card”. According to a survey that was prepared for a meeting of this working group, the “green card” had gathered support.⁵³ However, different interpretations of how a “green card” should be conceived have emerged among national parliaments.⁵⁴ Each of three slightly different ideas for “green card” mechanisms to send legislative proposals to the Commission is **backed by a significant number of the 41 national parliaments and chambers in the EU**: There are 22 national parliaments in favour of submitting new legislative initiatives, 20 in favour of proposing amendments to existing legal texts, and 18 in favour of suggesting the withdrawal of existing laws – the latter idea cannot legitimately be interpreted as supporting a “red card”, since the “green card” would be a proactive, non-binding instrument for involving national parliaments on the basis of existing treaty provisions.⁵⁵

Table 3: National parliaments’ coloured cards

	Status	Legal basis	Threshold (% of national parliaments)	Effect
“Yellow Card”	EWM entered into force in 2009	Protocol No. 2 to EU Treaties	33%	Commission to reconsider a draft legislative act
“Orange Card”			50%	
“Red Card”	European Council Proposal in 2016 (did not enter into force)	(Draft) European Council decision ⁵⁶	55%	Common understanding that draft legislative act would be discontinued
“Green Card”	Informally used since 2015	none	(25%)	Suggesting a legislative initiative to the Commission

Source: Author

National parliaments have started to use the instrument of issuing a **“green card”** in an informal way. They have emphasised that the “green card” would enhance the existing political dialogue and would allow national parliaments to submit **non-binding political and legislative suggestions to the Commission**, without undermining its right of legislative initiative under the EU Treaties or its competences in the EWM. For the case of

⁵³ Presidency of the Council of the European Union, Grand Duchy of Luxembourg, 2015. Information Note in relation to the COSAC Working Group, “Green card” (enhanced political dialogue) http://www.eu2015parl.lu/Uploads/Documents/Doc/114_2_Information_note_Green_card_20151026.pdf

⁵⁴ Fasone, C. and Fromage, D., 2016, From Veto Players to Agenda-Setters? National Parliaments and their ‘Green Card’ to the European Commission. *Maastricht Journal of European and Comparative Law*, 23 (2), pp. 294-317, here: p. 307.

⁵⁵ Kreiling, V., 2015. David Cameron’s proposal to give national parliaments a ‘red card’ over EU laws is deeply flawed. LSE EUROPP Blog. <http://blogs.lse.ac.uk/euoppblog/2015/11/10/david-camerons-proposal-to-give-national-parliaments-a-red-card-over-eu-laws-is-deeply-flawed/>

⁵⁶ European Council, 2016. Draft Decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union. EUCO 4/16, Section C. <http://www.consilium.europa.eu/en/european-council/president/pdf/new-settlement/>

formally implementing the “green card”, the same voting system as for the EWM, a 25% threshold and a longer deadline, e.g. 16 weeks or six months, have been discussed.⁵⁷

The **House of Lords EU Select Committee** had originally proposed the idea of such an enhanced political dialogue in its report on the role of national parliaments in the EU in March 2014 and invited national parliaments to sign an initiative of a “green card” on the specific topic of food waste without a specific threshold or deadline.⁵⁸ After the Commission had initially made a proposal in July 2014, which included an “aspirational objective” to reduce food waste by 30% by 2025, the new Commission withdrew it in order to present a revised proposal by the end of 2015. The **“green card” sent by 16 chairpersons of national parliaments and chambers** on 22 July 2015 to influence this new proposal **called upon the Commission to adopt a strategic approach to the reduction of food waste.**⁵⁹ Instead of simply formulating vague and consensual wishes, national parliaments’ text was rather detailed in terms of procedures and policies to be implemented. In addition, a European Parliament resolution of 9 July 2015 on moving towards a circular economy also referred to food waste.⁶⁰

On 17 November 2015 **the Commission** replied to the “green card” that it was “working hard on an ambitious circular economy package”, that it was “not possible at this stage to comment on specific initiatives [against food waste] that may form part of it”⁶¹, but **promised to pay particular attention to national parliaments’ suggestions.** In its report on Relations with National Parliaments, the Commission stressed, “Some of the suggestions on food donation, data collection and monitoring were subsequently reflected in the circular economy package adopted in December [2015].”⁶² A recent report by the European Court of Auditors, however, notes that the Commission’s ambition with respect to food waste has decreased over time.⁶³

The circular economy package is now in the EU legislative process. When looking at the five priorities in their “green card”⁶⁴, the proposal does not reflect what national parliaments had intended. The Commission’s own assessment in the 2015 Annual Report on Relations with national parliaments, published on 15 July 2016, seems therefore flattering compared to the reality of the situation.

⁵⁷ Fasone, C., Fromage, D., 2016, From Veto Players to Agenda-Setters? National Parliaments and their ‘Green Card’ to the European Commission. *Maastricht Journal of European and Comparative Law*, 23 (2), pp. 294-317, here: p. 312-313.

⁵⁸ House of Lords, 2015. Lords EU Committee issues first ever ‘Green Card’.

<https://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee/news-parliament-2015/green-card-food-waste-issued/>

⁵⁹ Priestley, S., 2016. Food Waste. House of Commons Library, Briefing Paper Number CBP07552, 30 August 2016, p. 40-41. <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7552>

⁶⁰ European Parliament, 2015. Resolution of 9 July 2015 on resource efficiency: moving towards a circular economy (2014/2208(INI)). <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0266&language=EN&ring=A8-2015-0215>

⁶¹ European Commission, 2015. Reply to the “Green Card”, Brussels, 17 November 2015, C(2015) 7982 final.

⁶² European Commission, 2016. Annual Report 2015 on Relations between the European Commission and National Parliaments. COM (2016) 471 final, p. 11.

⁶³ European Court of Auditors, 2017. Combating Food Waste: an opportunity for the EU to improve the resource-efficiency of the food supply chain. Special report no 34/2016, 17 January 2017, p. 20-22. <http://www.eca.europa.eu/en/Pages/DocItem.aspx?did=40302>

⁶⁴ These five priorities are: 1. EU Food Donation Guidelines for food donors and food banks; 2. An EU co-ordination mechanism to support the sharing of best practices between Member States on food waste prevention, reduction and management strategies; 3. European Commission monitoring of the business-to-business cross-border food supply chain; 4. A European Commission recommendation on the definition of food waste and on data collection; and 5. The establishment of a horizontal working group within the Commission. See Priestley, S., 2016. Food Waste. House of Commons Library, Briefing Paper Number CBP07552, 30 August 2016, p. 40-41. <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7552>

Since this first “green card”, the French *Assemblée nationale* has initiated a “green card” on EU corporate social responsibility, signed in July 2016 by seven other parliamentary chambers.⁶⁵ This prompted the Commission to highlight in its reply (15 December 2016) the series of actions related to corporate social responsibility that it has undertaken.⁶⁶ The Latvian Saeima has put forward another “green card” on the revision of the Audiovisual Media Services Directive in November 2015⁶⁷. However, although discussed in national parliaments, the proposal has not gained as much traction as the two other “green card” initiatives.⁶⁸

The **weak support** for the French and Latvian initiatives suggests that the idea of “green card”, although innovative, will face difficulties to be implemented in the future, especially if the proposals deal with less consensual issues than the environment. The European Parliament’s resolution, “Possible evolutions of and adjustments to the current institutional set-up of the European Union”, adopted in February 2017, supports a “green card”. It suggests “complementing and enhancing the powers of national parliaments by introducing a ‘green card’ procedure whereby national parliaments could submit legislative proposals to the Council for its consideration.”⁶⁹

4.3. The on-going multiplication of parliamentary forums

Since 2012, the Lisbon Treaty and the TSCG have introduced **policy-specific** inter-parliamentary conferences, which are a new development in inter-parliamentary cooperation: the Inter-Parliamentary Conference on CFSP and CSDP was established in 2012, and a year later, the area of Economic and Financial Governance followed (see 5.2).⁷⁰ The European Parliament resolution on “improving the functioning of the European Union building on the potential of the Lisbon Treaty” (adopted in February 2017) stresses “the importance of cooperation between the European Parliament and national parliaments in joint bodies [...] on the basis of the principles of consensus, information-sharing and consultation”.⁷¹ In addition, a new joint parliamentary body in the area of Justice and Home Affairs will start its scrutiny activities in 2017.⁷² It is important to note that many **MPs from sectoral committees** who then meet their counterparts from the European Parliament **have been less engaged in EU-related activities than their colleagues from the European affairs committees of national parliaments**.

⁶⁵ Assemblée nationale, 2016. Corporate social responsibility: proposal for an initiative by the European Commission, Letter to Vice-President Timmermans, 11 July 2016.

⁶⁶ European Commission, 2016. Reply to the “Green Card” on corporate social responsibility, Brussels, 15 December 2016, C(2016) 8597 final.

⁶⁷ Saeima of the Republic of Latvia, Proposal for the green card on the revision of the Audiovisual Media Services Directive 2010/13, Letter to Chairpersons of European Affairs Committees, 23 November 2015.

⁶⁸ Conference of Speakers of the EU Parliaments, 22-24 May 2016. Background Note.

Session III: The Role of National Parliaments and Interparliamentary Cooperation, p. 2. <http://www.ipex.eu/IPEXL-WEB/dossier/files/download/082dbcc55497c086015499bfd16a012f.do>

⁶⁹ European Parliament, 2017. Resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union (2014/2248(INI)). P8_TA-PROV(2017)0048, para. 60.

⁷⁰ Hefftlér, C. and Gattermann, K., 2015. Interparliamentary cooperation in the European Union: Patterns, problems and potential. In Hefftlér, C., Neuhold, C., Rozenberg, O. and Smith, J., eds., *The Palgrave Handbook of National Parliaments and the European Union*. Palgrave Macmillan, pp. 94-115.

⁷¹ European Parliament, 2017. Resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty (2014/2249(INI)). P8_TA-PROV(2017)0049, para. 21.

⁷² See Regulation (EU) No 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and its Article 51(2).

The **Inter-Parliamentary Conference on CFSP and CSDP** succeeded the Parliamentary Assembly of the Western European Union (WEU).⁷³ It also replaced the regular meetings of chairpersons of the relevant parliamentary committees. This inter-parliamentary conference meets twice a year, each time in the Member State that holds the Council Presidency. It is based on Article 10 of Protocol No. 1, which states that COSAC may “organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy.” Parliamentary control of CFSP and CSDP has been assessed “multidimensional” due its mix of intergovernmentalism and supranationalism.⁷⁴ Coordination between national parliaments and the European Parliament in a specific forum could therefore be particularly useful for the parliamentary scrutiny of a policy area traditionally dominated by the executive(s). The meetings can move beyond CFSP/CSDP narrowly defined and have already addressed issues such as trade, neighbourhood or migration policy. The High Representative usually addresses the conference in a keynote speech followed by a Q&A session. However, the Inter-Parliamentary Conference is **not the only parliamentary forum that brings together MPs and MEPs in this policy area**; the Foreign Affairs Committee of the European Parliament regularly organises inter-parliamentary meetings on specific topics in Brussels.⁷⁵

In addition, Article 85 TFEU and Article 88 TFEU provide for inter-parliamentary control over Europol and Eurojust.⁷⁶ A new inter-parliamentary forum, the **Joint Parliamentary Scrutiny Group (JPSG)**, is currently being established on the basis of the revised Europol regulation of 2016.⁷⁷ Its purpose is to “politically **monitor Europol’s activities** in fulfilling its mission, including as regards the impact of those activities on the fundamental rights and freedoms of natural persons.”⁷⁸ In the emerging “Security Union” that the EU seeks to create, and in reaction to recent terrorist attacks, the JPSG could thus play an essential role to ensure its parliamentary control.

Table 3 provides an overview of the various forms of inter-parliamentary cooperation evoked above. Although being neither a pure inter-parliamentary setting nor a permanent organisation, the **Convention** method, initiated in 1999 for the Charter of Fundamental Rights⁷⁹ and used for preparing the European Constitution in 2002-2003, has been added as the Treaty of Lisbon made it compulsory before ordinary treaty revisions. Even if the failure of European Constitution does not help to legitimate this original setting, a new convention may be called in the future – possibly without an immediate mandate to change the treaties. Indeed, in the context of the multiple crises that Europe is facing and of the “existential doubts” of the EU, the joint meeting of representatives from both national

⁷³ Herranz-Surrallés, A., 2014. The EU’s multilevel parliamentary (battle) field: Inter-parliamentary cooperation and conflict in foreign and security policy. *West European Politics*, 37(5), pp. 957-975.

⁷⁴ Butler, G., 2015. The Interparliamentary Conference on the CFSP/CSDP: A new forum for the Oireachtas in Irish and EU foreign policy? *Irish Studies in International Affairs*, 26, pp. 163-186.

⁷⁵ E.g. an Inter-parliamentary committee meeting with the topics “Toward the NATO Summit in Warsaw” and “Conflicts in the MENA region” on 23 February 2016.

⁷⁶ Article 85(1) TFEU: “[...] These regulations shall also determine arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust’s activities.” Article 88(2) TFEU: “[...] These regulations shall also lay down the procedures for scrutiny of Europol’s activities by the European Parliament, together with national Parliaments.”

⁷⁷ Regulation (EU) No 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol).

⁷⁸ Article 51(2) of Regulation (EU) No 2016/794 on Europol.

⁷⁹ On 15 and 16 October 1999, the European Council of Tampere decided to settle a Convention composed of representations of national parliaments, national government, the EP and the Commission in view of preparing the Charter for fundamental rights.

parliaments and of the institutional triangle could appear as relevant for granting the EU with renewed foundations.

Table 4: Inter-parliamentary conferences and forums within the EU

	Year of creation	Legal basis	Composition
EU Speakers' Conference	1963	Not explicitly recognised by the EU Treaties	1 per Member State + 1 European Parliament
COSAC	1989	Protocol No. 1 annexed to the EU Treaties, Title II	6 MPs per Member State + 6 MEPs
<i>Convention related to the ordinary revision procedure of the Treaties</i>	1999 / 2009	<i>European Council initiative, now Article 48 TEU</i>	<i>2 MPs per Member State + MEPs⁸⁰ + 1 representative by MS + 1 Commission representative</i>
Inter-Parliamentary Conference on CFSP and CSDP	2012	Protocol No. 1 annexed to the EU Treaties, Title II	6 MPs per Member State + 16 MEPs
Inter-Parliamentary Conference on Stability, Economic Coordination and Governance	2013	Article 13 TSCG; Protocol No. 1 annexed to the EU Treaties, Title II	Composition and size of delegations determined by each Parliament
Joint Parliamentary Scrutiny Group (Europol)	2017	Article 88 TFEU; Europol Regulation ⁸¹	To be determined

Source: Author

While the precise institutional design of the JPSG remains to be seen, a key **criticism** of plenary-like settings in COSAC and other inter-parliamentary conferences that has often been made is the succession of speeches and a **lack of interaction and real debate**. The “best practices” identified by the Inter-Parliamentary Conference on CFSP/CSDP in 2014 refer to some of these issues and suggest, for instance, to “consider shifting the balance from lengthy plenary presentations by the speakers to more time for questions and

⁸⁰ So far the number of MEPs has corresponded to the total number of Member States plus one.

⁸¹ See Article 51(2), Regulation (EU) No 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and its.

answers.”⁸² The EU Speakers’ Conference, although not explicitly recognised by the EU Treaties, has a coordinating function for inter-parliamentary cooperation.⁸³

4.4. Which improvements for inter-parliamentary coordination?

Ever-closer inter-parliamentary coordination has led to a significant increase in the number of inter-parliamentary meetings and conferences. On the positive side, MPs who are not members of the European affairs committees of national parliaments are becoming involved in inter-parliamentary coordination. The conclusion of this report will return to the fact that **a committee-based approach** seems to be the most promising evolution regarding inter-parliamentary cooperation. In nearly all of the national parliamentary assemblies as well as in the European Parliament, the standing committees constitute solid organisational bases granted with specific prerogatives and, above all, supported by a collective identity. They constitute therefore the most relevant entry for transnational parliamentary networking provided that equivalent structures exist all around Europe – which is sometimes the case (for instance, regarding foreign affairs) and sometimes not (for instance, regarding environment).

Yet, on the negative side, **limited time and resources** that MPs and MEPs are able to dedicate to such initiatives have led to complaints about a lack of focus and impact of many such meetings and conferences. There are **five broad options** to improve inter-parliamentary coordination under the unchanged framework of the existing treaties:

1. *Modify the Rules of Procedure of the conferences in order to make them more effective and efficient:*

The internal functioning of inter-parliamentary conferences is subject to their **Rules of Procedure**. These were agreed by consensus and the formal approach to improving inter-parliamentary coordination at these conferences is by changing these rules and incorporating as many of the improvements proposed below. Seeing as such processes are cumbersome, it might be preferable to start by implementing these changes in an informal way.

2. *Dedicate additional resources to inter-parliamentary coordination:*

Currently, the national parliament of the Member State holding the rotating Council Presidency (the “Presidency Parliament”), the European Parliament’s “Directorate for Relations with National Parliaments” and the small COSAC Secretariat share the organisational burden of inter-parliamentary coordination. National parliaments’ representatives in Brussels and Interparliamentary EU Information Exchange (IPEX) officers as well as other dedicated parliamentary officials in national capitals provide support and information. In order to **boost the organisational and administrative structure for inter-parliamentary coordination**, these actors could be strengthened individually, or a new and independent “General Secretariat for Inter-Parliamentary Coordination” could be created with its own staff and budget, supported with contributions from national and European level.

3. *Improve the timing of meetings and conferences:*

⁸² Interparliamentary Conference for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP). Best Practices. Senate of the [Italian] Republic. 5-7 November 2014.

⁸³ Fasone, C. (2016). Ruling the (Dis-)order of Interparliamentary Cooperation? The EU Speakers’ Conference’, in Lupo, N. and Fasone, C. (eds.), *Interparliamentary Cooperation in the Composite European Constitution*. Oxford, Hart Publishing, pp. 269-289, here: pp. 278-288.

Inter-parliamentary conferences could meet before relevant European Council meetings in order to allow for the conferences to provide suggestions to the agenda of the summits. It is crucial to **position inter-parliamentary coordination in the overall calendar of the EU institutions** and would encourage MPs and MEPs to participate actively in those conferences.⁸⁴

4. *Conduct meetings and conferences in a more interactive way:*

The Dutch Presidency Parliament (January to June 2016) was applauded for conducting the meetings and conferences that it had organised in **a more interactive way**. This approach meant shorter introductory statements and presentations, a session with parallel working groups at an inter-parliamentary conference, a real debate between two panellists or a special plenary session according to the 'catch-the-eye' principle. Thereby the Dutch Parliament followed a recommendation that it had set out in its own report on the role of national parliaments in the EU.⁸⁵ Such innovations are easy to implement and only depend on the willingness of the actors to make use of them.

5. *Upgrade the overall working method:*

Even though most inter-parliamentary meetings and conferences are live-streamed and videoconferences have started to replace face-to-face meetings of minor importance, this kind of inter-parliamentary coordination is still in its first stages/infancy. **Technological advances** reduce the necessity to travel. At the same time, they can help to increase the frequency of coordination and thus establish a much closer cooperation without requiring more time and financial resources.

As EU leaders are reluctant to embark on an ordinary revision of the Treaties following Article 48(2)-(5) TEU and call a European Convention⁸⁶, one could also seek to **relaunch the Assizes** which were only convened once in November 1990, when 258 parliamentarians, from both the national and the European level, met in Rome. However, the conference exposed divergences of interests and views between the European Parliament and national assemblies.⁸⁷

⁸⁴ Kreilinger, V. and Rozenberg O., 2013. Written Evidence for the House of Lords European Union Committee Enquiry on "The role of National Parliaments in the European Union", para. 12.

⁸⁵ Tweede Kamer, 2015. Ahead in Europe – on the role of the Tweede Kamer and national parliaments in the European Union, p. 27; p. 36. See also:

https://www.houseofrepresentatives.nl/sites/www.houseofrepresentatives.nl/files/news_items/ahead_in_europe_tcm181-238660_0.pdf

⁸⁶ See Article 48(3): "If the European Council, after consulting the European Parliament and the Commission, adopts by a simple majority a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of representatives of the national Parliaments, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission."

⁸⁷ Rozenberg, O. and Heffler, C., 2015. Introduction. In Heffler, C., Neuhold, C., Rozenberg, O. and Smith, J., eds., *The Palgrave Handbook of National Parliaments and the European Union*. Palgrave Macmillan, pp. 1-39, here: p. 10; Neunreither, K., 2005. The European Parliament and national parliaments: conflict or cooperation? *The Journal of Legislative Studies*, 11(3-4), pp. 466-489, here: p. 469.

5. WHICH ROLE FOR NATIONAL PARLIAMENTS IN BUDGETARY AND ECONOMIC COORDINATION?

KEY FINDINGS

- The involvement of national parliaments in the preparation of **Stability or Convergence Programmes and National Reform Programmes** varies, as data for 2016 shows. Only a few parliaments have the possibility to vote on these documents.
- The **inter-parliamentary conference foreseen by Article 13 TSCG** has met eight times since late 2013. The size and composition of the parliamentary delegations to the conference, however, are not defined which constitutes a major stumbling block for the institutionalisation of this body.
- A debate is open **about the future role of parliaments in the budgetary and economic coordination of the euro area**. Three aspects are distinguished:
 - 1. **A “meaningful” inter-parliamentary control** that could take different forms: a Eurozone Parliament, a less far-reaching Eurozone Assembly, a euro area component in the Inter-Parliamentary Conference on Stability, Economic Coordination and Governance;
 - 2. **Institutional engineering in the European Parliament** would lead to a euro area subcommittee;
 - 3. The major part of the control would be exercised **individually by each national parliament**.

This chapter addresses the existing practices of control related to the European Semester before proposing a first assessment of the Inter-Parliamentary Conference on Stability, Economic Coordination and Governance in the EU. The options related to future form of parliamentary control over budget and economic issues are also discussed.

5.1. The diversity of domestic parliamentary procedures related to the European Semester

All Member States and National parliaments have had to cope with new rules related to budgetary discipline. Given the increasing influence of the Commission on the drafting of national budgets, the stakes are high.⁸⁸ The coordination of national budgetary and economic policies at the EU level takes place in the framework of the European Semester. **The roles that national parliaments have started to play in these processes are varying** and domestic parliamentary procedures differ largely. Three major stages of the European Semester offer **opportunities for national parliaments to exercise scrutiny**: firstly, the Annual Growth Survey; secondly, national governments’ preparation and drafting of Stability or Convergence Programmes and National Reform Programmes; and thirdly, the Country-Specific Recommendations.

⁸⁸ Rozenberg, O. and Hefftler, C., 2015. Introduction. In Hefftler, C., Neuhold, C., Rozenberg, O. and Smith, J., eds., *The Palgrave Handbook of National Parliaments and the European Union*. Palgrave Macmillan, pp. 1-39, here: p. 23.

5.1.1. From scrutiny

Each year in November, the **Annual Growth Survey** (EU-wide economic policy priorities) and the Alert Mechanism Report (macro-economic imbalances) start a new cycle of the European Semester. This is the first stage of the European Semester. It takes place at the European level and these documents are scrutinised in the European Parliament. The Five Presidents' Report stated in 2015 that as "a rule, national parliaments should be closely involved in the adoption of National Reform and Stability Programmes."⁸⁹ This is still not always the case, but **national parliaments are generally becoming more involved** in that second stage of the European Semester in order to discover their government's plans, promises and pledges. This kind of parliamentary scrutiny mostly takes place in European affairs committees or Budget and Finance committees of national parliaments, before those programmes are sent to Brussels.⁹⁰

Table 4 shows the **involvement of national parliaments in the preparation of Stability or Convergence Programmes and National Reform Programmes in 2016**. The minimum requirement for *participation in the preparation* of these programmes, as defined by Raimla (2016), is *informing* the national parliament of the programmes *before* their submission at the end of April (*ex-ante*). The information from the text of these two programmes was complemented by information received from representatives of national parliaments.⁹¹ **The data reveals that parliamentary involvement differs**. In 2016, 16 out of 28 national parliaments scrutinized Stability or Convergence Programmes and National Reform Programmes. In three Member States, national parliaments scrutinized the Stability or Convergence Programme, but not the National Reform Programme. Finally, there are nine countries whose national parliaments did not exercise scrutiny over these programmes before national governments submitted them to Brussels by the end of April 2016. There is no apparent impact of Eurozone membership on the degree of parliamentary control (see Table 5).

⁸⁹ Juncker, J.-C., et al., 2015. Completing Europe's Economic and Monetary Union. Five Presidents' Report. European Commission, p. 17.

⁹⁰ Kreiling, V., 2016. Economic Policy Coordination in the EU: Linking national ownership and surveillance. Synthesis. Jacques Delors Institut – Berlin, pp. 2-3.

⁹¹ Raimla, E., 2016. Involvement of the National Parliaments in SCPs and NRPs – 2014, 2015 and 2016. European Parliament Directorate-General for Internal Policies, Economic Governance Support Unit, p. 1.

Table 5: Involvement of National Parliaments in the European Semester (2016)

Participation of respective national parliament in the preparation of:		National Reform Programme 2016	
		Yes	No
Stability or Convergence Programme 2016	Yes	CZ, DK, DE, ES, FI, FR, HR, IT, LV, LT, LU, NL, PL, PT, SE, SI (16)	BG, IE , UK (3)
	No	-/- (0)	AT, BE, CY, EE, EL* , HU, MT, RO, SK (9)

Note:

- * EL: Member State subject to a macro-economic adjustment programme not required to submit a fully-fledged Stability Programme and National Reform Programme.
- Member States whose currency is the Euro are printed in **bold**.

Table: the author, following the tables in Hallerberg, M., et al., 2012. *An Assessment of the European Semester*. European Parliament, pp. 71-75.

Data: Raimla, E., 2016. *Involvement of the National Parliaments in SCPs and NRPs – 2014, 2015 and 2016*. European Parliament Directorate-General for Internal Policies, Economic Governance Support Unit.

One of the national parliaments that have opted for a **strong procedural way of adapting to the European Semester** is the Danish Folketing. It created a separate “National Semester” and made the different stages of the European Semester subject to debates in joint committee meetings.⁹² At the other end of the spectrum of parliamentary adaptation – albeit also with a strong parliamentary role in the European Semester – is Finland, where Eduskunta stated in the questionnaire to the 21st bi-annual report of COSAC that existing rules for the parliamentary scrutiny of the annual budget process fit “nicely”⁹³ and did not need to be adapted to the European Semester.⁹⁴

5.1.2. To vote

Possibly the strongest way of controlling the submissions of the national government in the European Semester is to **give a national parliament the right to vote on the National Reform Programme or on the Stability or Convergence Programme** before it is sent to the Commission by the end of April. Such a vote could be complemented by giving MPs the possibility to table amendments to these drafts. According to a 2014 survey by the European Parliament’s Directorate for Relations with National Parliaments, **only a few** national parliaments have voting or amending powers. Some assemblies vote directly on the Stability Programme (Portugal and supposedly France) or in the context of the broader examination of national budgetary documents (Estonia, Italy). Others have the possibility

⁹² Folketing, 2013. Report on Consideration of the European Semester by the Danish Parliament. European Affairs Committee and Finance Committee, p. 2.

⁹³ COSAC, 2014. Annex to the Twenty-first Bi-annual Report: Developments in European Union. Procedures and Practices Relevant to Parliamentary Scrutiny, p. 240.

⁹⁴ Kreilinger, V., 2016. National parliaments, surveillance mechanisms and ownership in the Euro Area. Jacques Delors Institut – Berlin, p. 30, pp. 35-36.

to adopt an opinion on the Programme that can be binding for the government (Finland), or they can vote on and amend the Stability Programme (Latvia).⁹⁵

Organising **a vote is certainly preferable** compared to a simple debate. Given the parliamentary nature of European governments, every delicate vote in lower assemblies can appear as a sign of political weakness for the executive power. With the sanction of a vote, national governments have strong incentives to fully justify their position and therefore can be considered held better accountable. However, the example of France in recent years shows that even strong prerogatives are not able to impede the government and its parliamentary majority from overruling or ignoring a (legal but not constitutional) requirement to put the Stability Programme formally before parliament and make it subject to a vote in plenary.⁹⁶

In addition, **country-specific recommendations** are subject to parliamentary scrutiny targeted at the national government as well as at the Commission. National parliaments usually scrutinise these recommendations after they have been adopted by the Council. Interestingly enough, countries with a higher implementation rate for country-specific recommendations seem to have national parliaments that have specifically adapted their internal procedures to the European Semester. Denmark is the frontrunner, while a group of six Member States (Belgium, Czech Republic, Hungary, Luxembourg, Slovakia and Slovenia) is lagging behind.⁹⁷

5.2. The difficult institutionalisation of the “Article 13 Conference”

The Treaty on Stability, Coordination and Governance (TSCG) has allowed for the **creation of an inter-parliamentary conference in order to discuss budgetary policies** and other issues covered by that treaty.

Article 13 TSCG is the product of the intergovernmental negotiations and has undergone significant changes during the negotiating process, revealing the difficulties in reaching an agreement on this point. The final wording agreed by the Contracting Parties is as follows:

“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”.⁹⁸

The conclusions of the Speakers’ Conference in April 2013 provided the basis for bringing Article 13 TSCG into practice in October 2013. However, the **Inter-Parliamentary Conference on Stability, Economic Coordination and Governance in the EU**

⁹⁵ European Parliament, 2014. Review of Stability and Convergence Programmes by National Parliaments within the framework of the European Semester (Spotlight on Parliaments on Europe, n° 2), pp. 2-3.

⁹⁶ Assemblée nationale, 2015. Rapport d'information n° 3195, commission des affaires européennes sur le traitement des affaires européennes à l'Assemblée nationale déposé le 3 novembre 2015 par Philip Cordery et Pierre Lequiller.

⁹⁷ Parliaments in Spain, France, Lithuania, Austria and Latvia are also regarded as active. See: Kreilinger, V., 2016. National parliaments, surveillance mechanisms and ownership in the Euro Area. Jacques Delors Institut – Berlin, pp. 5-7.

⁹⁸ Article 13 TSCG.

subsequently discussed for two years whether it should adopt Rules of Procedure and possible provisions.⁹⁹

The **difficult institutionalisation of the inter-parliamentary conference** reflects profound disagreements about which functions it should fulfil and what the actual purpose of inter-parliamentary cooperation should be: Should it decide? Should it control? Should it discuss? The key problem lies in overlapping authority claims between the European Parliament and national parliaments, not only in the field of Foreign and Security Policy¹⁰⁰, but also in Economic and Financial Governance. An incremental and informal empowerment of the European Parliament clashes with national parliaments and their **constitutional role linked to ratifying intergovernmental treaties** such as the TSCG as well as their domestic role in controlling national governments. So far, this has prevented the possibility of efficiently sharing the scrutiny tasks between national parliaments and the European Parliament in budgetary and economic coordination.¹⁰¹

The **compromise on the Rules of Procedure**¹⁰² that was found at the meeting of the conference in Luxembourg **in November 2015** essentially codified existing practices. The conference meets twice a year, each delegation can determine its size and composition, and the first meeting of the year is connected to the European Parliamentary Week of the European Semester that takes place in the European Parliament. In the second half of the year, the conference meets in the Member State that holds the Council Presidency. The Inter-Parliamentary Conference on Stability, Economic Coordination and Governance in the EU is **an example for the multiplication of inter-parliamentary forums** since 2012 (see 4.3) and essentially follows the new “standard model” of an inter-parliamentary conference that is used for COSAC and CFSP/CSDP. MPs from all 28 Member States, i.e. also those that have not (UK and Czech Republic) or not yet (Croatia) signed the TSCG, participate in the conference.

Eight meetings of the “Article 13 Conference” have taken place **between late 2013 and early 2017**. As an attempt to control Economic governance that has been dominated by the executive(s), the provision of Article 13 TSCG was supposed to allow for “discuss[ing] budgetary policies and other issues” covered by that treaty. Yet, the meetings have moved beyond these topics and addressed more broadly defined economic policy, e.g. social affairs, growth and jobs. The key actors in Economic governance (Commissioners, Eurogroup) usually address the conference in speeches followed by Q&A sessions. In addition to the conference, an inter-parliamentary meeting to discuss the European Semester that is organised by the Economic and Monetary Affairs (ECON) committee of the European Parliament in September each year brings together MPs and MEPs in this policy area.

The functioning of the inter-parliamentary conference could be **improved** by better situating it in the overall EU institutional calendar. The meetings could, for instance, take place at critical junctures of the European Semester, e.g. in November or December after the Annual Growth Survey is presented and in June after country-specific recommendations

⁹⁹ See Kreilinger, V. and Larhant, M., 2016. Does the Eurozone need a Parliament? Jacques Delors Institut – Berlin, p. 6.

¹⁰⁰ Herranz-Surrallés, A., 2014. The EU’s multilevel parliamentary (battle) field: Inter-parliamentary cooperation and conflict in foreign and security policy. *West European Politics*, 37(5), 957-975.

¹⁰¹ Kreilinger, V., 2016. National parliaments, surveillance mechanisms and ownership in the Euro Area. Jacques Delors Institut – Berlin, p. 57.

¹⁰² Inter-Parliamentary Conference on Stability, Economic Coordination and Governance in the EU, 2015. Rules of Procedure.

<http://www.ipex.eu/IPEXL-WEB/dossier/files/download/082dbcc552572ef9015259413ba101a0.do>

are issued.¹⁰³ This would encourage MPs and MEPs to participate actively and allow them to report back to their respective committees at the national level. Like in the case of the other inter-parliamentary conferences, the plenary sessions are dominated by prepared speeches and offer little room for spontaneous discussions. Parallel working groups, as they have been organised by the ECON, Budgets and Employment and Social Affairs committees of the European Parliament at the first meeting of the conference in the European Parliamentary Week, e.g. in 2016 and 2017, are an example for a **greater specialisation within the inter-parliamentary conference**.

In terms of participation, between 60 and 80 MPs attend the meetings of the Inter-Parliamentary Conference on Stability, Economic Coordination and Governance in the EU. There are divergences in the size and composition of national parliaments' delegations, but the conference has achieved a greater involvement of sectoral committees: About half of the participating MPs is affiliated to Budget or Finance committees, one third to European affairs committees and the rest to other committees.¹⁰⁴ It can be noted that the decision taken in 2015 not to define the size and composition of the parliamentary delegations to the conference – contrary to similar organisations such as the Inter-Parliamentary Conference on CFSP and CSDP – constitutes **a major stumbling block for the institutionalisation** of this new body.

5.3. The on-going debates related to the parliamentary control of the EMU

Undoubtedly, the deepening of the Economic and Monetary Union (EMU), based on the Five Presidents' report, will also require an intensifying of parliamentary control. In their reflections on completing the EMU, the French *Assemblée nationale*¹⁰⁵ and the UK House of Lords¹⁰⁶ have set out proposals for strengthening parliamentary control in the EMU. Furthermore, the EP resolution on a "budgetary capacity for the Eurozone" of February 2017 stresses that the EP and national parliaments

"Should exercise a strengthened role in the renewed economic governance framework in order to reinforce democratic accountability. This includes increased national ownership on the European semester and a reform of the interparliamentary conference provided for in Article 13 of the Fiscal Compact to give it more substance, in order to develop a stronger parliamentary and public opinion."¹⁰⁷

Parliamentary control of the EMU is a major issue and should already be tackled in the current set-up of the EMU. While some think that an innovative parliamentary body could create new political conditions for deepening the EMU, others argue that the deepening of EMU will lead to an intensification of parliamentary control in the EMU, more specifically related to the euro area. **The idea of a "Eurozone Parliament" has re-emerged in the**

¹⁰³ Assemblée nationale, 2015. Rapport d'information n° 3232, commission des affaires européennes sur la gouvernance de la zone euro déposé le 18 novembre 2015 par Christophe Caresche.

¹⁰⁴ Kreiling, V., 2016. National parliaments, surveillance mechanisms and ownership in the Euro Area. Jacques Delors Institut – Berlin, p. 30, pp. 47-49.

¹⁰⁵ Assemblée nationale, 2016. Rapport d'information n° 4257, commission des affaires européennes sur le renforcement de l'Union économique et monétaire déposé le 3 novembre 2015 par Philip Cordery et Arnaud Richard.

¹⁰⁶ House of Lords European Union Committee, 2016. 'Whatever it takes': the Five Presidents' Report on completing Economic and Monetary Union. 13th Report of Session 2015-16. HL Paper 143.

¹⁰⁷ European Parliament, 2017. Resolution of 16 February 2017 on budgetary capacity for the Eurozone (2015/2344(INI)). P8_TA-PROV(2017)0050, item iii.

public debate, especially in France.¹⁰⁸ It could inject more politics into the rules of economic governance that have featured the Eurogroup and the Commission. Such parliament could also be the logical consequence of the objective to create a separate budget for the Eurozone and constitute the democratic element of the EMU.¹⁰⁹ It is important to note that the debate has found little echo in other Member States. In the following sections, three possible developments for parliamentary control in the EMU are outlined

5.3.1. Meaningful inter-parliamentary control

Under the current structure it is difficult to discern how inter-parliamentary control at the European Parliamentary Week and the Inter-Parliamentary Conference on Stability, Economic Coordination and Governance in the EU could have a real impact.

A meaningful inter-parliamentary control would follow the objective to make inter-parliamentary cooperation **more attractive to participants as well as more influential** regarding major macroeconomic decisions, in particular for the euro area. Three proposals can be listed from being the most radical to being the most moderate:

1. In order to respond to the need to better involve national parliamentarians, a regularly recalled solution is to create a **"Eurozone Parliament"** composed either of members of national parliaments and the European Parliament, or only of members of national parliaments. The latter would be "a parliamentary organ different from the European Parliament".¹¹⁰ For instance, Thomas Piketty has been in favour of "a parliamentary chamber for the Euro Area made up of representatives of the national parliaments, in proportion to the population of each country and the different political groups", which would "decide all budgetary and financial issues directly affecting the Euro Area, starting with the European Stability Mechanism, controlling deficits, and restructuring debt".¹¹¹
2. Such radical proposals undoubtedly face strong opposition throughout Europe. An intermediate solution, formulated by Valentin Kreiling and Morgan Larhant for the Jacques Delors Institut – Berlin, would be to create a **"Eurozone Assembly" composed of MPs and MEPs**, which could create sub-committees that would cover specific subjects of economic governance, such as the Annual Growth Survey or country-specific recommendations.¹¹²
3. A less ambitious, but rather feasible option would be to create and establish a **euro area component inside the inter-parliamentary conference of Article 13 TSCG**.

Despite the difficulties in inter-parliamentary relations over the last years, **national parliaments and the European Parliament are still generally convinced that their cooperation has an added value**. In light of the need to find a common response to the

¹⁰⁸ See, amongst others, Hollande, F., « Ce qui nous menace, ce n'est pas l'excès d'Europe, mais son insuffisance », Journal du dimanche, 19 July 2015. His former minister for Economy, now candidate for the French presidential election, Emmanuel Macron also mentions the need for creating a Eurozone assembly in his platform. See Macron, E., 2016. Révolution. XO.

¹⁰⁹ Kreiling, V. and Larhant, M., 2016. Does the Eurozone need a Parliament? Jacques Delors Institut – Berlin, p. 3.

¹¹⁰ Piri, J.-C., 2012. The Future of Europe. Towards a Two-Speed EU? Cambridge University Press, pp. 127-130.

¹¹¹ Piketty, T., 2016. La droite française et les critères budgétaires européens. Le Monde.

<http://piketty.blog.lemonde.fr/2016/10/18/la-droite-francaise-et-les-criteres-budgetaires-europeens/>

¹¹² Kreiling, V. and Larhant, M., 2016. Does the Eurozone need a Parliament? Jacques Delors Institut – Berlin, pp. 10-11.

threat of being marginalized and excluded from budgetary and economic coordination, it seems possible to agree on common measures to strengthen inter-parliamentary control. Beyond the institutional debate over the best-fitting type of assembly, it is also important to stress that a key point to achieve a meaningful inter-parliamentary control relates to working method, timing, Rules of Procedure and conditions for membership.

As indicated below (6.2), the definition of the membership condition of such a network is especially a key condition to its success. Regardless of the type of forums selected, **two representatives from Budget and Finance committee from all parliamentary assemblies – the chair and a deputy chair belonging to opposite political parties – would constitute a solid foundation for a genuine network of high flyer specialists.** Given the existence of bicameral systems, this would require presenting four seats by Member States, which represents in the end a forum of one hundred members for the euro area (4 MPs x 19 Member States + 20 to 25 MEPs).

5.3.2. Institutional engineering in the European Parliament

The possibility to adapt the internal functioning of the European Parliament has been discussed for a long period of time. The European Parliament has held plenary and committee meetings that exclusively examined euro area matters, but not created specific structures.

It would be possible to set up a **euro area subcommittee in the European Parliament** that would deal with euro area matters. Discrimination between MEPs on the premise of their nationality is prohibited, but a possibility to influence the composition of this subcommittee exists through an informal agreement between the political groups. And bodies including MEPs from all Member States would again be responsible for economic governance beyond the euro area.

It is unlikely that a proposal to divide the European Parliament, for example, the creation of a euro area component with decision-making power, be implemented. But, in the context of deepening the EMU, solutions that involve **minor institutional engineering** could find enough support inside the European Parliament. This would reinforce the European Parliament in Economic governance and create a parliamentary interlocutor for euro area matters.

5.3.3. National parliaments fight back

National parliaments have begun to dedicate time and resources to controlling budgetary and economic policy coordination. This has happened in an asymmetric way: some parliaments have been active, while others have been rather inactive (see Table 4 above).

In the context of a discussion on completing the EMU, **national parliaments become more aware of the importance of economic governance.** The exchange of information and best practices via inter-parliamentary cooperation could lead to the diffusion of mechanisms that allow holding national governments accountable, for example, with respect to the National Stability and Reform Programmes that they submit to the Commission.

The development of scrutiny activities of national parliaments, for instance, with respect to **controlling** their head of state or government before and/or after **European Council and**

euro area summits¹¹³ is an encouraging step in that direction. National parliaments have shown that they are able to respond to economic and budgetary coordination and “fight back”.¹¹⁴

These three options are not mutually exclusive, but complement each other and they can be expected to frame the debates on strengthening parliamentary control in the EMU.

¹¹³ Wessels, W., Rozenberg, O., Van Den Berge, M., Heffler, C., Kreilinger, V. and Ventura, L., 2013. Democratic Control in the Member States of the European Council and the Euro zone summits. European Parliament.

¹¹⁴ Raunio, T. and Hix, S., 2000. Backbenchers learn to fight back: European integration and parliamentary government. *West European Politics*, 23 (4), pp. 142-168.

6. CONCLUSIONS AND RECOMMENDATIONS: CONTEMPORARY CHALLENGES FOR NATIONAL GOVERNMENTS

KEY FINDINGS

- The participation of **opposition parties** in EU (national) parliamentary activities is a major challenge. Given the frequent fusion between a parliamentary majority and the government, any kinds of “red cards” given to national parliaments could indirectly strengthen the Council *vis-à-vis* other EU institutions. Various recommendations are formulated in order to grant the opposition with minimal rights in EU affairs – especially regarding parliamentary cooperation.
- Genuine parliamentary cooperation could also be strengthened provided that it be based on **existing standing committees** rather than on new *ad hoc* forums.
- An often-unnoticed issue regarding national parliaments lies in the **differences of rhythm** between national and EU politics. The on-going slow-down of the EU legislative process raises a problem of continuity for the activity of national parliaments. It calls for a cyclical and iterative parliamentary intervention that would not be limited to the first weeks of bargains.
- The **transparency of EU bargains** during the legislative procedures is a major problem for national parliaments. The generalisation of agreements during the first reading calls for imposing less secrecy during trilogues – a process that has been engaged recently and in which national parliaments could play a greater role. The informality of the decision-making process within the Council of the EU constitutes another challenge for national parliaments for which no obvious solution emerges.

In conclusion, different types of challenges regarding the role of national parliaments in EU affairs are listed, along with a few recommendations to address them.

6.1. The participation of the opposition and the fusion between parliaments and governments

Without any doubt, the pluralism of parliamentary representation is a central feature and justification for the parliamentary model.¹¹⁵ Genuine representation is not possible without giving a say to the opposing party. In EU affairs, the capacity for parliamentary opposition to weigh in on the European activities of the assemblies depends on the domestic legal rules (Constitution and Standing orders) as well as on the domestic balance of power. In several assemblies, it appears that the parliamentary majority, *de facto* placed under the authority of the Prime minister, fully controls either the initiative of a parliamentary activity or its content. This can be the case for initiating a parliamentary debate (e.g. before a European Council session), for deciding on whether this debate should be followed by a vote, and for issuing all kinds of parliamentary opinions.

The fusion between the parliamentary majority and the executive power has important consequences regarding the EWM. In many cases, a national government pushes “its” parliament to raise a subsidiarity opinion in view of blocking or delaying a given legislative proposal. When parliamentary assemblies act more autonomously,

¹¹⁵ Ihalainen, P., Ilie, C. and Palonen, K., eds., 2016. *Parliament and Parliamentarism. A Comparative History of a European Concept*. Bergham.

informal procedures of consultation exist at the political or administrative level to check that the parliamentary and governmental positions are consistent. In the case of the third yellow card issued in 2016 on the revision of the Posted Workers Directive, it has been noted that the position of the Eastern European assemblies mobilised reflected the concerns of the governments of those countries.

To a large extent, such indirect activation of national parliaments by the executive is inevitable.¹¹⁶ Yet, having them in mind can help assess the possible effects of the on-going proposals related to national parliaments. Any kinds of “red cards”, i.e. of procedures enabling national parliaments to block a legislative proposal before it has been discussed in the Council and the EP, would actually give the opportunity to some governments to try to block the opening of the ordinary legislative procedure.¹¹⁷ In Member States where the fusion between the parliamentary majority and the executive is significant, **the government would therefore have two possibilities to act: indirectly at the start of the legislative procedure through their parliament, and directly after.**

Second, despite the proximity between the parliamentary majority and the government, some procedural requirements can be adopted in order to ensure or favour the participation of the opposition:

- Best practices can be promoted regarding the role of the opposition in European activities within each assembly such as the right for the opposition to obtain the organisation of a floor debate before a European Council session with the participation of the Prime minister and a right to reply to his/her speech¹¹⁸, and the right of veto over the filtering of EU documents at the committee level...¹¹⁹
- Regarding any kind of inter-parliamentary cooperation, the rule could be adopted within the rules of procedure of the various fora that **any national parliamentary delegation should be pluralist**, i.e. composed of at least one opposition member. This is already the case in most meetings.
- As proposed by S. Kröger and R. Bellamy¹²⁰, **parliamentary minorities could even participate in elaborating parliamentary legislative initiatives**. Above a given threshold, e.g. one third of the MPs, an initiative for a green card or an official opinion addressed to the Commission could be validated.

The possibilities to act regarding the involvement of the parliamentary opposition(s) are thus numerous and generally require some sort of gentlemen agreements rather than new legal provisions. During a time when **populist forces** are progressing in many national chambers, usually sitting on the opposition benches, the stakes of involving minority political groups are particularly high. Involving anti-EU parties in interparliamentary cooperation could, over a long period of time, integrate national populist forces into EU politics. Given the multiple crises that Europe is facing today, it seems that EU decision-makers can no longer afford the luxury of closing their doors to people who do not share their same views.

¹¹⁶ Norton, P., ed., 1998. Parliaments and Governments in Western Europe. Frank Cass, 2nd ed.

¹¹⁷ Rozenberg, O., 2013. Killing the EU rather than quitting it. Policy Network. <http://www.policy-network.net/articles/4484/Killing-the-EU-rather-than-quitting-it>

¹¹⁸ Wessels, W., Rozenberg, O., Van Den Berge, M., Heffler, C., Kreilinger, V. and Ventura, L., 2013. Democratic Control in the Member States of the European Council and the Euro zone summits. European Parliament.

¹¹⁹ I.e. the right to obtain that an EU document is regarded as politically important and treated as such by the assembly.

¹²⁰ Kröger, S. and Bellamy, R., 2016. Beyond a Constraining Dissensus: The Role of National Parliaments in Domesticating and Normalising the Politicization of European Integration, Comparative European Politics 14, pp. 1–23.

6.2. The quality and effectiveness of inter-parliamentary cooperation

Inter-parliamentary cooperation faces numerous challenges. The occasional difficulties in **cooperation** between national parliaments and the EP were mentioned above in the cases of the settlement of the fora related to CFSP or to budget issues (Art.13 of the TSCG). There is also a threat of **routinization** of the cooperation with biannual or annual meetings organized with a limited involvement from the MPs and limited outcomes as well. The contrast is striking between the collaborative practices at the civil service level¹²¹, and the difficulty of involving a large number of backbenchers (beyond some European Affairs Committees 'club' members).¹²²

Several possible reforms for improving the quality of inter-parliamentary relations have already been listed at the end of part 4. More generally, it appears that the most promising approach for answering those challenges relies on the deepening of **committee-based inter-parliamentary cooperation**.¹²³ A committee approach could partly answer both the motivational and the outcome problems. Established forms of cooperation between committees according to policy fields already exist on a more or less formalized basis. Those networks could be expanded and deepened in several fields such as Justice and Home Affairs (as it will be logically the case with the future "Europol parliamentary conference"), environment, agriculture or regional development – to name a few sectors where the European legislation is present. Regarding the budget and economic issues, a small network of Budget committee chairs and deputy chairs from the main opposite party could be a more fitted structure than the uncertain frame of the large Inter-parliamentary Conference on Stability, Economic Coordination and Governance.

6.3. The differences of rhythm between EU and national politics

A major challenge regarding national parliaments' participation in EU affairs has to do with the question of timing. When the financial crisis was at its peak, national parliaments suffered from an acceleration of decision-making processes in Brussels. The instability of the Eurozone called for **urgent decisions** that were hardly compatible with respect for parliamentary practices and procedures.¹²⁴ Yet, the treaty of Lisbon has helped to limit this problem by granting an eight-week period between the official Commission proposal and the discussions within the Council.

More generally, the view that the national transposition of EU legislation (that often requires a vote in Parliament) takes too much time, can be highlighted by European decision-makers in order to give priority to **regulations over directives**. The observations made at Sciences Po about legislative productivity indicate that after a massive lowering of the number of EU legislative acts adopted in 2010, the number of regulations decided

¹²¹ For instance through the parliamentary representatives network in Brussels. Neuhold, C. and Högenauer, A.-L., 2016. *An information network of officials? Dissecting the role and nature of the network of parliamentary representatives in the European Parliament*. *The Journal of Legislative Studies*, 22(2), pp. 237-256.

¹²² Rozenberg, O., 2012. The Emotional Europeanisation of National Parliaments: Roles played by EU committee chairs at the Commons and at the French National Assembly. OPAL Online Paper Series 7. <http://spire.sciencespo.fr/hdl:/2441/dambferfb7dfprc9m0ta9769n/resources/7.pdf>

¹²³ Fasone, C. and Lupo, C., 2016. Conclusion. Interparliamentary Cooperation in the Framework of a Euro-national Parliamentary System. In *Interparliamentary Cooperation in the Composite European Constitution*. Hart Publishing, pp. 345-360, here p. 355s.

¹²⁴ White, J., 2014. Politicizing Europe: The Challenge of Executive Discretion. LEQS Paper 72.

yearly slowly increased again (around 60 per year) while the number of directives remained stable and historically low (around 15).¹²⁵

Regarding the issue of timing, another – rather unnoticed – aspect becomes progressively salient: **the slow-down of the EU legislative process**. It took a mean of 337 days to adopt the 256 legislative acts definitively voted on in 1996. Less than twenty years later in 2014, the 151 acts adopted had, on average, been discussed for 634 days. Such an increase is conspicuous. It questions the effectiveness of the timing of national parliaments' participation. Should they have their say very early in the procedure? The eight-week period of the EWM invites them to do so. This logic of 'the earlier the better' is at the heart of the lobbying strategies in Brussels from private or public actors. Yet, it may be difficult at the beginning of the process to distinguish which political stakes are relevant and to receive full information about the position of the national government. In addition, an intervention during the last stages of the policy-process may prove more crucial if a national assembly seek to support its government in the bargains.

Beyond this issue, the deceleration of the legislative procedure also contributes to a loss of continuity of the national parliamentary activity. The almost two-year duration of the legislative procedure (preceded by a period of consultation managed by the Commission) makes it likely that the national MPs active at the beginning and the end of the process may not be the same – the average lifespan of a parliamentary majority in Europe being around three years.

There are no obvious solutions to this major issue. Yet, **the longer duration of the legislation procedure indicates that the national parliamentary intervention, both individually and collectively, cannot be limited to the consultation periods and the first weeks of discussion**. A flexible and iterative approach seems to be necessary so that a better follow-up of the parliamentary actions may be provided.

6.4. Information and transparency related the EU policy-making system

The lack of information was a frequent complaint from national parliaments in the 1990s and in the early 2000s. Then, national procedures in most countries have progressively imposed a large diffusion of EU documents to national parliaments. The Lisbon Treaty, anticipated by José Manuel Barroso, provided for a direct transmission of legislative proposals from the Commission to the assemblies. Most of the parliaments have also learned to deal with information overload by designing procedures aimed at sorting documents and by employing clerks to that end. In short, the situation has improved.

Yet, certain problems remain and have become even more critical, such as the bargains within the EU institutional triangle and the decision-making process of the Council of the EU.

Regarding the first point, **the generalisation of 1st reading agreements** within the ordinary legislative process is a well-known phenomenon. It concerned 93% of the legislative acts adopted in 2014. This trend contributes to reduce the level of publicity of the bargains. The disagreement and convergence that a second and third reading could have made (partly) public are, to some extent, hidden by trilogue meetings behind closed doors. This makes it more difficult for national parliaments to follow the discussions and,

¹²⁵ EU Legislative Output 1996-2014 [database], Centre for Socio-political Data (CDSP, CNRS - Sciences Po) and Centre d'études européennes (CEE, Sciences Po) [producers], Centre for Socio-political Data [distributor]. As well as the following data. As well as the following data.

consequently, to weigh in on them. Therefore, the diverse on-going reforms, suggestions¹²⁶ and pressures¹²⁷ regarding greater transparency within trilogues can be positively interpreted from a national parliament perspective – should they seize this opportunity.

On 13 April 2016, an Interinstitutional Agreement on Better Law-making was published.¹²⁸ It sets an objective of improving transparency during bargains and mentions the provision of information to national Parliaments. It also foresees building a joint legislative database that could be a valuable instrument for national parliaments and, beyond them, for citizens. A national parliamentary entry into the base or a connection between the IPEX web site and the future base could be developed. In reaction to this agreement, the EP adopted a decision mentioning the need to inform and associate national parliaments.¹²⁹ The text especially assesses positively the political dialogue procedure and emphasises “the need for greater flexibility in the enforcement of the eight week deadline” of Protocol No. 1 (para. 12). It also mentions the significance of “the provision of information to national parliaments” during the legislative process (para. 16). More indirectly, it can be noted that on 13 December 2016, the EP amended its Rules of Procedure in order to give a larger role to the plenary regarding the starting of the negotiations. This reform could give national parliaments a political background regarding the on-going bargains since each of the EP party groups must take an official position on the draft act.

Secondly, the **informal and partly secret practices of cooperation within the Council of the EU** are detrimental to national parliaments. Even though the ministerial votes are now recorded and easily accessible, the information is more parcelled regarding parliamentary reserves.¹³⁰ The habit taken to postpone a vote, once a political agreement has been found, contributes in many cases to defuse the significance of those reserves. Indeed, in some cases, ministers must only wait for the clearing of the reserves from their parliament in order to officially agree to the proposed act – sometimes within an unrelated formation of the Council.

Due to the degree of informality that allows for international organisations to create compromises¹³¹, formulating recommendations is a meticulous process. Yet, some reforms are possible, for instance regarding the information given by the Secretariat of the Council on parliamentary reserves or by avoiding the adoption of a legislative act by an unrelated formation of the Council. In other words, everything that could “parliamentarise” the functioning of the Council of the EU would be beneficial to... national parliaments.

¹²⁶ In 2015, the European Ombudsman initiated an inquiry concerning a transparency of trilogies that called for making available to the public, during or after the negotiations, a large number of documents. Decision of the European Ombudsman setting out proposals following her strategic inquiry OI/8/2015/JAS concerning the transparency of Trilogues, available at:

<http://www.ombudsman.europa.eu/en/cases/decision.faces/en/69206/html.bookmark>.

¹²⁷ A pending case is open before the General Court (T-540/15, *De Capitani v European Parliament*). See Curtin, D. and Leino-Sandberg, P., 2016. Openness, Transparency and the Right of Access to Documents in the EU. In-Depth Analysis. EUI Working Papers 63.

¹²⁸ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ 2016 L 123, p. 1, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016Q0512%2801%29>

¹²⁹ EP decision of 9 March 2016 on the conclusion of an Interinstitutional Agreement on Better Law-Making between the European Parliament, the Council of the European Union and the European Commission (2016/2005(ACI)).

¹³⁰ Auel, K., Rozenberg, O. and Thomas, A., 2012. Lost in Transaction? Parliamentary Reserves in EU bargains. OPAL Online Paper Series 10. <https://spire.sciencespo.fr/hdl:/2441/dambferfb7dfprc9lie430oq8/resources/10.pdf>

¹³¹ Christiansen, T. and Neuhold, C., 2012. The International Handbook on Informal governance. Edward Elgar.

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ANNEXES

ANNEX 1. Protocol (No. 1) on the Role of National Parliaments in the European Union

THE HIGH CONTRACTING PARTIES,

RECALLING that the way in which national Parliaments scrutinise their governments in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State,

DESIRING to encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on draft legislative acts of the Union as well as on other matters which may be of particular interest to them,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community:

TITLE I

INFORMATION FOR NATIONAL PARLIAMENTS

Article 1

Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to national Parliaments upon publication. The Commission shall also forward the annual legislative programme as well as any other instrument of legislative planning or policy to national Parliaments, at the same time as to the European Parliament and the Council.

Article 2

Draft legislative acts sent to the European Parliament and to the Council shall be forwarded to national Parliaments.

For the purposes of this Protocol, "draft legislative acts" shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank, for the adoption of a legislative act.

Draft legislative acts originating from the Commission shall be forwarded to national Parliaments directly by the Commission, at the same time as to the European Parliament and the Council.

Draft legislative acts originating from the European Parliament shall be forwarded to national Parliaments directly by the European Parliament.

Draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank shall be forwarded to national Parliaments by the Council.

Article 3

National Parliaments may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity, in accordance with the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

If the draft legislative act originates from a group of Member States, the President of the Council shall forward the reasoned opinion or opinions to the governments of those Member States.

If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the reasoned opinion or opinions to the institution or body concerned.

Article 4

An eight-week period shall elapse between a draft legislative act being made available 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. Exceptions shall be possible in cases of urgency, the reasons for which shall be stated in the act or position of the Council. Save in urgent cases for which due reasons have been given, no agreement may be reached on a draft legislative act during those eight weeks. Save in urgent cases for which due reasons have been given, a ten-day period shall elapse between the placing of a draft legislative act on the provisional agenda for the Council and the adoption of a position.

Article 5

The agendas for and the outcome of meetings of the Council, including the minutes of meetings where the Council is deliberating on draft legislative acts, shall be forwarded directly to national Parliaments, at the same time as to Member States' governments.

Article 6

When the European Council intends to make use of the first or second subparagraphs of Article 48(7) of the Treaty on European Union, national Parliaments shall be informed of the initiative of the European Council at least six months before any decision is adopted.

Article 7

The Court of Auditors shall forward its annual report to national Parliaments, for information, at the same time as to the European Parliament and to the Council.

Article 8

Where the national Parliamentary system is not unicameral, Articles 1 to 7 shall apply to the component chambers.

TITLE II

INTERPARLIAMENTARY COOPERATION

Article 9

The European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union.

Article 10

A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. Contributions from the conference shall not bind national Parliaments and shall not prejudice their positions.

ANNEX 2. Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union,

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty on European Union, and to establish a system for monitoring the application of those principles,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty on European Union.

Article 2

Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.

Article 3

For the purposes of this Protocol, "draft legislative acts" shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank, for the adoption of a legislative act.

Article 4

The Commission shall forward its draft legislative acts and its amended drafts to national Parliaments at the same time as to the Union legislator.

The European Parliament shall forward its draft legislative acts and its amended drafts to national Parliaments.

The Council shall forward draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank and amended drafts to national Parliaments.

Upon adoption, legislative resolutions of the European Parliament and positions of the Council shall be forwarded by them to national Parliaments.

Article 5

Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

Article 6

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, 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. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.

If the draft legislative act originates from a group of Member States, the President of the Council shall forward the opinion to the governments of those Member States.

If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the opinion to the institution or body concerned.

Article 7

1. The European Parliament, the Council and the Commission, and, where appropriate, the group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, shall take account of the reasoned opinions issued by national Parliaments or by a chamber of a national Parliament.

Each national Parliament shall have two votes, shared out on the basis of the national Parliamentary system. In the case of a bicameral Parliamentary system, each of the two chambers shall have one vote.

2. Where reasoned opinions on a draft legislative act's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the draft must be reviewed. This threshold shall be a quarter in the case of a draft legislative act submitted on the basis of Article 76 of the Treaty on the Functioning of the European Union on the area of freedom, security and justice.

After such review, the Commission or, where appropriate, the group of Member States, the European Parliament, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, may decide to maintain, amend or withdraw the draft. Reasons must be given for this decision.

3. Furthermore, under the ordinary legislative procedure, where reasoned opinions on the non-compliance of a proposal for a legislative act with the principle of subsidiarity represent at least a simple majority of the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the proposal must be reviewed. After such review, the Commission may decide to maintain, amend or withdraw the proposal.

If it chooses to maintain the proposal, the Commission will have, in a reasoned opinion, to justify why it considers that the proposal complies with the principle of subsidiarity. This reasoned opinion, as well as the reasoned opinions of the national Parliaments, will have to be submitted to the Union legislator, for consideration in the procedure:

- (a) before concluding the first reading, the legislator (the European Parliament and the Council) shall consider whether the legislative proposal is compatible with the principle of subsidiarity, taking particular account of the reasons expressed and shared by the majority of national Parliaments as well as the reasoned opinion of the Commission;
- (b) if, by a majority of 55 % of the members of the Council or a majority of the votes cast in the European Parliament, the legislator is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal shall not be given further consideration.

Article 8

The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article 263 of the Treaty on the Functioning of the European Union by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber thereof.

In accordance with the rules laid down in the said Article, the Committee of the Regions may also bring such actions against legislative acts for the adoption of which the Treaty on the Functioning of the European Union provides that it be consulted.

Article 9

The Commission shall submit each year to the European Council, the European Parliament, the Council and national Parliaments a report on the application of Article 5 of the Treaty on European Union. This annual report shall also be forwarded to the Economic and Social Committee and the Committee of the Regions.

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS C

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