

PART I: REPORT OF FINDINGS

# Engaging with Europe

Evaluating national parliamentary control of EU decision making  
after the Lisbon Treaty

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Nora Dörrenbächer, and Christine Neuhold*



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Part I: Report of findings

**Institute for Management Research  
Radboud University Nijmegen**

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# 1 | Introduction

## 1.1 Background

European integration has important consequences for national policy making, both through legislation, and softer measures like recommendations and the Open Method of Coordination. For this reason, national parliaments have strengthened their position in the European policy making process. This is exemplified by the Dutch *Tweede Kamer*, which over time has developed an extensive toolkit to be ‘on top of Europe’<sup>2</sup> that has resulted in a comparatively strong position in European affairs.<sup>3</sup> Initially, this toolkit primarily contained *indirect* instruments, aimed at scrutinizing and controlling the position of the national government in EU negotiations rather than engaging *directly* in the process of EU decision making.

The Treaty of Lisbon added a new dimension to this process of Europeanization of national parliaments. Most importantly, the introduction of the so-called *Early Warning System* (EWS) provided national parliaments with an instrument for *direct* control over EU policy making. Commonly known as the “yellow card procedure”, the EWS provides national parliaments with an independent power to assess whether Commission proposals are in line with the subsidiarity principle. To this end, parliaments may send a reasoned opinion (RO) to the Commission within eight weeks after the publication of a legislative proposal. If at least one third of the national parliaments passes a negative opinion (one quarter for matter in the area of Freedom, Security and Justice), this “yellow card” necessitates reconsideration of the proposal by the Commission. Finally, if a majority of parliaments contests a draft, the Commission has to submit a reasoned opinion for maintaining it nevertheless, the Parliament and the Council are to review the proposal, and either may decide to vote it down (the ‘orange card’). Additionally, in 2006, Commission President Barroso initiated the non-binding instrument of the political dialogue. This provides national parliaments with the opportunity to react to Commission legislative proposals beyond scrutiny of the subsidiarity principle.<sup>4</sup>

After and even in the run-up to the ratification of the Lisbon Treaty, national parliaments have implemented new procedures to apply the instruments in practice.<sup>5</sup> On the one hand, these procedures establish the steps for carrying out a subsidiarity check, which is the basis for a reasoned opinion. On the other hand, parliaments have developed - both jointly

and individually - procedures and instruments for inter-parliamentary cooperation, so as to facilitate effective coordination with an eye on reaching the threshold for a yellow card, and exchanging information and best practices more broadly. Finally, several parliaments have introduced additional instruments to increase parliamentary influence over EU policy making that are not strictly related to the Lisbon Treaty.

## 1.2 Problem definition

Use of the new parliamentary instruments is demanding for national parliaments. Both members of parliament (MPs) and their administrative staff need to invest time and energy in order to use the new instruments effectively. Given this observation, and the fact that the first results of and experiences with the EWS are now established, the time has come to evaluate the functioning and effectiveness of these new instruments. This leads to the following central question:

*What are the functioning and effects of the instruments implemented by national parliaments in response to the Lisbon Treaty in order to increase their control over EU policy making?*

Even though the political dialogue was not introduced by the Lisbon Treaty, we include this instrument in the research, because of its close relationship with the EWS. The objective of this study, which was commissioned by the *Tweede Kamer*, is to draw lessons for the *Tweede Kamer*, with an eye on improving the functioning and effects of the new instruments.

## 1.3 Analytical framework

In order to answer the central question, we analyse the following elements of national parliamentary control<sup>6</sup> of EU affairs.

- Parliamentary *instruments* adopted in response to the Lisbon Treaty, and main existing instruments. We define an *instrument* as the formal or informal means available for controlling EU policy making. Whereas indirect instruments target the national government, *direct instruments* focus on EU institutions.
- Parliamentary *procedures* concerning the EWS. This refers to all the formal or informal rules and requirements stipulating the actual use of a parliamentary instrument, such as who takes the initiative to use the instrument, who decides on use of the

instrument, what are the voting requirements, and what is the time frame. Specific attention will be paid to the role of sectoral committees, the plenary and the government.

- Perceived actual *functioning* of national and EU-level procedures for the EWS, including the view on subsidiarity;
- Actual *use* of the EWS and political dialogue in quantitative terms;
- Desired and perceived *effects* of the EWS;
- *Conditions* for a) adoption of ROs, b) adoption of yellow cards, and c) legislative influence, i.e. modification or withdrawal of a Commission proposal in line with parliamentary preferences.

### **Specifying effects**

Concerning the effects, we follow Ian Cooper's argument that the effects of parliamentary instruments should be seen in light of the three core functions of parliaments, namely legislation, representation, and deliberation.<sup>7</sup> First, from the perspective of the function of legislation, effectiveness means the influencing of the outcome of the legislative process of the EU. This effect is indeed central to the debate about the Early Warning System. Second, seen from the representative function, effectiveness requires that the EWS creates a new link between the EU and the citizen. Third, based on the function of deliberation, effectiveness entails improvement of the public debate on EU affairs. Moreover, we may anticipate side effects of the EWS, such as more awareness of MPs and tighter scrutiny of EU processes beyond subsidiarity, resulting in a more independent stance taken by parliaments.<sup>8</sup> Finally, it can be expected that the EWS affects other channels of national representation at the European Union (EU), of which most importantly the national position in Council negotiations.<sup>9</sup>

### **Specifying conditions**

In this study, we focus on the legislative function of parliaments. Indeed, as Cooper has stated: 'with the orange card the collectivity of NPs has unequivocally gained a legislative power, in that a majority of them acting together may trigger an early vote in the Council and the EP on a draft legislative act'.<sup>10</sup> Given the fact that the Lisbon Treaty has provided the national parliaments with a collective right to influence – if not alter or veto – a proposal, their success in doing so should be the litmus test of the new treaty. The interviews we conducted may however also uncover other effects.

**Table 1** | Overview of expected effects of the EWS

Direct effects	<i>Legislative function</i> <ul style="list-style-type: none"><li>• Influence on legislative outcomes</li></ul> <i>Representative function</i> <ul style="list-style-type: none"><li>• “New link” between Europe and the citizen</li></ul> <i>Deliberative function</i> <ul style="list-style-type: none"><li>• More political debate on EU affairs</li></ul>
Indirect effects	<ul style="list-style-type: none"><li>• More awareness of EU issues at national level</li><li>• Tighter scrutiny of EU proposals beyond subsidiarity</li><li>• Affecting national position in Council negotiations</li></ul>

We differentiate between three types of *conditions*: those relating to (1) the adoption of a reasoned opinion (RO) in a particular national parliament, (2) the adoption of a yellow card, and ultimately, (3) legislative influence, i.e. modification or withdrawal of the Commission proposal.

To start with the *conditions for issuing a reasoned opinion*, there are three broad theoretical perspectives on parliamentary control that help us identify the conditions (or incentives) for national parliaments to issue a reasoned opinion. First, according to the *constitutional or delegation perspective*,<sup>11</sup> the conditions for exerting parliamentary control are rather a-political, and most importantly include the awareness, encompassing knowledge of existence and functioning of the instruments, and capacity of politicians and their staff.<sup>12</sup> It has been shown that this is indeed also important for the use of the subsidiarity instrument and the adoption of an RO. In particular, knowledge about the EWS and the capacity to issue an RO within a limited time frame are important conditions.<sup>13</sup> Then, the complexity of the procedure for the EWS seems to play a role: procedures involving more veto players are likely to be used less often. As such, systems involving the plenary are likely to produce fewer ROs. Systems involving sectoral committees are likely to boost the use of the EWS, because the workload can be shared. Furthermore, strong parliamentary information rights are likely to increase the use of the EWS. Finally, Christiansen et al point out that the presence of strong mandating powers may lead to less interest in the use of the EWS.<sup>14</sup>

Second, according to the *cultural perspective*,<sup>15</sup> the conditions for the use of particular parliamentary instruments are mainly a matter of tradition. Parliamentary traditions are said to shape and be shaped by the role orientations of MPs, as well as by MPs’ beliefs about the



functions a parliament should fulfil.<sup>16</sup> Crucially, role orientations reflect the general understanding of the parliament's function vis-à-vis the executive. In many political systems, the main conflict lines are between coalition and opposition parties, rather than between parliament and government<sup>17</sup>. With regard to EU affairs, Katrin Auel has for example used this perspective to explain why coalition parties in the German Bundestag are rather inactive when it comes to controlling the German government in EU affairs.<sup>18</sup> Finally, role orientations may relate to a population's general stance towards EU integration.<sup>19</sup>

The previous conditions are rather structural qualities of parliaments or political parties in them. In contrast, the third perspective, the so-called *negotiation perspective*, takes a "micro" perspective, and argues that effective control depends on the substantive aspects or the political salience of a particular dossier.<sup>20</sup> Both media attention and interest group support may influence the political cost-benefit analysis made by MPs to actually engage in scrutiny.<sup>21</sup> Although these conditions have so far not been extensively tested, a first empirical study has suggested that the salience of draft legislation is an important incentive for issuing an RO.<sup>22</sup>

These three broad theoretical perspectives on parliamentary control point at different conditions for the use of EU-related control instruments, and in particular for the adoption of an RO. As such, these perspectives may also further our understanding of *conditions for the adoption of a yellow card*, as a second step in the causal chain. That is, the threshold for the yellow card can only be reached when enough other parliaments (or a majority of parties in them) score "positively" on the conditions necessary for use of the EWS instrument. Particularly, previous research has shown that inter-parliamentary cooperation is key to reaching the threshold for a yellow card.<sup>23</sup> In light of the three theoretical perspectives, we can thus expect that inter-parliamentary cooperation to reach the threshold for the yellow card is more likely to occur between parliaments with a role conception that is favourable to the use of the EWS, with the capacity to carry out a subsidiarity check, and with a majority of political groups in each of them making a cost-benefit analysis pursuant to adoption of an RO. Furthermore, to be effective, inter-parliamentary cooperation is dependent on some rather trivial preconditions, such as time and resources. Finally, it must be noted that intra-parliamentary cooperation in bicameral systems is also important. Theoretically, procedures for joint submission of ROs could lead to more concerted ROs.

The third type of conditions relates to the *influence on the outcome of the EU legislative process*. Crucially, a yellow card is one of the many inputs in the complicated multi-level policy making process of the Union, in which many institutions play a role. If we view ROs

and yellow cards as inputs into the full EU policy making process, it seems that cooperation with the European institutions playing a key role in this process is crucial. In addition, the European procedures for dealing with contributions from national parliaments themselves will be evaluated, by looking at the perceptions of key stakeholders. We will identify conditions in this field inductively from the interviews.

**Table 2** | Overview of conditions

<b>Stage in the EWM process</b>	<b>Conditions</b>
Adoption of an RO in a national parliament	<p><i>Constitutional perspective</i></p> <ul style="list-style-type: none"> <li>• Awareness</li> <li>• Capacity</li> <li>• Complexity of EWS procedure               <ul style="list-style-type: none"> <li>○ Plenary involvement</li> <li>○ Decentralized responsibility</li> </ul> </li> <li>• Strength of information rights</li> <li>• Strength of mandating powers</li> </ul> <p><i>Cultural perspective</i></p> <ul style="list-style-type: none"> <li>• Parliament’s role vis-à-vis the government</li> <li>• Population’s stance towards European integration</li> </ul> <p><i>Negotiation perspective</i></p> <ul style="list-style-type: none"> <li>• Saliency</li> <li>• Substantive difference of opinion</li> </ul>
Adoption of a yellow card	<p><i>Opportunities for inter-parliamentary cooperation</i></p> <ul style="list-style-type: none"> <li>• The above conditions</li> <li>• Time and resources</li> </ul> <p><i>Procedures for intra-parliamentary cooperation</i></p>
Legislative influence	<p><i>Cooperation with the EU institutions</i></p> <p><i>Functioning of EU procedure</i></p>

## 1.4 Method and data

The research consisted of four stages. The first stage was an explorative analysis of the Dutch parliament, consisting of interviews with thirteen key players in the *Tweede Kamer* and *Eerste Kamer*. We also conducted interviews with Philips and the Dutch trade union *FNV* to gather best practices for information exchange in a complex international setting.<sup>24</sup>

The second stage of the project consisted of analysis of the facts and figures about parliamentary control “post-Lisbon”. This encompassed taking stock of parliaments’ instruments and procedures, and their use. Also, in this stage we gathered data about cooperation between and within parliaments, as well as the EU institutions. This information

was gathered for all parliaments in the EU-28, using academic and official reports.

The third stage of the project concerned the “softer information” about parliamentary scrutiny post-Lisbon: that is, the experiences with the instruments. Central variables in this stage were the conditions, the functioning of procedures, and the effects of the new instruments. This was done for the lower houses of nine member states. We selected the Austrian *Nationalrat*, the Belgian *Chambre des représentants*, the Estonian *Riigikogu*, the Finnish *Eduskunta*, the German *Bundestag*, the Greek *Vouli ton Ellinon*, the Italian *Camera dei Deputati*, the Polish *Sejm*, and the Swedish *Riksdag*. Reasons for selecting these nine parliaments were a geographical spread, heterogeneity of instruments for parliamentary control, and differences in use of the EWS.<sup>25</sup>

We chose five parliaments with novel instruments for EU scrutiny (Austrian *Nationalrat*, Belgian *Chambre des représentants*, Greece, Italian *Camera dei Deputati*, and Estonia).<sup>26</sup> Next, we selected four parliaments with relatively strong EU scrutiny instruments, but rather diverging use of the EWS: Sweden using the instrument very often, Finland and the German *Bundestag* being rather inactive, and the *Polish Sejm* taking an intermediate position.<sup>27</sup> Data collection for this stage consisted of interviews with the parliamentary liaisons in Brussels, and with the members and chairs of the EACs, and their clerks, conducted during the COSAC Chairpersons Meeting in Rome, 17-18 July 2014.

In addition, interviews were carried out with representatives of the European Commission and the European Parliament, to obtain their experiences and perceptions. Appendix 1 contains an overview of the interviews. The interviews were aimed at obtaining information about the *experiences and perceptions*, going beyond the opinion of individual persons. To this end, we also triangulated the results of the various interviews – where possible making use of additional academic or official literature.

The fourth stage of the project consisted of in-depth case studies focusing on the experiences with the post-Lisbon instruments. Here, we selected one parliament from each of the three groups:

- a) Austrian *Nationalrat* and *Bundesrat*: a bicameral parliament that has various innovative instruments that could be interesting to the *Tweede Kamer*.
- b) German *Bundestag*: a lower chamber with relatively strong EU scrutiny instruments, which does not use the EWS all too frequently.<sup>28</sup>
- c) Swedish *Riksdag*: a parliament with relatively strong EU scrutiny instruments, which uses the EWS rather frequently.

Data collection for this fourth stage comprised on-site interviews within the three parliaments, including the Upper Houses (if relevant), combined with the insights from academic literature. Also, we asked local academic experts to write country reports detailing the political context of the new scrutiny instruments (see Appendix 1). Finally, the insights were discussed in a focus group, held at the Dutch *Tweede Kamer*, involving both administrators and MPs, as well as academic experts.<sup>29</sup>

## **1.5 Outline**

Chapter two provides the facts and figures of parliamentary control post-Lisbon in the EU-28. Chapter three explains the procedures and practice of EU-related scrutiny in the *Tweede Kamer*. Chapter four sketches the experiences with the instruments in nine parliaments. Chapter five discusses the experiences at the European level, based on interviews with the EP and European Commission. Chapter six through eight provide the in-depth studies of the German *Bundestag*, the Austrian parliament, and the Swedish parliament.

## 2 | EU scrutiny in the *Tweede Kamer*

Before taking stock of the facts and experiences in other parliaments, this chapter describes the state of play in the Dutch *Tweede Kamer*. After discussing the background of EU-related parliamentary control, it presents the main instruments and procedures available for EU-related control. It then charts the actual functioning of the national and European instruments and procedure, as well as the conditions for use – focusing on the EWS. It then proceeds with a discussion of the different types of cooperation that are deemed necessary for exerting effective influence over EU policy making.

### 2.1 Background

The Dutch “no” to the proposal for an EU Constitution in 2005 has reinforced a process of gradual strengthening of the position of the *Tweede Kamer* in EU affairs, to the extent that it wants to be ‘on top of Europe’.<sup>30</sup> A main change has been the “mainstreaming” of EU parliamentary scrutiny, by making the sectoral committees responsible for scrutinizing EU proposals in their respective policy domains.<sup>31</sup> Second, administrative capacity of the *Tweede Kamer* was strengthened in 2007,<sup>32</sup> by increasing the administrative staff of the European Affairs Committee (EAC) to ten full time equivalents, two of whom are stationed in Brussels as of 2013. Members of the EU staff, the so-called “EU advisers”, also support the sectoral committees, which allows them to function as a bridge between “Europe” and sectoral dossiers.

The present EU coordination system of the *Tweede Kamer* is seen as relatively strong<sup>33</sup>. It is also special, in that it combines independent document-based scrutiny with scrutiny surrounding Council meetings,<sup>34</sup> and an active European role.<sup>35</sup> It is based on three key principles: (1) timely input into EU decision making, (2) prioritization, and (3) decentralized responsibility,<sup>36</sup> meaning that the sectoral committees are responsible for EU control.<sup>37</sup> The role of the EAC is one of coordination, and treatment of horizontal dossiers that transcend individual policy areas, congruent with the General Affairs Council agenda.<sup>38</sup> Few parliaments have a system with as strong an involvement of the sectoral parliamentary committees.<sup>39</sup>

## 2.2 Institutional framework

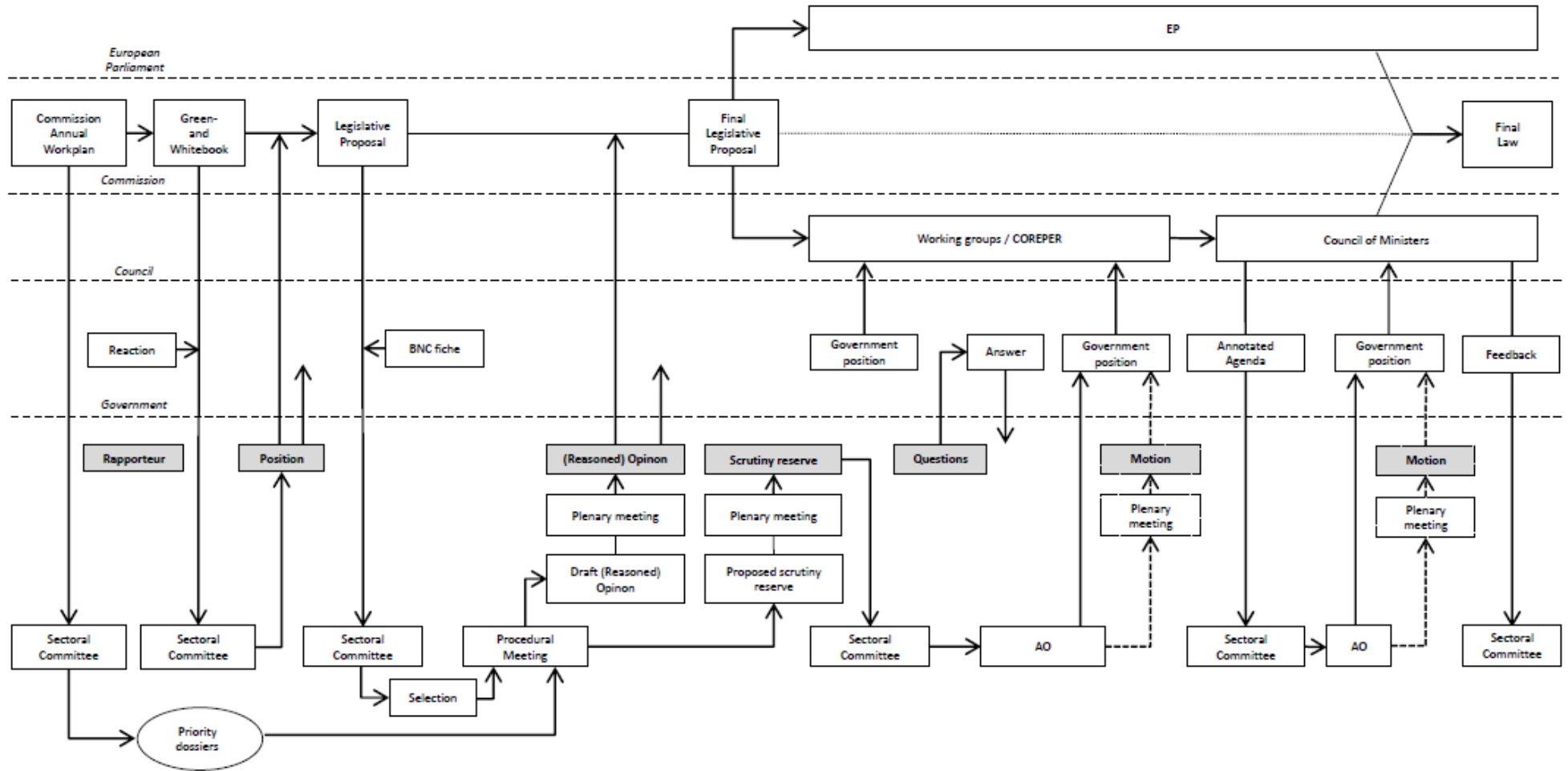
Since the mid-2000s, the Dutch *Tweede Kamer* has expressed the political ambition to become involved more pro-actively in the early stages of the EU policy making process<sup>40</sup>. Since the early 1990s, the Dutch government sends its assessment of new Commission proposals, called *BNC-fiches*, to parliament. These documents summarize the EU proposal and indicate the position and strategy of the government. While in the 1990s these documents were the starting point for parliamentary involvement with EU legislation, this is no longer the case. Since the mid-2000s, the *Tweede Kamer* more and more takes its own initiative in discussing EU affairs. For doing so, the following instruments are key, as illustrated in figure 1.

The starting point of scrutiny is the systematic *prioritisation* of Commission proposals on the basis of the Commission's annual Work Programme.<sup>41</sup> Since 2007, the sectoral committees make a selection of priority dossiers that will be discussed in the committee after publication. Since the entering into force of the Lisbon Treaty, the European Commission sends all its new proposals directly to national parliaments, making it easier for the staff of the European Affairs Committee to keep track of those topics that the parliament prioritized – and making the *Tweede Kamer* less dependent on the government for providing information.

A second important early instrument is *responding to the Commission's consultation documents*, such as Green and White Papers. The Dutch government is expected to respond to these documents, and sends its reaction to the *Tweede Kamer*. Sometimes, a *rapporteur* is assigned to specific dossiers, who will try to formulate a Chamber-wide position.<sup>42</sup> This could be combined with a position paper by the *Tweede Kamer*.

A series of additional instruments follows after the *Tweede Kamer* receives a Commission proposal for legislation. All Commission proposals flowing from the agreed priority list are automatically tabled for discussion in the relevant sectoral committee. In addition, Commission proposals not included in the Work Programme may be tabled in a committee meeting following political initiative or administrative advice. Upon publication of the Commission proposal, the EU staff writes a proposal (*stafnotitie*) for treatment comprising suggestions for scrutiny and control instruments that could be deployed. Upon the basis of this advise, the procedural meeting of the respective sectoral committee decides on the follow-up.

Figure 1 | EU scrutiny instruments in the Tweede Kamer



A general principle of the Dutch scrutiny system is that EU proposals and policy documents should be treated as national bills.<sup>43</sup> This means that regular parliamentary instruments may be employed, such as round table hearings with relevant experts and/or stakeholders, technical briefings by the European Commission or the ministry. Over the years, the number of briefings by staff of the EU institutions or EU agencies has increased considerably, with an annual average over ten.<sup>44</sup> Another instrument aimed at information gathering are (video)conferences with other EU institutions or parliaments. Since 2008, there have been about ten working visits to Brussels and other relevant capitals each year, and the number of occasions at which Commissioners were invited to the parliament also steadily grew.<sup>45</sup>

Turning to parliamentary control, motions and written or oral questions may be employed for EU affairs, just like for national bills. Since 1996, another key option for a sectoral committee is to hold a *general consultation* (AO; *algemeen overleg*) with the respective minister (e.g. between the Committee for Social Affairs and the social affairs minister). Traditionally, this takes place before the meeting of the relevant Council of Ministers' meeting in Brussels. In preparation for the AO, the minister sends his/her position for the upcoming Council meeting (*geannoteerde agenda*). Officially, the AOs do not have a mandating character (i.e. there is no legal obligation to have this meeting, and the parliamentary committee does not formally provide a mandate to the minister), but the AO may be followed up by a plenary meeting of the parliament at which motions may be voted on, asking the minister to change his/her position. In 2012, 63 of these AOs were held; in 2013, the number was 68. In addition, ministers usually report after a Council meeting.

Two further instruments are typical to EU affairs: the parliamentary scrutiny reserve and the EWS (in the Dutch parliament known as the "subsidiarity test"). Before turning to the scrutiny reserve, it should be stressed that over time the *Tweede Kamer* has improved its information position. In March 2013, it obtained access to the Extranet database, which contains so-called *limité* documents about Council discussions.<sup>46</sup> However, it still experiences a lack of information about the stages before Council decision making, including Council Working Groups and COREPER, which hampers effective scrutiny and control. Additional agreements about information provision are that *geannoteerde agendas* always must be available one week before Council negotiations *at the latest*, that the Dutch governmental position is specifically and clearly set out, and that the *Tweede Kamer* is informed about relevant changes in positions within Council.<sup>47</sup>



### **Changes after Lisbon**

The specific parliamentary instruments in response to Lisbon are laid down in the *Rijkswet houdende goedkeuring Verdrag van Lissabon*.<sup>48</sup> These are further detailed in the *Reglement van Orde* of the Lower Chamber. Beyond the scrutiny reserve, which is technically not related to the Treaty of Lisbon, the *Rijkswet* details the instrument of the subsidiarity test, to give effect to the Early Warning System.

The Dutch parliament already started testing on subsidiarity in the 1990s, but with the entering into force of the Lisbon Treaty this gained additional momentum. The basis for deciding whether or not to carry out a subsidiarity test is with the prioritisation system described above. Within eight weeks after publication of new legislative drafts by the Commission, parliament may decide to execute a subsidiarity test to check whether the proposal should indeed be initiated at the European level. In line with the decentralized organization of EU affairs, this is decided by the relevant sectoral committee. If this is the case, the political groups provide their comments using, with an eye on time, a procedure by e-mail. The EU adviser then summarizes this, and together with the relevant committee clerk, assesses what the majority position is. In case of a positive opinion on subsidiarity, the procedure ends; in case of a negative majority opinion, the EU advisor and clerk write a draft reasoned opinion, which is then submitted to the plenary for a vote. In the meantime, the EU advisor starts, through the liaison, to contact counterparts in other parliaments, to see if support can be found. When adopted by the plenary, the letter is sent to the European Commission, European Parliament, Council, and the Dutch government.

In addition, the *Tweede Kamer*, as well as the *Eerste Kamer*, may use the political dialogue when they have substantive issues with a Commission proposal. Here, the procedure is the same as for the reasoned opinion, except for the time limits.<sup>49</sup> It is however much less frequently used. So far only two opinions have been adopted in cases where the subsidiarity test did not show a breach of subsidiarity.

Third, since the entering into force of the Lisbon Treaty, the Dutch parliament initiated a general *parliamentary scrutiny reserve*. Even though not related to the Lisbon Treaty, this was part of the implementation process, based on an amendment.<sup>50</sup> The related procedure is as follows:<sup>51</sup> within two months after publication of a new legislative proposal by the European Commission, the *Tweede Kamer* (or *Eerste Kamer* for that matter) may ask the government not to take any irreversible decisions in the negotiations in Brussels. The decision to activate the scrutiny reserve is made in plenary, on the basis of a proposal by the Committee. In case the

plenary indeed makes a scrutiny reserve, within four weeks, a special AO must take place about the bill. In this AO, strategy, priorities and/or future information agreements regarding the course of the negotiations are set. This may be taken back to the plenary through a *Verslag Algemeen Overleg*, during which motions may be tabled. The agreements must be confirmed by the minister in a letter to parliament. Whereas the outcomes of the scrutiny reserve are not legally binding, it is in practice a strong instrument,<sup>52</sup> that is when combined with motions, and if rather time-consuming. In the period 2010 through 2013, the *Tweede Kamer* adopted seventeen scrutiny reserves. In five of these cases, an RO was adopted as well.

## 2.3 Actual functioning

### *View of subsidiarity*

The Dutch view of subsidiarity is allegedly rather legalistic.<sup>53</sup> According to Kiiver, the Dutch Parliament is a 'literalist parliament': that is, it faithfully carries out subsidiarity checks in line with the Protocol on Subsidiarity, rather than engaging in political discussions about a proposal.<sup>54</sup> According to Högenauer, however, this is not to say that reasoned opinions are not used *for* political purposes, if formulated in legal terms.<sup>55</sup> As a respondent explained, subsidiarity tests are based on political concerns, but couched in legal terms, because it cannot be upheld otherwise. According to an interviewee, there is no such thing as *the* view of Dutch parliament on subsidiarity: allegedly there is quite a difference in understanding between the *Eerste* and *Tweede Kamer* – the former taking a rather strict legal stance, with the latter being more willing to include content and proportionality and using it as a political tool, and between political groups.

### *Evaluation of national procedures*

The interviews did not point towards many important gaps in instruments, or problems in the procedures. Yet, several comments were made regarding availability of information. Since the implementation of the newest procedural revision, *Voorop in Europa*,<sup>56</sup> full lists of Commission proposals will be tabled at the procedural meetings of all sectoral committees in order to enhance political steering. A potential downside is that this may lead to information overload, which is seen as a threat to the system.<sup>57</sup>

A second point for improvement, as pointed out by several interviewees and written self-reflection by the *Tweede Kamer*,<sup>58</sup> information provision by the government on Council meetings can be improved. The *Tweede Kamer* indicates that it wants to obtain a clearer view

of the European playing field during negotiations,<sup>59</sup> and of the informal aspects of Council meetings.<sup>60</sup> Also, ex-post accountability could be improved.<sup>61</sup> As one interviewee pointed out, the follow-up of negotiations is very difficult, because information by the government on the course of the negotiations is often very generic. According to this respondent, appointing *rapporteurs*, as decided in the latest procedural guidelines<sup>62</sup> on salient EU dossiers could mitigate this problem, because this could make information exchange with the government more efficient.<sup>63</sup> Another solution would be to give mandates behind closed doors (as in Denmark), because this could enhance the quality of the information and insights for the parliament.

Generally, there is satisfaction with the fact that the scrutiny process is not entirely Council-based, but starts with scrutiny of consultation documents. Yet, attention to subsidiarity in the consultation stage<sup>64</sup> could be improved.<sup>65</sup> In addition, the *Tweede Kamer* finds it problematic that it has an incomplete overview of what goes on in Council working groups.<sup>66</sup>

The procedures for the adoption of ROs and the scrutiny reserve are generally seen as adequate, which is supported by the figures: the *Tweede Kamer* adopted fifteen ROs from 2011-2013. Two qualifications must be made, however. First, as two respondents pointed out, the majority position in the committees and the majority in the plenary may differ for procedural reasons. This rather unique feature of the current parliamentary composition complicates the committee-based EU process in the House: in at least one case, the majority in the plenary had to resort to a motion to force a negative RO, notwithstanding previous discussions in the committee. Second, two respondents explained that the common feeling amongst administrative staff is that the specifically designed EU instruments, especially the scrutiny reserve, are rather complicated and labor-intensive. Three respondents indicate that the *Tweede Kamer* has enough EU-related instruments, and that the main challenge is to improve their use, and making them more efficient.

### ***Evaluation of the European EWS procedure***

Högenauer has stated that the emphasis of the *Tweede Kamer* is on control of the government, rather than on EU decision making directly.<sup>67</sup> This view seems to be a bit too quick however, as the ambitions of the *Tweede Kamer* with the subsidiarity instrument are high. According to one respondent, the *Tweede Kamer* 'wants to be a pioneer in the issuance of a yellow card'.

Also, the *Tweede Kamer* has several suggestions for improvement of the European procedure: Commission answers must be more substantive,<sup>68</sup> the eight-week deadline should be increased to twelve weeks,<sup>69</sup> and the threshold should be lowered.<sup>70</sup> Also, it argues that the notion of subsidiarity should be broadened to encompass proportionality and legal base.<sup>71</sup> The other side of the coin is that it argues that ROs should be more extensively elaborated.<sup>72</sup>

## 2.4 Conditions for use of the subsidiarity test

*‘Eventually, it is less a matter of what instruments are out there for parliaments but more a question of what ambitions parliaments have.’*  
(interview with Dutch respondent)

The interviews and documents provided evidence of the following conditions for use of the subsidiarity test.

### ***Awareness and capacity***

Administrative capacity is not mentioned as a problem, although the workload is perceived as rather high. The number of EU staff is relatively extensive compared to other parliaments.<sup>73</sup> Yet compared to the vast amount of staff of the EP, administrative capacity for EU affairs is limited. Furthermore, it seems that the regular staff of sectoral committees sometimes has a hard time to remain on top of the various EU-related instruments and procedures, which are perceived to be rather time-consuming and different from parliamentary instruments for national affairs. This workload as experienced by sectoral staff might be a problem, and could possibly also be a result of the rather ambitious stance of Dutch parliament, symbolised by the EU staff. Another problem is that the Netherlands has a rather small parliament, which leads to a high workload per MP. The time limits of party spokespersons are mentioned by one respondent as a main impediment to the use of the instruments, amongst which the subsidiarity test. This problem is especially acute for smaller political parties (two interviews). Due to the great fragmentation of the current *Tweede Kamer*, various parties do not have enough resources to play an active role in EU control.

In addition, awareness amongst MPs seems a problem. The average MP neither knows the instruments available (interview), nor understands the way the EU functions (interview). This is especially the case for committees with a small share of EU dossiers, as explained by another respondent. An important condition for the decentralized approach to function thus is

the rather active role played by the EU staff, as observed by three respondents. This is for example reflected in the practice to advise Committee members on the use of control instruments available. According to one respondent, the EU staff plays a rather influential role, suggesting and stimulating use of control instruments. However, one respondent points out explicitly that ultimately the responsibility is with MPs, who should increase their EU knowledge. Another respondent agrees: ‘the subsidiarity test is eventually a political instrument and it depends on politicians if it is used or not’. This also seems to be the working understanding in the *Eerste Kamer*. In the words of one respondent: ‘a main principle is that the members have to do it, not the staff’. Indeed, the general understanding amongst our respondents is that ultimately, the choice to use instruments for EU control is and should be political nature.

### ***Role conception***

The Netherlands for a long time was united in a strong pro-European stance, furthering more integration.<sup>74</sup> However, as the 2005 no vote in the referendum about the Constitutional Treaty made clear, the support of the Dutch population for further European integration eroded. Various political parties capitalized this critical stance about further European integration. In 2005, the Balkenende Cabinet thus came to support the extension of control by national parliaments – a move regarded by its long-time ally Belgium as a true deception.<sup>75</sup>

The Dutch *Tweede Kamer* seems to be united in its belief that it has an important role to play in strengthening the democratic legitimacy of the European decision making process,<sup>76</sup> and in constituting a linking pin between citizens and the European Union. This role conception, detailed in a set of more specific action points, was adopted almost unanimously by the *Tweede Kamer*.<sup>77</sup> Yet, below this surface, differences between party groups and MPs seem to exist. Especially those political parties which are more critical about further European integration have a high stake in EU scrutiny.<sup>78</sup>

### ***Use of EWS instruments as a cost-benefit analysis***

According to one respondent, use of the instruments is a matter of ‘interest, passion, and ownership’ of a member. Another respondent added that it is important that an MP takes the lead- this will also activate other MPs. There should be, according to another respondent, an intrinsic Dutch interest at stake. Earlier research has shown that Dutch political parties with a critical stance towards further European integration in general, may also act according to

substantive policy motives in particular EU dossiers.<sup>79</sup> So, in the end, involvement of political parties to a great extent seems a matter of political cost-benefit analysis. One ingredient into this cost-benefit analysis, according to one interviewee, is that there is a tendency among MPs to consider EU scrutiny as hardly effective. Yet, another respondent observed that the disappointing response by the Commission so far has not discouraged use of the subsidiarity instrument.

## 2.5 Effectiveness of the EWS instrument

### *Desired effects*

Key to the *Tweede Kamer's* mission is the observation that EU legitimacy is weak.<sup>80</sup> Specifically, three problems are associated with this lack of legitimacy. First, citizens do not view their interests as being represented in EU policy making. Second, EU policies often are not in line with popular expectations, because they are sometimes used as a scapegoat. Third, ministers and MPs do not account sufficiently for their European role.<sup>81</sup> Crucially, the Early Warning System could play a role in addressing these three shortcomings, most importantly by signalling to voters that the parliament takes their interests seriously, and uploads these to the European level, so as to try to change unwanted policies. In addition, active use of the EWS could make MPs take responsibility for EU policy and account for their European role. Therefore, withdrawal of undesired bills, commonly seen as *the* desired effect of the EWS, is not the only possible outcome.

### *Perceived effects*

There is a broadly shared dissatisfaction among national parliaments about the effects of the yellow cards that materialized so far (interview). On the other hand, one Dutch respondent observes that it is only five years after Lisbon – a period in which national parliaments have started working with new procedures – a stage which is still one of experimenting. Yet, the interviewee also observes, the fact that it has proved possible to draw two yellow cards is positive. Also, an important side effect is that the Dutch minister used the EPPO yellow card to strengthen its negotiating position. Two other respondents share this view, explaining that an important (but rather minimal) side effect is that the government is made aware of the position in parliament. Finally, one respondent notes a side effect in a sectoral committee: much more interest in the substantive aspects of a European file, also after the subsidiarity test. From the point of view of a more direct link between the EU and its citizens, and public

debate, it is important to note that due to the strict time frame, subsidiarity checks are usually carried out through an e-mail procedure, away from the spotlight. At the same time, it must be noted that the *Tweede Kamer* tries to communicate actively, using social media and more traditional channels, about its role in EU control.

## 2.6 Conditions for effectiveness of the EWS

Adopting a reasoned opinion is not enough to be successful. A second step is to get from the reasoned opinion to a yellow card. For this step, inter-parliamentary cooperation is a *sine qua non*: both with other parliaments or with the other chamber in case of two-chamber parliaments. Next, in order for a reasoned opinion or yellow card to really be effective, good cooperation with the EU institutions themselves seems crucial. How does the *Tweede Kamer* organize and perceive these types of cooperation?

### *Inter-parliamentary cooperation*

The *Tweede Kamer* values strengthening of cooperation in order to make coalitions in the context of the yellow card procedure,<sup>82</sup> and to facilitate the exchange of information and best practices.<sup>83</sup> Yet, the overall view is one of dissatisfaction with the present state of inter-parliamentary cooperation. Before dealing with this situation, let us describe the key instruments available, as well as their use.

Inter-parliamentary cooperation is primarily regarded a concern for the administrative liaisons and EU staff in The Hague. Political groups and their support staff usually do not play an active role, even though there have been some exceptions (interview). The two Dutch liaisons are to serve as the “eyes and ears” of Dutch parliament (including the *Eerste Kamer*) in Brussels. The liaison has four main functions: early gathering of strategic information, networking with the EP and Council, organizing work visits, and facilitating inter-parliamentary cooperation through the sharing of experiences and arguments, coordination of reasoned opinions. This also includes the organization of COSAC meetings. The liaisons are a crucial linking pin in external cooperation: ‘everything normally runs through the representatives’ (interview).

The role of the liaison is hence restricted to sharing of information, rather than forming coalitions (interview). This is seen as very useful: ‘it is a matter of stimulating and inspiring each other’. To this end, four key instruments exist: an e-mail list of liaisons, informal exchange enabled by the proximity of offices, weekly Monday Morning Meetings, and courtesy

translations of reasoned opinions. Generally, these instruments are used frequently, with a lot of communication as a result. Yet, are marked differences in activity are observed, with the Netherlands being amongst the most active together with Germany, Sweden, Finland, Denmark, France, Austria, Spain, Ireland, the UK, and to some extent the Baltic states.

Another instrument for information sharing, IPEX, is not deemed very relevant by the *Tweede Kamer*.<sup>84</sup> Equally so, the various inter-parliamentary conferences are seen as having downsides. First, participation at these conferences is low,<sup>85</sup> a key problem being the absence of a mandate or clear national position. Also, as one respondent explained, it may be hard to send out MPs, especially for topics that are not yet on the agenda.

Turning away from administrators and liaisons, one respondent observed that it is a disadvantage that there are hardly any transnational connections between MPs, other than accidental personal connections. For this reason, the *Tweede Kamer* has proposed to establish a network of MPs as established contact points for the EWS.<sup>86</sup> This has resulted in a contact list which has been composed upon the initiative of the Dutch delegation during the COSAC chairpersons meeting in Rome in 2014, and can be actively used by other delegations. Another “Dutch” suggestion has been the Dutch initiative for a meeting of EAC clerks during COSAC Copenhagen<sup>87</sup>. This administrative network, analogous to that of the parliamentary assemblies, has however not yet been followed up by subsequent parliamentary presidencies. Other suggestions concern the type of inter-parliamentary meetings. The *Tweede Kamer* has proposed to hold ‘cluster of interest’ meetings, ad hoc meetings between groups of parliaments dealing with a particular policy theme<sup>88</sup>. Another respondent made the proposal to allow for more strategic interactions, aimed at discussing more generally the role of national parliaments in EU decision making. Finally, one respondent argued that, whereas so far IPC has primarily been seen as important with an eye to the yellow card procedure, it would also be interesting to have more exchange of substantive arguments between parliaments.

### ***Intra-parliamentary cooperation***

Dutch Parliament consists of two chambers: the directly elected *Tweede Kamer* (lower house), and the *Eerste Kamer* (upper house), the composition of which is derivative from the outcomes of the provincial elections. Both chambers have independent powers and responsibilities vis-à-vis “Europe”. From this perspective it is not surprising that both chambers have their own procedures. Both chambers operate parallel in the annual selection of priority EU proposals,<sup>89</sup> and have autonomous EU-related information system for their Members. Also, the



parliamentary instruments are used in different ways and to different degrees. The scrutiny reserve, for instance, has not been used in the *Eerste Kamer*, in contrast to the *Tweede Kamer*.

In line with these procedural differences, the two chambers seem to have somewhat different conceptions about the role of the chamber in EU decision making, and different stance towards subsidiarity. According to one respondent, the general role conception of the *Eerste Kamer* is that it EP in Brussels is the democratic legislator, and that national parliaments focus upon the Council to bring in a democratic component. At the same time, there is said to be a consensus that the subsidiarity test is appropriate in case of legal arguments. This said, there are also said to be some differences across party groups, with D66, Green Left and PvdA being less inclined to use the instrument, in contrast to parties like the SP, CU, PVV, and VVD who allegedly are more favourable to using the instrument, if also depending on substantive political preferences.

In line with these differences in procedure and outlook, the two chambers have their own internal procedure for subsidiarity tests. This was different in the period 2006-2009, when the two chambers cooperated in the Temporary Joint Committee Subsidiarity Test (*Tijdelijke gemeenschappelijke commissie subsidiariteitstoets*). This joint committee was abolished in 2009, because the *Eerste Kamer* expressed the ambition to be more complementary to the *Tweede Kamer*.<sup>90</sup> Currently, as explained by our respondents, cooperation is more ad hoc, and takes place between chairs of EAC Committee or at the administrative level: between staff of sectoral committees in the *Eerste Kamer* and EU staff in the *Tweede Kamer*. Most commonly, the *Tweede Kamer* takes the initiative, because of its relatively large administrative staff, after which the *Eerste Kamer* decides whether or not to follow suit. Whereas this cooperation is seen to function well, one respondent explains that it may be difficult for coalition building at the EU level when the *Eerste* and *Tweede Kamer* do not act in concordance regarding the EWS. Whereas ROs do not occur, about half of the total number of ROs from the Dutch parliament was a one chamber matter. Ten out of fourteen ROs by the Lower Chamber were also supported by the Upper Chamber; the latter adopted one RO concerning two Commission proposals that was not shared by the Lower Chamber.

### **Cooperation with the EU institutions**

The *Tweede Kamer* takes the stance that national parliaments and the EP have their own roles in EU policy making. It sees the EP as an ally, instead of a competitor.<sup>91</sup> One type of contacts take the form of formal networking,<sup>92</sup> for instance through visits to Brussels, or at conferences

organized by the EP. This latter type of exchange is not seen as very fruitful because they offer limited opportunities for interaction. As such, the *Tweede Kamer* has expressed the explicit ambition to make conferences more interactive in the wake of the parliamentary dimension of the EU presidency in 2016.<sup>93</sup> Also, it organizes a yearly debate on the governmental strategy-memorandum 'State of the European Union', in which MEPs may take part.

However, most contacts with the EP, according to a respondent, run along party lines. Yet, as claimed by another respondent, these contacts are thin and rather ad hoc. One respondent even claimed that Dutch MEPs have better contacts with the permanent representation of the Dutch government in Brussels, than with national MPs. Cooperation within parties can be difficult to achieve: substantive opinions of MEPs and MPs within one political party were reported to sometimes be diametrically opposed to each other.

The *Tweede Kamer* sees the potential of building closer ties with the EP, with an eye to the subsidiarity test: it is seen as important that the EP acts upon the adoption of yellow cards.<sup>94</sup> More contacts between MEPs and MPs are also suggested, for instance by more frequently inviting EP rapporteurs to the Dutch Lower Chamber – also those without a Dutch nationality.<sup>95</sup>

Contacts with the Commission mostly exist between clerks and Commission administrators.<sup>96</sup> One interviewee pointed out that, to secure follow-up to reasoned opinions, the Council could be used more effectively to increase pressure on the Commission.

## 2.7 Conclusion

The *Tweede Kamer* has a relatively strong coordination system, characterized by strong involvement of sectoral committees, systematic prioritization, and an early and independent role in scrutiny. EU proposals are treated as national bills, which means that existing national instruments are used for EU scrutiny and control. After Lisbon, it has added the scrutiny reserve and subsidiarity test to its already extensive toolbox. As such, the *Tweede Kamer* combines a role focusing on the government with a strong European role, primarily through the reasoned opinion. However, actual use of the instruments is to some extent complicated by the absence of good information about the early stages of Council decision making, and varying political commitment. To this end, the *Tweede Kamer* has experimented with the instrument of rapporteur on EU policy proposals, after the Commission disregarded the yellow card on the European Public Prosecutor's Office, indicating that it would not withdraw the proposal. The *Tweede Kamer* plans to use this instrument more frequently in the future.<sup>97</sup> The

existing procedures for the EWS are generally seen as adequate, although some complexities may occur in individual cases. Finally, an especially remarkable ingredient of the *Tweede Kamer's* approach is the strong role played by administrators- the so-called EU staff.

The *Tweede Kamer* wants to keep playing a clear European role, possibly even expanding it. It views inter-parliamentary condition as a key route to this end. The *Tweede Kamer* is relatively active at the liaison level, and in inter-parliamentary cooperation. It has proposed several improvements of the system, such as the establishment of a network of MPs as established contact points for the yellow card procedure, and 'cluster of interest' meetings dealing with a particular policy theme. Finally, the chapter has shown that there is no institutionalized cooperation with the *Eerste Kamer* in the EWS, while the informal connections are fairly strong.

## 3 | Facts and figures (EU-28)

This chapter reports about parliamentary scrutiny after the Lisbon Treaty in all 28 EU member states. First, the chapter takes stock of the different scrutiny instruments. Second, it investigates the use of the RO and the political dialogue, connecting these to internal capacity and procedures for these two instruments. Next, the chapter outlines the instruments for and use of internal cooperation in bicameral systems, and the tools for cooperation with other parliaments and the EU institutions.

### 3.1 Instruments for EU scrutiny

Due to different political and institutional traditions, a wide array of mechanisms exists in different parliaments to exercise parliamentary scrutiny of EU affairs.<sup>98</sup> Table 1 provides an overview of instruments commonly used by parliaments to scrutinize different actors within a particular phase of the EU policy making process.

#### *Indirect Instruments*

Most parliaments have stressed the importance of indirect instruments, related to the control of their own government in EU matters. 92% of parliaments/chambers identified holding governments to account for their participation in the Council as the most important task of parliamentary scrutiny in EU affairs.<sup>99</sup> Besides the common instruments listed in Table 1, some parliaments mentioned special instruments within their system as being particularly useful to monitor government. For example, the German *Bundestag* and the Belgian *Sénat* stressed that a proactive dialogue with the government is an important mechanism of indirect control.<sup>100</sup> The German *Bundestag* also mentioned its extensive information rights as particularly effective when holding the government accountable in EU affairs, and the Polish *Sejm* hears stakeholders to some issues to obtain further information of EU issues.<sup>101</sup> Some parliaments also identified gaps within their indirect scrutiny system. For example, the Irish Houses of the *Oireachtas* faces a lack of a scrutiny reserve (or mandate) system.<sup>102</sup> The *Oireachtas* also stressed the need for greater input into the pre-legislative phase and the need for greater parliamentary scrutiny of the transposition and implementation of EU legislation. Polish *Senat*

sometimes faced problems of control of the government due to belated government information.<sup>103</sup>

**Table 3 | Commonly used scrutiny instruments<sup>104</sup>**

Entity	Instrument
Government (indirect instruments)	<ul style="list-style-type: none"> <li>• Oral and written parliamentary question</li> <li>• Formal legal Acts outlining the limits of the government's mandate</li> <li>• Motion -legislative and non-legislative</li> <li>• Motion of no confidence</li> <li>• Power of national budget approval</li> <li>• The evaluation of reports on the positions taken by governments</li> </ul>
Council (indirect instruments)	<ul style="list-style-type: none"> <li>• Ministers appearing before committee or plenary before and/or after Council usually within a set time period</li> <li>• Oral or written report by Ministers before and/or after Council</li> <li>• Scrutiny reserve resolution, formal mandate or resolution (binding or non-binding depending on the tradition or legal position)</li> <li>• Written report on developments occurring during the outgoing Presidency</li> <li>• Special committee or plenary debate</li> <li>• Report on the status of negotiations or about the impact of an EU measure</li> </ul>
Commission (direct instruments)	<ul style="list-style-type: none"> <li>• Use of political dialogue and subsidiarity mechanisms</li> <li>• Appearance before committees to give evidence or meetings with Commissioners or EU Representation staff in capitals</li> <li>• Special committee or plenary debates (e.g. on the Commission Work Programme)</li> <li>• Dialogue at inter-parliamentary conferences</li> </ul>
European Council (indirect instrument)	<ul style="list-style-type: none"> <li>• Appearance of Prime Ministers in plenary before and/or after each European Council usually within a set time period</li> </ul>

### **Direct Instruments**

Besides the indirect instruments used, 20 out of 37 parliaments/chambers believe that democratic accountability in the context of the EU affairs should not be limited to their own governments, but must also include EU institutions (see table 1 for a list of common instruments).<sup>105</sup> According to the 20<sup>th</sup> Biannual COSAC Report, the second most importance instrument mentioned by parliaments, besides scrutiny of the government, are the reasoned opinions (50%, 12 out of 24) and the political dialogue (42%, 10 out of 24).<sup>106</sup> However, the Cyprian and Greek parliament stressed the subsidiarity check as the most effective instrument, because it is the only legally binding power available to their parliaments for the scrutiny of EU affairs.<sup>107</sup>

### **Timing of the Instruments**

Most national parliaments focus on the legislative phase of EU decision making, but several parliaments also stress that they try to scrutinize the pre-legislative phase. For example, 10 of 37 parliaments/chambers scrutinize not only Commission proposals but also consultation documents.<sup>108</sup> In Sweden, scrutiny of all Green and White Papers is even obligatory. Other parliaments/chambers rely in the pre-legislative phase mainly on their strong information rights (e.g. German *Bundestag*, the Italian *Camera dei Deputati*, Swedish *Riksdag*). The Lithuanian and Slovakian parliament and the Dutch *Eerste Kamer*, also regularly evaluate the European Commission Work Programme.<sup>109</sup>

### **Procedures**

After Lisbon, most parliaments adopted new laws for parliamentary scrutiny and/or amended their rules of procedure to clarify the procedure of reasoned opinions and enhance information rights (see the OPAL country reports<sup>110</sup>). The result is a highly heterogeneous collection of practices for the subsidiarity checks and the political dialogue across the 28 member states. Sometimes the procedure for the subsidiarity checks even differs between different chambers within the same parliament (e.g. in Italy, France, and Belgium).

### **Involvement of sectoral committees**

An important difference between national parliaments concerning their procedures to conduct subsidiarity tests is with the actors involved. A range of parliaments conduct the subsidiarity test mainly in the European Affairs Committees (EACs) through a centralized procedure (e.g. Austria, Cyprus, Hungary, Italian *Camera dei Deputati*, Latvia, Poland, Bulgaria, Cyprus, UK, Latvia, Malta, Polish *Sejm*, Slovakia, Spain, and the Czech Republic). Other parliaments use a more decentralized system, where the EACs have no role or only a limited role, such as in Sweden, the Dutch *Tweede Kamer*, and Luxembourg.

Another group of parliaments employs highly complicated procedures that divide competences between EACs, sectoral committees, the plenary and several administrative levels. Such complex systems involving all layers of parliamentary activity can be found in Denmark, Germany, Portugal, Belgium, Estonia, Finland, France, Ireland, Lithuania, Portugal, Romania, and Slovenia.

### **Plenary involvement**

Parliaments differ regarding the role of the plenary under the EWS.<sup>111</sup> Plenary adoption of all reasoned opinions is obligatory in the Czech *Senat*, both Dutch chambers, Estonia, Finland, both German chambers (exceptions are possible, but so far never used), Hungary, Ireland, both UK chambers, Sweden, Slovenian *Državni svet* (upper house), Romanian *Senat*, both Polish chambers, and Lithuania. Plenary adoption of opinions occurs sometimes in the Belgian *Sénat*, the Czech *Poslanecká sněmovna* (lower house), both French chambers, both Italian chambers, Luxembourg, Portugal, Romanian *Camera Deputaților*, Spain and the Slovenian *Državni zbor* (lower house). The plenary has no role under the EWS or only an optional right to submit reasoned opinions in Denmark, Austria, Bulgaria, Cyprus, Greece, Latvia, Malta, Romanian *Camera Deputaților*, Slovakia.

### **Role of the Government**

Parliamentary procedures also differ with respect to the involvement of the government in the subsidiarity mechanisms. For example, in the German *Bundestag*, Estonia and Greece, the government conducts a pre-selection to warn parliament in their subsidiarity tests. In these parliaments/chambers, the administrative staff of the relevant ministries provides reports for each EU proposal, which already flag proposals that might be problematic in terms of subsidiarity. Due to the strong interrelation between MPs and members of the government in the German *Bundestag*, mostly parliament does not question the government position.

### **Procedure for EWS vs. political dialogue**

Most parliaments use the same procedure for subsidiarity checks as for the political dialogue. However, the procedures differ in Austria, where the political dialogue is a constitutional right. The procedure is also different in Denmark where the political dialogue is conducted within a centralized system in the EAC but reasoned opinions have to be issued in a decentralized system, involving sectoral committees. In Estonia, opinions under the political dialogue are sent to the government and not directly to the EU institutions, unlike reasoned opinions. Ireland has no formal rules at all for the political dialogue. In practice however, a similar procedure as for reasoned opinions is used. Similarly, there are no formal rules for the political dialogue in Portugal and Sweden. Sweden uses in practice the same procedure as for the scrutiny of Green Papers.

## 3.2 Use of reasoned opinions and political dialogue

Parliaments and chambers make different use of the new instruments of reasoned opinion and political dialogue. Figures 2 and 3 show the frequency of use in the parliaments of all 28 member states for the period 2010 through 2013. These figures should be taken as an approximate guide only, because reports have provided different figures, for example depending on whether an RO relating to two proposals counts as one or two opinions.<sup>112</sup>

### *Use of reasoned opinion*

Sweden is by far the most active parliament when it comes to using reasoned opinions (until 2013, 48 reasoned opinions were sent to the Commission). Sweden is followed by Luxembourg (16), the French *Sénat* (15), the *Tweede Kamer* (14), the UK *House of Commons* (13), and the Polish *Sejm* (12). Least active in sending reasoned opinions are several Central-Eastern European parliaments such as Slovenia (both chambers), Hungary, Czech *Poslanecká sněmovna* (lower house), Greece and Estonia.

### *Use of the political dialogue*

Generally speaking, the use of the political dialogue is higher than that of the reasoned opinions. Most active parliaments tend to concentrate their scrutiny efforts either on the political dialogue or the EWS. A third group of countries uses neither instrument. The *Tweede Kamer* issues a relatively large number of reasoned opinions, but it is not very active in the political dialogue. In contrast, with 709 opinions until 2014, Portugal extensively uses the political dialogue, but is less active in the EWS. Also the Italian chambers focus more on the political dialogue than on reasoned opinions. In addition, the Czech *Senát*, both Romanian chambers, the German *Bundesrat*, and the UK *House of Lords* also use the political dialogue extensively. In contrast, Cyprus, Latvia, Estonia, and both Slovenian chambers do not use it much. Several of the very active parliaments, such as Poland and Portugal, have criticized the Commission for how it answers to contributions under the political dialogue. Nevertheless, the instrument is still popular, because it is considered not to be a 'break' on EU integration.<sup>113</sup> Several parliaments (e.g. Portugal or Italian *Camera dei Deputati*) also use the political dialogue to express support for EU proposals. Indeed, the instrument is then considered as a more constructive instrument than the EWS.



Figure 2 | Use of reasoned opinions per parliament/chamber (2010-2013)<sup>114</sup>

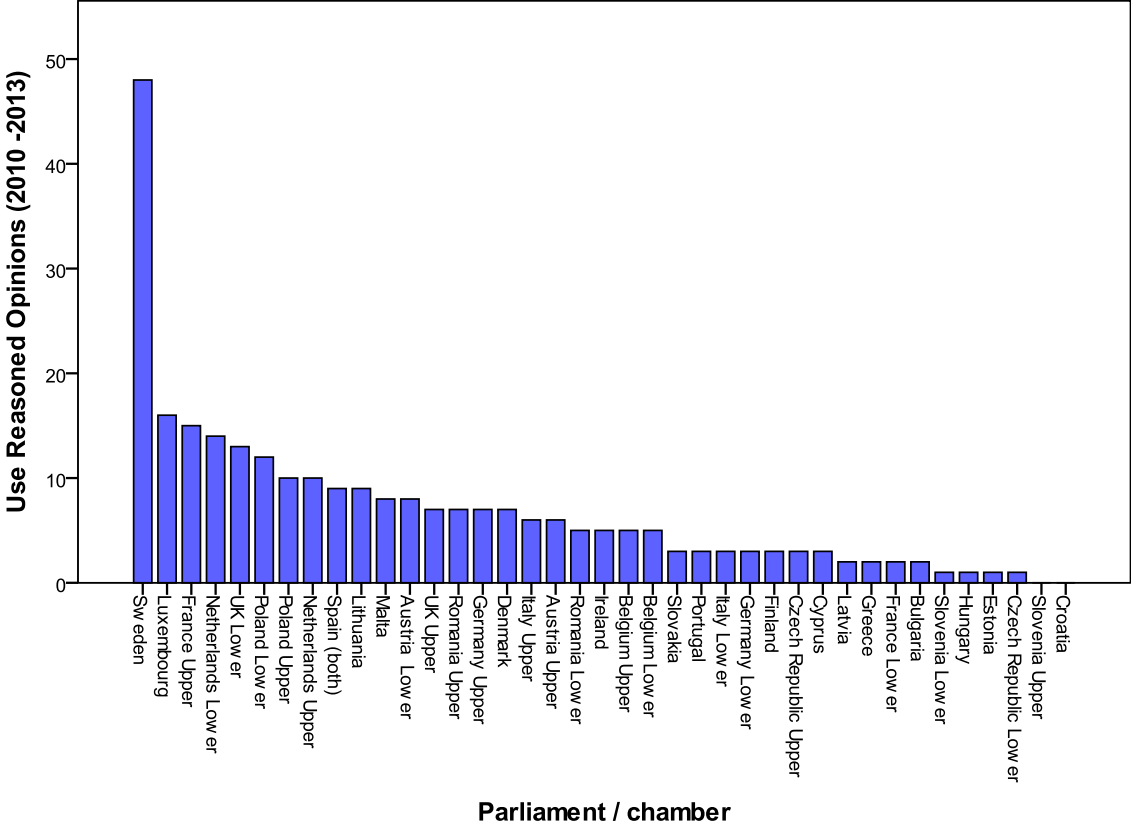
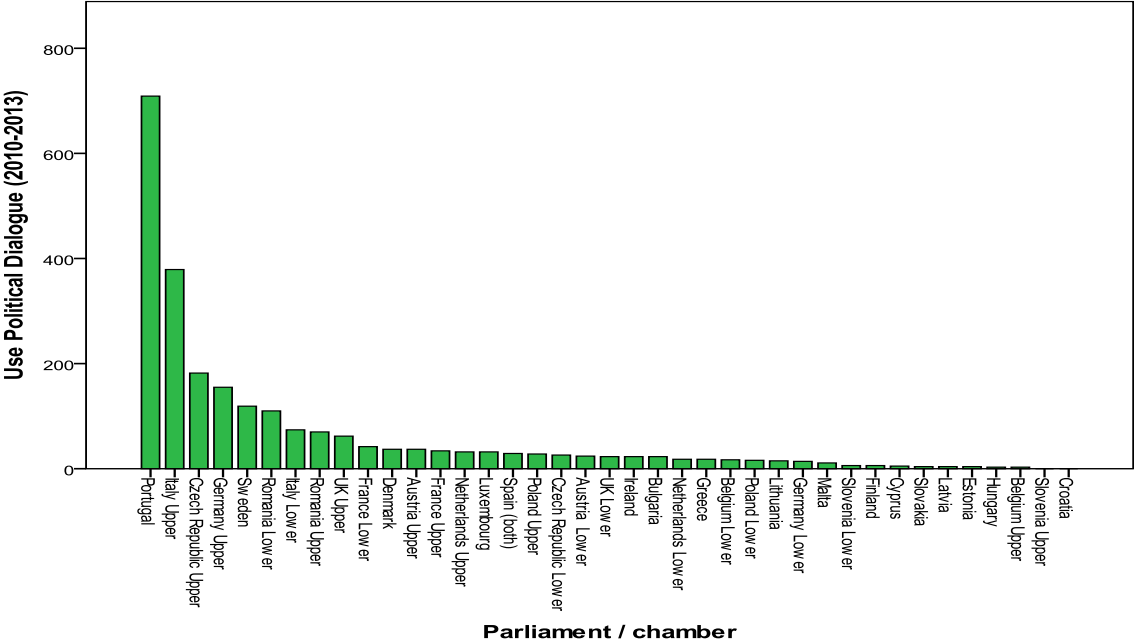


Figure 3 | Use of the political dialogue per parliament/chamber (2010-2013)<sup>115</sup>



**Note:** Sweden does *not* use the political dialogue actively. The high number of contributions in this table is due to the fact that the European Commission counts the Swedish reactions to green and white papers as contributions under the political dialogue (see p. 98 of this report).

### 3.3 Conditions for use

In the following, we analyze the patterns in the use for the EWS and political dialogue. The focus will be on the constitutional and cultural perspective, as the political perspective is a micro-level explanation, which does not make sense to analyze at the macro level. The data underpinning this analysis are shown in Appendix 2.

#### *Constitutional perspective*

Of the a-political variables presented in the introduction, awareness cannot be measured quantitatively. *Capacity* can be measured by looking at the numbers of administrative staff available for EU affairs. Administrative capacity is not sufficient to create an active use of the EWS. Indeed, the German Bundestag has the highest number of EU-related staff, but is fairly inactive concerning the EWS. High staff numbers does also not seem absolutely necessary for active use of the EWS, as evidenced by the relatively high number of ROs adopted by Luxembourg. Similarly, the German *Bundesrat*, one of the top users of the political dialogue, has a very limited administrative staff. At the same time, several parliaments that are not active have mentioned in the twentieth COSAC report that they suffer from limited resources available for EU scrutiny work (e.g. Greece, Ireland and Estonia).<sup>116</sup>

A second variable that we can analyze for all parliaments is the *complexity of the procedures in place*. The figures show that three parliaments with clearly decentralized procedures for the EWS (Luxembourg, *Tweede Kamer*, and Sweden) adopt reasoned opinions rather frequently. The reason for this link decentralization may be the fact that the specialized sectoral interests represented in these committees triggers MPs to use the EWS more frequently than under more centralized procedures with less expertise on the content of specific proposals. Yet a *decentralized* EWS procedure is not strictly necessary for the active use of the EWS. Indeed, the French *Sénat* combines a mixed system with rather active use, and the UK and Polish lower houses combine an EAC-based system with rather active use. Across the board, however, the chambers that use a very complex procedure involving different actors at the administrative and political level are amongst the less active parliaments (e.g. Germany, Portugal, Belgium and Finland).

There is no clear link between decentralization and use of the political dialogue, given the active use of the instrument in across the range of coordination systems. Here, however, the *informality* of the procedure seems to play a role. In Portugal, the informality of the procedure for the political dialogue might explain the large number of opinions sent to the Commission,

particularly compared to the number of reasoned opinions issued in Portugal.

Use of the new instruments may also be conditioned by the *strength of a parliament*, captured by EU-related information rights and mandating powers. Although no recent disaggregate data are available for these features of control, the OPAL network has constructed a new index for institutional strength of a parliament in EU affairs, composed of these two aspects.<sup>117</sup> Although we could not use the scores per item, as this research is in progress, we did obtain the aggregate scores, which yield the following picture.

There is no straightforward relation between institutional strength and adoption of ROs. Denmark, Germany (both chambers), Estonia, Finland, and Lithuania, are comparatively strong while using the EWS to a low or moderate degree. Sweden and the Dutch *Tweede Kamer* are the only two of the group of strong parliaments that actively use the EWS. Parliamentary strength is not a necessary condition for the active use of the EWS, given the fact that the Polish *Sejm*, the Dutch *Eerste Kamer*, the French *Sénat*, and the UK *House of Commons* only score moderately on strength, but are relatively frequent users of the EWS. Similarly, strength is not a necessary condition for active use of the political dialogue, as evidenced by for instance the Italian *Camera dei Deputati* and the Portuguese parliament. Strong parliaments also do not always actively use the political dialogue, as evidenced by the fact that the three strongest parliaments (Finland, German *Bundestag*, and Lithuania) hardly use the political dialogue.

One striking finding is that in some parliaments, *upper chambers* are more active in using the political dialogue than lower chambers (Austria, Germany, UK, Italy, Netherlands, and Poland). Reasons for the differences in use of the instrument might be that lower chambers profit from closer contacts to the government both in terms of information as well as in terms of influencing EU policy making in the Council through holding their government to account. For upper chambers, the political dialogue seems to be one of the few instruments to make their voice heard at the EU level, especially if no breach of subsidiarity is apparent.

The differences between upper and lower chambers are less pronounced for reasoned opinions (but see France, Germany and Italy, where the upper houses are again more active). The reason for the lower activity of upper chambers in issuing reasoned opinions (compared to the political dialogue) might be twofold. This might relate to problems of coordination. Upper chambers in federal systems often have to coordinate with regional parliaments, which may lead to problems in terms of the eight-week deadline for reasoned opinions.

### **Cultural perspective**

Turning to *parliamentary roles*, we may use a recently developed typology of parliamentary roles in EU affairs, developed by the OPAL network.<sup>118</sup> Crucially, they distinguish five roles. The first role is that of *government watchdog*, i.e. trying to hold government accountable after negotiations. Secondly, parliaments may be *policy shapers*, trying to influence government positions ex ante. Third, parliaments may see their role as a *public forum*, in which important choices are discussed and communicated to the public. Fourth, parliaments may be *experts*, developing their own expertise on EU affairs. Fifth, they may see their role as a veritable *European player*, wanting to act directly at the EU level, e.g. by using the EWS or political dialogue. For our purposes, the latter role is important, because this may lead to more active use of those instruments. In addition, the two roles aimed at the government seem important, because it has been argued that parliaments focusing strongly on their own government, may not want to also focus on the EU directly.

Scoring has been done on the basis of in-depth case studies of the parliaments.<sup>119</sup> On this basis, eight parliaments and lower chambers are said to be an EU player: Denmark, Italy, Luxembourg, the Netherlands, Portugal, Romania, Sweden, and the Czech Republic. Within this group of European players, some are highly active with the EWS (Luxembourg, the Netherlands, Sweden), or the political dialogue (Italy, Portugal, Romania). Yet other European players have more moderate outputs (Denmark, Czech Republic). Also, a clear European role perception is not a necessary condition for the use of the EWS: the lower chambers in the UK and Poland are argued not to be European players, but still produce relatively few ROs. It must be noted that four of the top users of this instrument are upper chambers, for which role conceptions have not yet been systematically analyzed.

The roles of government watchdog and policy-shaper, both of which are directed at the government, are not incompatible with the European role. Several lower chambers (Denmark, Luxembourg, Netherlands, and Sweden) combine these direct and more indirect roles. For this reason, attaching great value to control of the government in EU affairs, does not preclude an active role at the EU stage. Yet it must be noted that amongst those parliaments which only score high on the national control roles, only Poland plays an active role at the EU stage, using the EWS relatively frequently.

Finally, we analyzed the relationship between a *popular stance* towards European integration and the use of the EWS and political dialogue. This presents the following picture. In nine member states, more than 50% of the population does not have trust in EU institutions: Cyprus, Greece, Portugal, Slovakia, Slovenia, Spain, and the Czech Republic. The parliaments of

these member states do not necessarily use the available EU instruments more actively. Some of these parliaments are virtual non-users of the instruments available (Slovakia, Slovenia, Greece, Cyprus). Only in Portugal and the Czech Republic (upper chambers) is this distrust channelled into the use of available instruments. In both member states, the political dialogue is often used. Member states with relatively high levels of popular trust in the EU (Finland, Lithuania, Malta, Denmark, and Romania), are not necessarily more reluctant to use the direct scrutiny instruments, as evidenced by the Danish and Romanian parliaments' rather active use of the political dialogue. Finally, turning to support for EU membership, it appears that two frequent users of the EWS (the Netherlands, Luxembourg), actually are amongst the member states with highest support for EU membership. In Sweden, still more than half of the population supports EU membership. In sum, there is no straightforward relationship between these popular values and use of the instruments.

### **3.4 Cooperation**

We now turn to the conditions for transforming ROs into yellow cards, i.e. cooperation between parliaments, and for actually exerting influence on EU legislative outcomes, i.e. direct cooperation or interaction with the EU institutions.

#### ***Intra-parliamentary cooperation in bicameral systems***

Not only the internal procedure for the political dialogue and to issue reasoned opinions differs within the parliamentary chambers of the 28 member states, also cooperation between chambers in bicameral systems is diverse. Most bicameral parliaments identify cooperation problems when it comes to subsidiarity checks<sup>120</sup> and cooperation between chambers is mostly not binding (e.g. UK, Ireland, Germany). Only the Irish and Spanish parliaments have developed several formal tools for cooperation between the chambers. Overall, Spain seems to be the only bicameral system that manages to issue reasoned opinions together. By contrast, in the Netherlands, Germany, Austria, UK, Poland and Belgium, each chamber issues its own reasoned opinions. In Austria, cooperation between the chambers occurs through the single administration for both chambers. This enhances the exchange of information. Nevertheless, both chambers still issue opinions separately and often on different EU proposals. In several federal states, also regional parliaments have competences under the Early Warning System (e.g. Austria, Belgium and Spain). Particularly in Belgium the division of competences under the EWS between the regional and

central parliament is not always clear and can delay the procedure.

### **Inter-parliamentary cooperation**

Inter-parliamentary cooperation is a crucial condition for the EWS to work, because without cooperation a yellow card is hard to effectuate. Inter-parliamentary cooperation runs through a diversity of channels, several of which preceded the Treaty of Lisbon. Appendix 3 provides an overview of these channels, some of which are political in composition, others administrative. In addition, there is a system of information exchange (IPEX).<sup>121</sup>

### **Political cooperation**

The oldest format of inter-parliamentary cooperation is the *Conference of Speakers of the Parliaments of the EU*. The main actors involved in this conference are the speakers of national parliaments and the President of the European Parliament. The conference held its inaugural meeting in Rome in 1963 (see table 2). Until 1975, the conference was only held irregularly, but since then it is held on an annual basis. The conference is formally codified in Art. 9 of Protocol (No 1) on the Role of National Parliaments in the European Union of the Treaty of Lisbon.

The aims of the Conference of Speakers are a) to safeguard and promote ‘the role of parliaments and carrying out common work in support of the inter-parliamentary activities’, b) to represent a ‘forum for the exchange of opinions, information and experiences among the Speakers’ and c) to ‘oversee the coordination of inter-parliamentary EU activities’.<sup>122</sup> It also supports research activities to create common instruments of knowledge exchange. It is the only body that may make binding decisions on inter-parliamentary cooperation in the EU.<sup>123</sup> For example, the structure and organization of the inter-parliamentary conference for CFSP/CSDP were agreed at the Speakers’ Conference in Warsaw in April 2012.

The most important forum of inter-parliamentary cooperation is the *Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC)*.<sup>124</sup> COSAC was established in 1989 at a Speakers meeting, and was formally recognized in the Amsterdam Treaty. In the Lisbon Treaty, it is acknowledged in Article 10 of the Protocol on the Role of National Parliaments. COSAC meetings, which take place twice per year, are organized and chaired by the parliament of the country which holds the rotating Presidency. They serve to exchange views, information, best practices, and expertise on EU matters.<sup>125</sup> Each delegation consists of six members from EACs from national parliaments, and six members of the European Parliament. Often, COSAC invites guest speakers such as European Commissioners or

representatives of the rotating presidency.

In addition to the biannual meetings, the chairpersons of EACs also meet twice per year within the COSAC format. Furthermore, COSAC may organize inter-parliamentary conferences on specific topics (such as CSFP, including CSDP). Like any other inter-parliamentary forum, the conclusions, recommendations or decisions reached in COSAC meetings are not binding on its members unless they address the conduct of the conference itself.

Most parliaments (27 out of 31) consider networking as the most successful aspect of COSAC meetings. This networking function became particularly visible when the first yellow card (Monti II) was issued. Several parliaments mention that the timing of the COSAC meeting and networking during the conference was highly effective in bringing about the first yellow card.<sup>126</sup> Thus, in recent years COSAC has become an important forum for coordinating the submission of reasoned opinions as part of the EWS.

Through the use of bi-annual reports, 29 out of 34 parliaments consider COSAC as a good way to exchange best practices between parliaments. However, 18 out of 31 parliaments/chambers consider the quality of debate during COSAC meetings as the least successful aspect of this type of inter-parliamentary cooperation.<sup>127</sup> Parliaments in Europe are also divided when it comes to COSAC's future tasks. Especially Central Eastern European parliaments criticize COSAC for being too weak and lacking decision making power. However, most other parliaments do not consider COSAC to be the right venue for collective decision making, and prefer to use COSAC as a more informal venue and would like to increase the number of side meetings to discuss specific legislative proposals.<sup>128</sup>

Besides formal inter-parliamentary cooperation between all national parliaments, several *regional groups of parliaments* have been established in the last years, such as the Visegrad group (Poland, Hungary, Slovakia, and the Czech Republic) or the Mediterranean Parliaments (France, Greece, Italy, Croatia, Malta, Portugal, and Slovenia). It is yet unclear to what extent such regional cooperation could enhance parliamentary cooperation with respect to subsidiarity concerns.

### **Administrative Cooperation**

At the administrative level, national parliaments cooperate through their *liaison officers*, which together form an informal network. All national parliaments have at least one representative in Brussels. Most of them have offices in the EP (except for the German *Bundestag*: the *Bundestag* has its office in the building that also hosts the party political representatives). The representatives exchange information and coordinate the submissions of reasoned opinions. They

provide a ‘bridge-building function’ across national parliaments.<sup>129</sup> The weekly Monday Morning Meetings (MMMs) are the main instrument for doing so.

Most parliaments and chambers consider the liaisons in Brussels as a very useful instrument.<sup>130</sup> The Czech *Senát*, and Latvia even consider the liaisons as one of the most useful pro-active tool for general national parliamentary involvement in EU policy making (COSAC 20<sup>th</sup> biannual report). The German *Bundestag*, Portugal, the French *Sénat*, the Romanian *Senat*, the Polish *Sejm*, and the Spanish *Cortes* point to the liaisons as a source of information not only during subsidiarity tests, but also in the pre-legislative phase in order to scrutinize EU proposals that might become critical.

### **IPEX**

A final instrument for inter-parliamentary cooperation worth mentioning is *IPEX*; *Inter-parliamentary EU information eXchange* (sic). This is a platform for the exchange of information between national parliaments and the European Parliament concerning issues related to EU policy making, particularly in light of the provisions of the Treaty of Lisbon. IPEX contains information on the progress of scrutiny in member states, whether or not a subsidiarity check is in progress, important information to exchange, and any reasoned opinions. These parliamentary documents are uploaded individually by each national Parliament.<sup>131</sup> The IPEX database is complemented by a network of IPEX correspondents that may be used to obtain any information not in the database.<sup>132</sup>

Parliaments make different use of IPEX. Some for example also add national documents.<sup>133</sup> The countries that upload most documents on IPEX are Austria, Germany, Italy, the Netherlands, Sweden, the Czech and French *Sénat* and the Polish *Sejm*.<sup>134</sup> As such, there is no clear link with institutional strength of a parliament. While it seems that countries that frequently use the system are also among the more active countries in issuing reasoned opinions, it is surprising that also less active parliaments such as Italy and Germany are rather active in uploading documents into IPEX.

Overall, many parliaments criticize the database for not being up to date and information only being available in national languages. This view is supported by a recent academic study,<sup>135</sup> according to which the database has the following shortcomings: many parliaments do not upload substantive documents, or do so with delay or only in their national language. On the positive side, the information on IPEX is argued to have expanded.<sup>136</sup> In sum, IPEX seems to be more an instrument to exchange information on subsidiarity checks, and not necessarily a useful way of



increasing the number of reasoned opinions actually issued or to concert action of parliaments.

### ***Cooperation with the EU institutions***

Besides regular inter-parliamentary meetings organized by national parliaments, a range of irregular inter-parliamentary meetings exist which are mainly organized by the European Parliament. First, there are *Inter-parliamentary Committee Meetings* that are organized under the sole responsibility of the European Parliament. They are established to facilitate further discussion among parliamentary committees on concrete issues or specific draft of EU legislation. Generally, they deal with policies falling under the ordinary legislative procedure.<sup>137</sup>

Secondly, there are Joint Committee Meetings that are organized jointly by the European Parliament and the national parliament of the country holding the rotating Council Presidency. They aim to bring together MPs and MEPs from corresponding committees to discuss matters of common concern. The choice of topics, speakers, agenda, documentation, audiovisual and media tools are all devised and agreed upon by the EP together with the co-organizing national parliament. Compared to the regular meetings, these meetings are more informal and not officially codified in the Treaties. Inter-parliamentary Committee Meetings and Joint Committee Meetings are frequently organized (49 between 2009 and 2013). According to Claudia Heffler and Katjana Gattermann, this shows that there is a demand for parliamentary exchange between specialist parliamentarians.<sup>138</sup>

Another forum of irregular meetings are *Joint Parliamentary Meetings*. Similarly to Joint Committee Meetings, they are organized jointly by European Parliament and the national parliament of the country holding the rotating Council Presidency. According to the European Parliament's annual reports, Joint Parliamentary Meetings take a broader perspective in their debates and do not serve to produce 'common conclusions', but instead aim to promote 'inter-parliamentary dialogue on major policy areas' and to improve parliamentary awareness for oversight and control over decisions taken at EU level.<sup>139</sup> The focus is on cross-cutting issues (e.g. future of Europe, economic crisis, sustainable development) and more general discussions, they require complex and long preparation.

Between 2005 and 2008, 16 Joint Parliamentary Meetings were organized.<sup>140</sup> However, there are declining registration rates of MEPs and MPs at such meetings,<sup>141</sup> and since 2011 there were no regular meetings. The European Parliament (2014<sup>142</sup>) has stated that the diminishing relevance of Joint Parliamentary Meetings is linked to a new trend for specialization in inter-parliamentary cooperation, which has produced new formats and attracted more specialist

parliamentarians.

Overall, the 21<sup>st</sup> biannual COSAC report indicates that the majority of chambers/parliaments (24 out of 38) regularly attended the irregular inter-parliamentary meetings held at the premises of the European Parliament. Only the Denmark and the Slovenian *Drzavni zbor* (lower house) rarely attended these meetings. Similarly as for the COSAC meetings, most parliaments consider the quality of debate during such meetings the weakest aspect, while networking and the exchange of best practices are generally considered to be the most important aspect of such meetings.<sup>143</sup>

Besides the range of inter-parliamentary meetings, there is also room for more informal cooperation. However, contacts between national MPs and MEPs are still rare and often only run through informal party channels,<sup>144</sup> although the French *Assemblée nationale* interacts regularly with national MEPs on important EU issues.<sup>145</sup> Croatia and the French *Assemblée nationale* also find it useful to ask rapporteurs to engage with the Commission at the preparatory stage of a proposal.<sup>146</sup> The German *Bundesrat*, Greece, and the group of the Green party of the Austrian *Nationalrat* regularly cooperate with the European Parliament. Furthermore, the *Bundestag* holds committee meetings in Brussels that are attended by members of the European Commission, and the parliament gives national MEPs the right to sit on national committees.

Several parliaments, (e.g. Lithuania) would also find it useful to engage more frequently with key EU figures such as members of the European Commission. However, this seems to be difficult to arrange as national parliaments are not the primary focus for key EU figures.<sup>147</sup>

### 3.5 Conclusion

The analysis of the 28 parliaments shows that most parliaments and chambers consider their indirect instruments of scrutinizing their own government the most important tool to get involved in EU affairs. Besides these most popular instruments, several parliaments also find the instrument of a rapporteur helpful to influence EU decision making in an early stage. Generally, the EWS and the political dialogue follow the indirect instruments. However, several parliaments and chambers specialize only either on the EWS or the political dialogue, as shown by the frequency of use of the procedures shows. Upper chambers and chambers with a low capacity seem to use the EWS less frequently than the political dialogue. Additionally, a decentralized procedure for subsidiarity tests seems to increase the number of reasoned opinions issued. Complex procedures involving different administrative levels, the plenary and sectoral committees seem to decrease the use of the EWS.

Concerning inter-parliamentary cooperation, the common denominator of most parliaments is that they would like to improve the quality of debate in inter-parliamentary meetings towards more specialized debate on policy issues. COSAC meetings could be improved by leaving more room for informal sessions and including all national parliaments in agenda setting of the meetings to discuss more specific issues. This wish is in line with a trend of mainstreaming observed for the meetings with the EP.<sup>148</sup> So far, however, administrative cooperation has been more effective for bringing about coordination in the context of the EWS than IPEX.

## 4 | Experiences in nine parliaments

This chapter deals with the experiences of nine parliaments with scrutiny of EU affairs after the Lisbon Treaty, namely the Austrian *Nationalrat* and *Bundesrat*, the Belgian *Chambre des représentants*, the Estonian *Riigikogu*, the Finnish *Eduskunta*, the German *Bundestag*, the Greek *Vouli ton Ellinon*, the Italian *Camera dei Deputati*, the Polish *Sejm*, and the Swedish *Riksdag*. First, the chapter deals with the broad institutional framework for scrutiny of EU affairs: the instruments in use since Lisbon and the procedure for the Early Warning System (EWS). Second, it discusses the actual functioning of the EWS, as well as the conditions that facilitate or obstruct the use of the instrument. Third, the chapter deals with the effects of the EWS, and in particular of the reasoned opinions – including national perceptions on what the effects should ideally be. Finally, as one of the conditions for the use and effectiveness of the EWS, the chapter discusses inter-parliamentary and intra-parliamentary cooperation, as well as cooperation with EU institutions.

### 4.1 Institutional framework

#### *Indirect instruments since Lisbon*

Chapter 2 has provided an overview of the various instruments for parliamentary scrutiny that are available to national parliaments besides the EWS. Some of these instruments were already in place before the Lisbon Treaty, whereas others were adopted in response to it. In the following, we discuss the four main indirect scrutiny instruments, as indicated by our respondents. These are information rights, negotiation mandates and voting instructions, follow-up after Council negotiations, and rapporteurs.

#### **Information rights**

First, the interviews made clear that parliaments have different degrees of parliamentary information rights. Since the scope of this chapter does not allow for a complete overview, it focuses on some notable features of access to information in the nine parliaments. Firstly, besides the “normal” flow of information between government and parliament that often includes explanatory memorandums from the government on Commission proposals, some parliaments

may oblige the government to provide additional information. Most notably, in Finland, the government may submit to the parliament anything relating to the EU, and is obliged to do so if the Grand Committee so demands – which has led to a flexible working understanding on the sharing of information. This includes information on issues or documents that are not formally part of the powers of the parliament, such as non-legislative Commission documents. Similarly, in Sweden, sectoral committees can oblige the government to provide information on EU matters.<sup>149</sup>

Secondly, some parliaments have obtained more extensive access to information about negotiations in the Council of Ministers. In particular, the Italian *Camera dei Deputati* recently adopted a new rule concerning the exchange of information. Accordingly, the Italian Permanent Representative has to provide the parliamentary liaison with all information pertaining to EU negotiations, including trilogues, minutes of COREPER and Council working groups, and detailed documents on the Italian position. The German *Bundestag* also has extensive access to documents pertaining to negotiations, including documents of informal ministerial meetings, COREPER, and Council working groups; as well as the ‘coordinated instructions for the German representative’ on COREPER and reports from the Permanent Representation.<sup>150</sup> This information, along with many other documents, is available in the electronic information system EuDox, and all documents are accompanied by government opinions (*doppeltes Ueberweisungsverfahren*). Other parliaments mostly receive information through reports from the government on Council negotiations, such as in Finland and Sweden; or through ‘pre-’ and ‘post-briefings’ on Council meetings, such as in Belgium.<sup>151</sup> While the Polish government must submit to the *Sejm* written information ‘on the progress of EU law-making procedures and information on the Republic of Poland’s positions taken in the course of those procedures’, it must also inform the *Sejm* of Poland’s participation in the activities of the EU’ at least twice a year.<sup>152</sup>

Finally, there are a few other interesting documents regarding information rights. In particular, in Austria and Italy, the ministers may scrutinize the Commission’s Annual Work Programme, and report on this to the relevant sectoral committee. Moreover, the Austrian parliament has developed the new instrument of the “topical EU affairs hour” (*Aktuelle Aussprache über EU Angelegenheiten*), intended to discuss EU proposals.

### **Voting instructions**

Second, the negotiation mandate or similar instruments to instruct the government how to vote during Council meetings is often considered the most effective or important instrument of parliamentary control. Some of these mandates are legally binding, whereas others are only

politically binding. The EAC of the Austrian parliament may issue legally binding mandates, just like the EAC of the Estonian parliament. In the Polish *Sejm*, the EAC may issue a binding opinion that either approves or rejects the government's opinion. In the German *Bundestag*, Finnish and Swedish parliament, opinions are not binding legally, but are said to be "politically" binding. Indeed, in these three parliaments, the government has to justify any deviations from the mandate or opinion of parliament. Some parliaments rely on regular parliamentary instruments to instruct the government on Council meetings, including most importantly the resolution (Belgian *Chambre des représentants* and Italian *Camera dei Deputati*) or parliamentary questions (Greece). Although the Belgian *Chambre des représentants* does not have a mandating power, it was mentioned that informally - due to the small distance between the MPs and the minister, who meet on a weekly basis - the ministers know exactly what (not) to do at Council negotiations. Finally, as mentioned by an Austrian respondent, such parliamentary mandates can strengthen the position of the minister in the Council. Generally, the respondents judged very positively about these instruments for scrutiny and control in Council negotiations. They are seen as effective instruments for influencing EU decision making.

### **Follow-up on Council negotiations**

A third type of instrument mentioned is the follow-up after Council negotiations. Respondents from both Belgium and Austria mentioned their system of pre- and post-briefings of meetings of the European Council. Polish ministers owe an account ex-post to the Polish *Sejm*, after Council negotiations. In Finland, if the minister cannot stick to a mandate, he/she has to get back to the Grand Committee by calling its chair. During the debate about the Greek bailout, there was even a 36 hours virtual session with the Grand Committee.

### **Rapporteurs**

Fourth, several respondents highlighted instruments to make MPs responsible for EU affairs. The Polish *Sejm* uses a system of rapporteurs who are assigned to EU legislative proposals, while the Greek parliament has a more informal system in which a certain MP takes the lead. The Polish rapporteurs are MPs of the EAC who have an interest in the Commission proposal under scrutiny. The rapporteur introduces the document of his responsibility in the EUAC and to other MPs. In case a reasoned opinion is adopted it is also the task of the rapporteur to draft the opinion. He or she is also responsible to attend the relevant EU meetings or inter-parliamentary meeting where the proposal is discussed. However, the rapporteur has no mandate from the EUAC and cannot

represent the views of the whole Polish Lower Chamber at such meetings, if there is no plenary agreement or already an agreement on issuing an RO. In the Polish system, there is a 'reporting deputy' for each draft legislative act selected for discussion.<sup>153</sup>

In a similar vein, but in a somewhat broader setting, the Belgian *Chambre des représentants* has introduced a system of "Europromoters": every sectoral committee has appointed such a Europromoter among its members, who has the task to follow the EU policy making processes that are relevant for the committee.<sup>154</sup> The idea is that these MPs stimulate other committee members to study and scrutinize European legislative dossiers. Moreover, the Europromoter is formally responsible for drafting a reasoned opinion under the EWS, and could thus potentially stimulate the scrutiny of subsidiarity issues. This system could promote EU affairs on the agenda of the sectoral committee, as well as increase the link between the Federal Advisory Committee on European Questions (FAC, a joint committee of the Senate and Chamber) and the sectoral committees, since Europromoters are expected to be a member of both the FAC and a sectoral committee.<sup>155</sup> Although the results of this system are not clear yet, given the structural character of the system in contrast to ad hoc rapporteurs on specific dossiers or draft legislative acts, it could promote the scrutiny of EU affairs in day-to-day parliamentary work.<sup>156</sup>

### **Procedure for Early Warning System**

As shown in chapter two, the main *direct* instrument for EU-related control is the Early Warning System, followed by the political dialogue. Parliaments have adopted their own procedures to these ends, which differ in two key aspects. The first difference concerns the *key actors involved*. In some parliaments, the task of scrutinizing Commission proposals on subsidiarity is fully with the EAC (Austria, Estonia, Greece, Finland, Italian *Camera dei Deputati*, Polish *Sejm*). In other parliaments, sectoral committees play a key role (Sweden, Belgian *Chambre des représentants*). The German *Bundestag* has a mixed system involving both sectoral committees, which take the lead, and the EAC. The decision which instruments to deploy is commonly political in nature. This decision is made at different levels, however. For the RO, a distinction should be drawn between lower houses with a need for plenary involvement (Sweden, Estonia, German *Bundestag*, Finland, Polish *Sejm*), and parliaments in which the EAC or the appropriate sectoral committee may decide on behalf of the plenary (Austria, Greece, Italian *Camera dei Deputati*, Belgian *Chambre des représentants*).

A second difference key difference is the *role of the administration* and, relatedly, the *selection and prioritization* of draft legislative acts. In some parliaments, such as the Italian and

Greek lower chamber, administrations are very closely involved with the drafting of reasoned opinions. Moreover, at an earlier stage, most parliaments select or prioritize specific draft legislative acts for the scrutiny of the subsidiarity principle (with the exception of the Sweden, see chapter 7). Members of the parliamentary staff are often closely involved in this selection and prioritization. In order to make such a selection of incoming proposals, most of the nine parliamentary administrations scrutinize all incoming draft legislative proposals. In Finland and the Polish *Sejm*, for example, the staff of the EAC takes note of all incoming proposals from the Commission, and make a first suggestion for acts that need further scrutiny. The staff of the German *Bundestag* also suggests a selection and prioritization of all incoming proposals, while the final selection and appeals for an RO are typically made by the party groups. The administration of the Austrian parliament follows a similar procedure, whereby the staff prepares a list of incoming Commission proposals on a weekly basis, and makes a first legal assessment of a possible breach of the subsidiarity principle. The EU Unit of the Belgian *Chambre des représentants* provides the Speaker with a list of all proposals, but also makes a selection from all Commission proposals of about a hundred a year on the basis of the question whether the proposal bears political pertinence to Belgium. Finally, in the Italian case, the administrative staff of the EAC makes a pre-selection of proposals the EAC decides if a reasoned opinion is drafted. Sometimes the administrative staff of the EAC tries to convince MPs of the EAC that an RO is really needed. The administrative staff of the EAC drafts the RO and the bureau of the EAC (including all political parties) finally votes on it.

Respondents from some parliaments highlighted that they did not have the administrative capacity to carefully read all incoming proposals. As such, in Estonia, the advisors of the EAC look into the Commission's Annual Work Programme, and highlight important dossiers for discussion. Subsequently, staff from the Justice department provides a report on a possible breach of subsidiarity, while the chair of the EAC makes the final decision to put the draft legislative act on the committee's agenda. The Greek parliament also draws on the advice from the ministry, besides a meeting with the chair of the EAC. Finally, a main task of administrations is to provide recommendations to parliament about the instruments to be deployed in response to a particular Commission proposal. Mostly, this advice is not restricted to EWS instruments only, but also encompasses other, national scrutiny instruments, like a mandate.



## 4.2 Actual functioning

### *View of subsidiarity*

A crucial aspect of the practical functioning of the EWS procedure is the understanding of subsidiarity held by the national parliaments. The common line is that subsidiarity is a legal concept, which however is activated on the basis of political reasons. As one respondent put it, 'even in case of a politically motivated RO, legal arguments are still necessary'. Even in those parliaments with a rather legal understanding of subsidiarity, political concerns interrelate. One respondent explains how the administration informally sometimes pushes MPs to start scrutiny if there are important political reasons to investigate a certain proposal. Another interviewee explained that the concept of subsidiarity by necessity is also political in nature, in that you have to check 'added value', which is a more political concept. Two respondents indicated that real breaches of subsidiarity are rare, in the words of one of them because the Commission knows 'exactly what they can and cannot do'.

At the same time, other parliaments struggle with the concept of subsidiarity. One of our respondents explained that subsidiarity is a very subjective matter, which even differs between sectoral committees. According to her, the evaluation of subsidiarity is based on the feeling of being a sovereign parliament; there is no objective test. In addition, a respondent pointed out that it is impossible to decouple subsidiarity and proportionality. The problem is, in her view, that you cannot formulate an opinion about the level of policy, without judging the adequacy/content of a measure. This respondent argues that it is a systemic failure under the Lisbon logic that subsidiarity is seen as a standalone criterion.

### *Evaluation of national procedures*

The respondents provided different evaluations of national procedures. The following strong aspects were pointed out. First, some perceive the procedure in the *Nationalrat* to be fast and simple, because it does not involve many layers and actors. The system in the Sweden is strong because all proposals are checked, with the decentralized system dividing the burden of scrutiny. A strong aspect of this system seems to be the fact that European law is treated as national law. Best practices from the German *Bundestag*, according to the respondents, are the rich information provided on Commission proposals, the strong role of the political groups, EuDox, and the strong German position in the Council.

Weak aspects mentioned by respondents from the several member states concern timing, due to factors such as coordination problems, the lack of weekly sessions of parliament, and

involvement of the plenary. A strong side of involving the plenary, on the other hand, is that this is believed to foster public interest in EU affairs, even though this is also disputed by some respondents. Finally, a best practice from the German *Bundestag* is to ultimately select a few, very important issues, and then really “pool all resources”, using all instruments at a parliament’s disposal, ranging from EWS instruments to indirect ones, and contacts with the Commission and European Parliament. This way, the parliament ensures that ‘every relevant institution knows what the parliament thinks on the issue’ (interview).

### ***Evaluation of the European EWS procedure***

The interviews also were helpful to evaluate the European procedure surrounding the EWS, from the vantage point of national parliaments – beyond the perceived ineffectiveness in terms of control over decision making. As said, various respondents criticized the eight-week deadline. Even if parliaments manage to keep within this time frame, it might be a good idea to allow more time for inter-parliamentary cooperation, as one respondent remarked. A second problem is the quality and speed of the Commission’s response. Respondents in five out of the nine parliaments judged negatively about these aspects. The answers are often late, and of poor quality – some respondents even claiming that the Commission just copies and pastes from previous reasoned opinions. In the words of a respondent, ‘often, it is just a summary of the proposal and which parliament argued what and only a few sentences, or not even that, to the actual criticism. And then, nothing happens’. According to one respondent, one cause of these problems is the centrality of the Secretariat-General of the Commission, at the expense of the DGs, which are the substantive experts on a proposal. A third set of suggestions concerns the notion of subsidiarity. In line with the perceptions held nationally, various respondents argued that the principle of subsidiarity is too restricted; one of them recommending that subsidiarity is broadened to also encompass proportionality. The Swedish parliament has however argued that the Treaty already allows for this.<sup>157</sup>

### **4.3 Conditions for use**

The previous chapter has charted great variety in the extent to which national parliaments issue reasoned opinions and opinions under the political dialogue. This observation leads to the question under which conditions national parliaments use the newly acquired EWS instruments.

### ***The constitutional perspective***

Awareness of the EWS instruments, or European affairs more generally, was seen as a barrier in only two of the parliaments studied. The general perception from the interviews was that awareness is sufficient. Inactivity is seen as result of either a lack of capacity or willingness to use the instrument. Capacity problems were mentioned by respondents from Estonia, Greece, Finland, and the Italian *Camera dei Deputati*. According to Swedish respondents, capacity problems were offset by making the sectoral committees responsible for the subsidiarity checks. There seems a link between capacity and role conception concerning EU scrutiny: some parliaments which do not perceive their role to be active with EU scrutiny (see below), also have assigned low administrative capacity to EU affairs.

The information rights of parliaments also are an important condition of the use of the EWS instruments. Parliaments with strong access to information, such as Sweden, Poland, and Austria, are more active than those with moderate or weak information (Belgium, Greece, Italy, and Estonia).<sup>158</sup> Germany and Finland seem to be an exception here, however, because they combine high access to information with low use of the EWS. This shows that information rights are not a sufficient condition for use of the EWS. The presence of mandating powers does not have a clear effect on the use of the EWS. Various systems combine mandating powers with active use of the EWS: Sweden, Poland, and Austria.<sup>159</sup> On the other hand, Finland, with its strong mandating system, hardly uses the EWS. A similar argument holds for Germany.<sup>160</sup> This marked difference brings us to the importance of role conceptions.

### ***The cultural perspective: role conceptions***

The interviews pointed towards the presence of highly divergent perceptions of what should be the role of national parliaments in EU affairs. According to several respondents, an important determinant of this role conception is the perceived popular stance towards European integration amongst the population in a member state. This was noted in interviews in the Belgian *Chambre des représentants*, Estonia, German *Bundestag*, Italian *Camera dei Deputati*, and the Polish *Sejm*. A respondent of one of these parliaments explained that they did not want to lose credence with the Commission. Accordingly, as several respondents from these parliaments pointed out, the preference is to use the instrument in a positive fashion, aimed at fruitful political dialogue with the Commission (Belgian *Chambre des représentants*), and not to block decision making (Polish *Sejm*). In the parliaments of these member states, the EWS is seen as an “ultimate weapon”, to use only in exceptional circumstances of great political interest. In some parliaments subsidiarity

tests are seen as too negative, which is why there is more use of the political dialogue – sometimes even to express support for European integration by pro-European parties. However, these conceptions are not set in stone: in one pro-European parliament, MPs have learned that the subsidiarity mechanism is not necessarily a negative instrument. Swedish respondents, on the other hand, explained that the role conception shared broadly in Sweden is that it should check that not more power is conferred to Europe. Use of the subsidiarity test is seen as important in light of the Eurosceptical attitude amongst citizens. So, the view of MPs is not necessarily related to those amongst the population.

Furthermore, in Sweden, active use of the instrument is perceived to flow from a general duty of law, in the sense of the obligations flowing from the Treaty of Lisbon. Finland takes a different stance. It is seen as undesirable by all political parties that more than one Finnish position is voiced at the European stage. In the words of one of our Finnish respondents: ‘the idea that governments could represent different positions at the EU level than those of their respective national parliaments raises serious questions about (...)the level of democracy in that country’.

Finally, in some member states, there has been a political choice not to use the instrument very actively. In some cases, this has even resulted in deliberately complicated procedures, or “bypassing” of sectoral committees, to minimize the risk that the instrument is used after all, for instance in response to critical sectoral interests.

### ***The negotiation perspective***

The interviews provided much support for the negotiation perspective. Respondents from various parliaments stressed the importance of a “pusher” who is willing to invest time and energy. A certain degree of idiosyncrasy seems to exist in this respect: in some cases an unexpected player – MP, administrator, external stakeholder or even the government – pushed for a subsidiarity test. Activation of the subsidiarity mechanism, or the political dialogue for that matter, is thus a political choice that depends on a political cost-benefit analysis. This observation holds for all parliaments, including those that are generally not in favour of the subsidiarity mechanism. Components of this cost-benefit analysis differ per parliament, but the some elements seem to have more general relevance. to start with, such a push seems to be conditional on political saliency: importance to key constituents. Moreover, political importance is a main parameter in this cost-benefit analysis. A respondent in one of the more subsidiarity-critical parliaments explained: ‘if we make a reasoned opinion, we really want to make a difference. Use of the

instrument has to be a real message'. Conditions then are a very strong opinion, and the wish to obtain maximum visibility at the European stage.

On the other hand, several circumstances and concerns have been reported to work against the use of the mechanism in specific dossiers. First, several respondents explain that MPs do not see much added value of the instrument, because 'Europe does not bring votes' and 'is not seen as high politics'. However, according to one respondent in a generally pro-European country, this has changed somewhat, because of the financial crisis. Second and related, it was noted that national priorities may take away attention from subsidiarity debates, as happened in one parliament with the Fourth Railway Package, even though this was seen as a key dossier. The latter situation occurred in Sweden, when national attention for railroad privatization led to more attention for the European dossier. Third, favourable party politics are needed. In the words of another respondent: EU issues are still not an issue for which the coalition risks a conflict. There is no consensus on any differences between Eurosceptic parties. Whereas in some parliaments Eurosceptic parties suggest more reasoned opinions, there is no clear picture. Fourth, the position of the government is an important parameter. Especially in monist parliamentary systems, the choice to activate the subsidiarity test is coordinated with the government, or even prevented or requested by it. Fifth, the perceptions of ineffectiveness were reported to hinder activation of the subsidiarity mechanism. According to one of the respondents, 'MPs feel that their actions do not really matter for EU decision making'. This is partly related to the disappointing reactions of the Commission to earlier yellow cards, even though this has also led to anger in at least two parliaments, and a renewed will to use the instrument actively. Sixth, depending on the national conception of subsidiarity, a clear breach of the subsidiarity in legal terms is a prerequisite, whereas in other parliaments political problems seem to be a sufficient condition. A final countervailing pressure on the use of the subsidiarity instrument is the presence of existing alternatives for exerting controls. This may be a matter of effective scrutiny of the government, either formal or informal, or a strong position in the Council as is the case in the German *Bundestag*, which makes it less necessary to "go European" independently, as a parliament.

## **4.4 Effectiveness**

### ***Desired effects***

The interviews revealed that the notion of effective use of the subsidiarity instrument held in a particular parliament is closely linked to the dominant EU-related role conception of a parliament. Parliaments with high popular support for European integration perceive blocking of the decision

making process as an undesirable effect. As a Belgian respondent explains, a fruitful dialogue, and contributing to a Commission proposal are key goals. Similarly, the Polish *Sejm* attaches more value to the political dialogue, which is seen as a more constructive instrument. For the political dialogue, as explained by an Austrian respondent, effectiveness would mean that EU institutions provide further information on the proposal. Ideally, one would also like to see the substantive opinion of parliament reflected in the final proposal, but this is difficult to evaluate.

The voicing of opinions of national parliament or fraction could also be a desired effect in itself. One respondent explained that the instrument may also be used by pro-European parties to express their support for Commission legislation. Then, various respondents also made clear that if an RO is adopted, or even a yellow card adopted, one would expect this to affect the course of the legislative process, at the very least by a reaction of the EU institutions to the parliamentary concerns. These answers reflect the important distinction between policy-seeking motives, i.e. affecting the contents of decision making, versus vote-seeking: making clear to the public that particular issues are dealt with. The latter motive, for instance, is an explicit objective in the Swedish case, where MPs use the subsidiarity test to signal to the public that their concerns with EU integration are met.

### **Perceived effects**

Turning to the actual effects at the EU level, the respondents are fairly united in expressing disappointment with the European Commission's responses to the earlier yellow cards. Also, due to the allegedly slow speed and low quality of the Commission's responses, there is low faith in actual effects on legislative decision making. At the same time, one of the respondents pointed out that the Commission has become more responsive to concerns of parliaments in recent years. According to this respondent, it is merely a formality whether or not the yellow card quorum is reached. She added that the Commission is especially alert when less active parliaments or larger member states become active, adopting a reasoned opinion.

Yet, the respondents have identified various side effects at the European level, some of which unintentional. First, respondents from the Austrian *Nationalrat* and Finland pointed out how the Commission took the absence of reasoned opinions as implicit agreement, i.e. evidence that there were no concerns with subsidiarity in these parliaments. This triggered a higher awareness of subsidiarity in those parliaments. A similar effect is reported after the disappointing response by the Commission to the earlier yellow cards: this has angered MPs in at least two parliaments, making them more active.

Also, according to an MP, the availability of the subsidiarity mechanism has increased conflict between national MPs and MEPs, even within one and the same party group. Several respondents describe a boomerang effect of being 'too active' with ROs: they are alleged to weaken a parliament's credibility with the Commission and other member states. One liaison even describes how reasoned opinions by very active parliaments are not regarded seriously, when making the decision whether or not to follow other parliaments.

The following (side) effects at the national level were reported. The effect mentioned most often (four out of nine parliaments), is that the EWS instruments have led to more awareness of and more interest in EU affairs. One respondent from the Austrian *Nationalrat* explained that this is not so much the effect of the subsidiarity checks in a narrow sense, but more so of the enhanced inter-parliamentary cooperation after Lisbon. A second side effect was increased EU-related activity: more frequent meetings of the EAC and new resources for EU matters (Austria, Greece), the instalment of a new task force on EU documents (Belgian *Chambre des représentants*), but also an increased workload (Greece). Third, various respondents indicated that the subsidiarity instrument led to better substantive parliamentary scrutiny on EU-affairs, as well as political interest in EU issues (Austria, Estonia, Greece). This intensified scrutiny is also partly related to external circumstances, like the financial crisis (Italian *Camera dei Deputati*), or the German constitutional court ruling after Lisbon<sup>161</sup> (German *Bundestag*). Fourth, there have been effects on political debate. In some parliaments, the EWS instruments have led to more plenary debates (Austria). Associated with this is a trend towards more public interest in EU matters (Austria, Finland), which then also increases MPs' influence (Austria). Paradoxically, in Sweden the active use of the EWS instruments makes debate less necessary, because subsidiarity concerns are now handled in an earlier stage of decision making than before.

In addition, the EWS instruments were reported in some parliaments to have impacted on existing political relations. In the Belgian *Chambre des représentants*, worries are that the instrument enhances the position of the opposition, which can use the information on EU proposals to criticize the government. In line with this, in the German *Bundestag*, the tools are actively used by opposition parties, to signal their position on a dossier. In Austria, the EWS instruments have intensified the relationship between the Länder, given the key role of the *Bundesrat* in performing subsidiarity checks. The instruments have affected the position of the government in negotiations, although there is no common pattern in the precise direction. Two respondents stressed that a reasoned opinion may strengthen a government's negotiation position in the Council, which is in line with the earlier observation that several parliaments

cooperate quite closely with the government when adopting a reasoned opinion. Yet, another respondent warned that the adoption of reasoned opinions could also damage the position of the government, and even lead to conflict with the government, which would be dangerous for the coalition.

## **4.5 Cooperation**

### ***Inter-parliamentary cooperation***

The instruments for inter-parliamentary cooperation – the Brussels liaisons, COSAC, and IPEX – are well known by the respondents. Particularly important seems to be the role of the liaisons, who typically serve as the “eyes and ears” of national parliaments in Brussels. In the first place, they channel information from the European level to the national level. On the basis of the Monday Morning Meetings and e-mail contacts between the national liaisons, they update their parliament on the activities of other parliaments. Next, several parliaments have a meeting in which they discuss whether to become active too. One respondent from a parliament less active on the subsidiarity front, however explained that in doing so they focus on parliaments which ‘only become active if there is really something to it’. This is supported by a respondent from another parliament that is more critical of those parliaments who ‘make so many subsidiarity calls’. Additional information is gathered through IPEX, COSAC, and also directly from the EP and Commission in the case of one parliament. Within the group of liaisons, subgroups of likeminded parliaments are reported to exist, based on differences of preference and culture. COSAC and IPEX is also mentioned as a key information source and channel for cooperation. Beyond these three instruments, no specific instruments at the national level for improving inter-parliamentary cooperation exist. One exception is the fact that several parliaments cooperate with subgroups of parliaments during COSAC meetings – such as the meeting of Southern parliamentary committees.

The main function of inter-parliamentary cooperation instruments as perceived by the interviewees is the exchange of information. Even the parliaments that are critical of the EWS or inter-parliamentary cooperation more broadly indicated that inter-parliamentary cooperation is useful, because it allows gathering information that may serve to double-check the government. In the words of one respondent, there is a ‘great need for exchange of views and information’. Also, several parliaments are interested in what other parliaments are planning, in terms of responding with subsidiarity tests.



Of the three main instruments (liaisons, COSAC and IPEX), the liaisons are judged most positively. The majority of respondents were of the opinion that administrative cooperation works very well, and was very important for the Monti II and EPPO yellow cards. The e-mail procedure used amongst the liaison is seen as informative. The personal ties and possibilities for informal exchange make the liaisons an important tool for information exchange.

The majority of respondents explained that IPEX is less useful to this end: information typically most often cannot be found in IPEX, because it is not always up to date and complete, or only in the national language. A key problem, according to one respondent, is that some parliaments may not share information before an official opinion is issued. For this reason, formalized information exchange is problematic. This is partly mitigated by more informal contacts between the liaisons, or at COSAC for that matter.

Opinions on COSAC meetings are more divergent, ranging from 'slight amusement' to positive experiences. On the one hand, COSAC meetings are seen as having been very effective for the Monti-II and EPPO yellow cards, which were conveniently timed. Proponents of a yellow card used these conferences actively to amass support amongst fellow MPs. At the same time, several limits to effectiveness were sketched. One problem is that practical issues often preclude attendance by MPs. Arguably, MPs do not always have an incentive to participate and network. A second problem, highlighted by various respondents, is that most national MPs have no mandate. As a result, they cannot say much at COSAC meetings. A third problem is that there is no continuity between presidencies, which can be very disappointing to MPs interested in a particular meeting. Fourth, there is criticism on the formalism at COSAC, combined with a rejection of the idea that COSAC should produce substantive conclusions. A fifth perceived weakness of COSAC is that its success is very much dependent on accidental personal contacts, which makes continuity a problem. It is partly due to this, that horizontal contacts between MPs beyond COSAC meetings remain rare – another reason being the absence of an overview of potential contact persons.

Several respondents provided suggestions to improve the system of inter-parliamentary cooperation. A majority of respondents suggested that COSAC meetings should focus more on substantive issues, allowing for dialogue and exchange of views- amongst national parliaments and with the EP. One respondent added to this that there should be more room for ad hoc meetings- a sensible suggestion given the earlier importance of COSAC meetings for the existing two yellow cards. Two respondents took another stance, suggesting that COSAC focuses more on institutional issues, and the role of national parliaments in EU decision making. Feasibility of this

suggestion seems limited. A second suggestion from several respondents is to allow for more informal interaction at COSAC, given the absence of national mandates and the fact that COSAC is not a decision making body. A third suggestion is to have better coordination with other types of meetings, to avoid duplication. A fourth suggestion is to use videoconferencing more often. All suggestions have as a commonality that they take the current system as a given. No suggestions were made for new systems or instruments, except the suggestion to exchange lists of priorities by those parliaments who scrutinize the Commission Work Programme. But as one respondent put it, the general idea seems to be to 'first improve existing instruments before creating new ones'.

### ***Intra-parliamentary cooperation in bicameral systems***

Another type of cooperation concerning the EWS is cooperation between chambers of a parliament. The respondents from the various bicameral systems did not provide any best practices here. Typically, it is seen that lower and upper houses have different procedures and role conceptions vis-à-vis the EWS. Also, the understanding of subsidiarity may be different. There are no clear examples of cooperation, except in Austria where the *Bundesrat* and *Nationalrat* share their administration for EU matters. One German respondent even explained that cooperation with the second chamber is lower than with the other parliaments in Europe. In terms of coordination, at most we see an exchange of information between the different chambers.

### ***Cooperation with the EU institutions***

The main function of cooperation with the European institutions is the exchange of information. Lobbying the EP or Commission is mentioned by some respondents, whereas it is strictly ruled out in other parliaments.

The respondents listed several instruments for cooperation with the *European Parliament*. First, in several parliaments bilateral contacts between MPs and MEPs seem not to be very systematic or widespread, except in the German *Bundestag*, which allegedly has intensive contacts between these groups. Some parliaments even have a line working against such contacts, from the conviction that government represents the state vis-à-vis EU institutions. In one parliament, the EWS is reported to have even deteriorated links between national MPs and the EP, because it increased competition. On the other side of the spectrum, several parliaments have instruments for involving MEPs in their operations. Instruments are the right of MEPs to

observe committee meetings (Austria), MEP membership of the advisory committee (Belgian *Chambre des représentants*), attendance of the political party meetings on Monday mornings (Belgian *Chambre des représentants*), hearings with MEPs, and inviting EP rapporteurs (German *Bundestag*),

A second instrument are the meetings organized by the European Parliament. Respondents judge differently about these meetings. One respondent noted that meetings at the EP increasingly deal with specific, controversial issues, such as at the recent meeting on EUROPOL, which in her view is a good thing. Another respondent advises the EP to only include issues on the agenda which have not yet been taken up by the current presidency.

A third instrument are the COSAC meetings, which usually involve MEPs or Commissioners as speakers. This practice is criticized by several respondents, though. According to one of them, the quality of inter-parliamentary meetings is highly dependent on the quality of the presidency, with weak presidencies filling the programme with long presentations by MEPs and Commissioners. This is a broader complaint made by some: why giving MEPs and Commissioners such a central role at COSAC meetings? According to one respondent, 'the EP and Commission take too much time in COSAC meetings on topics not relevant for parliamentary cooperation'. Possibly more useful are meetings with Commissioners at the national level – an instrument mentioned by respondents from the *Sejm* and *Bundestag*.

## **4.6 Conclusion**

The EWS and political dialogue function against the background of a set of indirect instruments, most important of which are information rights, voting instructions, follow-up on Council negotiations, and rapporteurs. The nine cases provided several best practices, such as information about the pre-Council stage of law-making, legally or politically binding mandates, follow-up on Council negotiations, and rapporteurs. The complete mainstreaming of EU affairs in Sweden is seen as a best practice for the EWS procedure, as is the German practice of selecting only a few issues for the EWS, while going all the way on these. Simplified procedures are seen as conducive to the use of the EWS, which also explains why they were deliberately made highly complicated in some parliaments not favouring the EWS.

The European procedure and effects of the EWS are criticized across the parliaments. At the same time, the EWS is said to have led to various other side effects, such as more awareness of EU affairs and better EU scrutiny beyond subsidiarity. Use of the new instruments is mostly seen as a result of lacking capacity, or willingness to use the instrument, combined with the

presence of strong indirect instruments for scrutiny. This willingness is closely related to the EU-related role conception of a parliament, which may be based on the perceived popular stance on the EU, or on the question whether parliaments should play an independent role at the European stage. To explain activity on particular dossiers, political cost-benefit analyses come in, revolving around preferences and saliency, as well as the position of the government in more monist systems.

Systematic intra-parliamentary cooperation is absent in the bicameral parliaments researched. Turning to inter-parliamentary cooperation, the liaisons are seen as the most important instrument, while IPEX is seen to be hardly useful. The majority of respondents view COSAC as a good platform for information exchange, whereas the quality of its debates is judged as insufficient. Given the absence of parliamentary mandates, several respondents argue for more room for informal interactions, a majority of respondents suggesting COSAC meetings to become more substantive. In most parliaments researched, cooperation with the Commission is not well-developed. Cooperation with the EP is more extensive, mostly based on bilateral contacts and instruments for including MEPs in national parliamentary proceedings. The substantive meetings organized by the EP are valued by some, while the important role of the Commission and EP at COSAC meetings receives quite some criticism.

# 5 | Experiences: The view of the European institutions

## 5.1 Introduction

The previous chapters described how national parliaments have tried to tighten their grip on Brussels. However, in order to gain a complete overview of the working of the instruments that have been established with and since the Lisbon Treaty, it is equally important to understand the views and experiences of the European institutions. After all, national parliaments' attempts to influence EU decision making can only have a real effect if the communications are also well-understood at the 'other side of the line'. In this chapter, we therefore shed light on the cooperation between national parliaments on the one hand, and the European institutions on the other hand. What are the procedures of the European Commission and the European Parliament with regard to the subsidiarity test? To what extent do the reasoned opinions and other contributions of national parliaments influence the decision making process? What improvements are possible? And what other – perhaps preferable – forms of cooperation can national parliaments use to tighten their grip on Brussels?

## 5.2 European Commission

### *Procedure*<sup>162</sup>

The Commission sends the national parliaments all consultation documents and draft legislation digitally, simultaneously with the announcement to the European Parliament and the Council. As far as available, national parliaments receive the documents in their official language. Draft legislation subject to the subsidiarity test is accompanied by a special transmission document specifying the deadline concerned. IPEX receives an announcement of the documents as well.

On a weekly basis, the Commission sends the national parliaments an overview of all documents sent in the preceding week. If a parliament did not receive a particular document, it should inform the Commission within three workdays. After this period, the documents are considered to have been received. The deadline for the subsidiarity test can be changed on an *ad hoc* basis if a parliament did not receive a document in first instance. The original deadline remains valid for the other parliaments. Finally, the Commission takes into account parliaments'

summer recess: it does not include the month August in the eight-week period.

The Commission tracks the number of reasoned opinions through a specially developed IT-tool that visualizes the state of affairs in a histogram. To this end, the Secretariat General of the Commission assesses whether a contribution received by a national parliament falls under the Early Warning System or the political dialogue. The guiding principle is that all contributions that put forward subsidiarity concerns count as reasoned opinions.

If the threshold for a yellow card has been reached within the eight week period, the College of Commissioners officially establishes this, and informs the national parliaments, the European Parliament, the Council and IPEX. The service(s) within the Commission concerned with the draft legislation subsequently prepares an analysis, on the basis of which the College of Commissioners decides whether it will maintain, amend or withdraw the proposal. The national parliaments, the European Parliament, the Council and IPEX are informed of this decision through a communication, accompanied by an explanatory memorandum.

If the threshold for a yellow card has not been reached, reasoned opinions are dealt with in the same way as the contributions under the political dialogue. Internally, the procedure is as follows: the Secretariat General of the Commission receives all contribution of the national parliaments, and forwards them to the lead service that prepares a reaction - if necessary in cooperation with associated services within the Commission. The reaction is signed by the vice-president for inter-institutional relations and sent to the national parliament in question.

### ***Experiences with the procedure***

The introduction of the political dialogue in 2006 led to a higher number of contributions of national parliaments every year. In 2006, the Commission received a total number of 53 contributions, rising to 200 in 2008, and 250 a year later.<sup>163</sup> This trend continued after the entry into force of the subsidiarity test at the end of 2009. In 2010, the Commission received 387 contributions, of which it identified 34 as reasoned opinions.<sup>164</sup> The year 2011 witnessed a spectacular growth of the number of contributions to 622, including 64 reasoned opinions.<sup>165</sup> Since then, the number of contributions seems to have stabilized with 663 contributions (of which 70 reasoned opinions) in 2012, and 621 (of which 88 reasoned opinions) in 2013.<sup>166</sup> Just like the national parliaments, also the Commission had to get used to the new situation and adjust its procedures accordingly.

Initially, the Commission reacted very slowly to the contributions from the national parliaments. Currently however, it employs a self-imposed deadline of three months, which it can

normally meet. Nevertheless, national parliaments are still dissatisfied, and would like to have a quicker response from the Commission.<sup>167</sup> Although the Commission is aware of this, the preparation of the answers to all (reasoned) opinions takes time. Every contribution must be registered, translated and assessed. Often, several services are involved as regards the content of the reply, the legal service provides an advice, and the Secretariat General assesses the text of the reaction. Changes that are made during this process have to be seen and approved by all services involved, and lastly, the final text has to be translated in the official language of the parliament concerned. This way particularly the processing of complex questions takes quite some time.

Another frequently heard complaint from national parliaments is that the reply of the Commission is often dissatisfactory as regards content, and simply comes down to repeating the argumentation from the original draft legislative act. Actually, at the Commission itself the exchange of arguments in the context of both the political dialogue and the subsidiarity test is not experienced as a real dialogue either. The rather formal answers are seen as an inevitable outcome of a formal procedure. After all, political self-preservation of any player on the European stage – and thus also that of the European Commission – requires cautiousness about official written accounts of its position and the arguments used.

Moreover, a complicating factor is that the views of the national parliaments often diverge greatly, both as regards the substantive arguments and the assessment of the subsidiarity aspect. In practice, the principle of subsidiarity is difficult to define. Even before the introduction of the Early Warning System, agreement on the correct application of the principle required negotiations between the Commission, the Council and the European Parliament.<sup>168</sup> Evidently, the (potential) involvement of forty-one national parliaments does not make it any easier to come to a univocal assessment.

With regard to the subsidiarity analysis, the Commission itself starts from two fundamental questions: the question whether the intended result of the European legislation cannot be (sufficiently) achieved by the individual member states (*necessity test*), and the question if the result can be better achieved by collective European action through for example the creation of economies of scale and better effectiveness (*added value test*).<sup>169</sup> Yet in the reasoned opinions, national parliaments give the principle their own interpretation, and also put forward several, and often contradictory, political arguments. As such, it is not only unnecessary, but also impossible for the Commission to satisfy the demands of all national parliaments.

Usually, experiences with personal contact between national parliaments and the Commission are more positive. The European Commission has encouraged Commissioners to visit

national parliaments in order to explain and discuss legislative proposals. From the side of the national parliaments, the visits from and to the Commission are often appreciated.<sup>170</sup> Also, for Commission officials, personal contacts are mostly of greater value than a written exchange of arguments. Moreover, timely involvement is more appreciated than comments on draft legislation in the final stage. The Commission advises parliaments to provide input at an early stage, because changes can be more easily implemented when the legislation is still in the preparatory phase. Yet, since the entry into force of the Lisbon Treaty, national parliaments seem to have started to give relatively more attention to already proposed legislation, and less attention to Green and White Papers in their dialogue with the Commission.<sup>171</sup> In 2013, only 28 out of the 621 contributions that national parliaments sent in were concerned with Green and White Papers or public consultations.<sup>172</sup> Only the Swedish parliament is involved in the early phase of law-making on a structural basis.

### **5.3 European Parliament**

#### ***Procedure***

As established in the Rules of Procedure of the European Parliament,<sup>173</sup> reasoned opinions that are received by the President of the European Parliament have to be referred to the standing committee responsible for the legislative proposal in question. In addition, a reasoned opinion has to be forwarded for information to the Legal Affairs committee, which is responsible for the scrutiny of the subsidiarity principle.

With the exception of the urgent cases mentioned in Article 4 of the Protocol on the Role of National Parliaments, the EP standing committee responsible for the legislative proposal is not allowed to proceed to a final vote before the deadline of eight weeks has expired. According to a common approach developed by the EP's committee chairs, ten more days are added to this period to give reasoned opinions sufficient time to properly arrive in the lead committee.<sup>174</sup> Discussions may however take place before the EWS-procedure has been concluded.

If the threshold for the yellow card is reached, the European Parliament will not take a decision about the proposal until the Commission has made clear whether it will withdraw, maintain or amend it. If the threshold for a potential orange card is reached, the committee within the Parliament that has the primary responsibility for the proposal concerned can recommend the plenary to reject the proposal on the grounds of subsidiarity infringement, or to decide differently. This recommendation has to consider both the reasoned opinions, the decision of the European Commission, and the advice of the Legal Affairs committee of the Parliament. If



the plenary, by a majority of the votes, decides to reject the proposal, the President of the Parliament closes the procedure. Otherwise, the procedure continues.

Finally, besides the procedures as regards the subsidiarity test, the Rules of Procedure contain articles concerning the relations with national parliaments. These include for example stipulations determining that the European Parliament has to regularly inform the national parliaments about its activities; that the committees of the Parliament can consult with the parliamentary committees of the national parliaments (in so far as the budget allows); and that documents concerning the European decision making process that national parliaments sent to the Parliament have to be referred to the standing committee concerned. The Rules also establish the possibility to conclude an inter-institutional agreement for inter-parliamentary cooperation. Although on occasions, this wish has indeed been expressed within the European Parliament,<sup>175</sup> it has not resulted in any concrete initiatives as yet.

### ***Experiences with the procedure***

The Secretariat General of the European Parliament has established several instruments and procedures to inform the members of the Parliament about reasoned opinions and other contributions from national parliaments.<sup>176</sup> Evidently, reasoned opinions and other contributions are referred to the committee responsible for the legislative proposal in question – as the Rules of Procedure prescribe. Reasoned opinions are all translated into the official languages of the EU, with the exception of Maltese and Gaelic. Translations of contributions within the political dialogue are only made on the request of the chair of the standing committee or the rapporteur. Even if a request for translation only concerns one or a few contributions, all contributions from national parliaments concerning the proposal in question will in that case be translated – a procedure based on the principle of equal treatment. In practice however, very few requests for translation are made.

All reasoned opinions and other contributions are entered into a special intranet-database in all languages that are available. The database is available to Members of the European Parliament (MEPs), their assistants and the staff of the European Parliament. Also the liaison officers of the national parliaments have access to the database. Moreover, prior to a plenary session in Strasbourg, an overview of the state of affairs is made available that lists proposals with regard to which reasoned opinions or several contributions to the political dialogue have been received in the preceding month, and outlines on which proposals on the plenary's agenda reasoned opinions and other contributions were sent in.<sup>177</sup>

It is striking that the European Parliament and the European Commission assess independently from each other whether the contributions from national parliaments are reasoned opinions or opinions within the framework of the political dialogue. In most cases the assessment will be the same, but, occasionally, this may give rise to misunderstandings and confusion.

Clearly however, in the current situation this potential difference of assessment will not matter much. That is, despite the attempts to inform the MEPs, in practice many MEPs are ill-informed about both reasoned opinions and other contributions from national parliaments. Just like members of the national parliaments, MEPs struggle with the amount of shared information, and therefore not all information that is available actually gets through. There is also undoubtedly a general sense of rivalry vis-à-vis the national parliaments. Traditionally, the European Parliament was concerned with European legislation and the national parliaments with national legislation. As such, not all MEPs appreciate the direct involvement of national parliament at the European level. Particularly when this direct involvement is accompanied by negative statements about the European Parliament, it is sometimes experienced as threatening. The extent to which this is the case differs however according to person and party. Indeed, also the tone of the reports produced by the European Parliament can greatly differ.<sup>178</sup>

In order to improve on the relations between MEPs and national parliamentarians on an institutional level, the directorate of the EP Secretariat responsible for relations with national parliaments will introduce some new tools. For example, the directorate wants to directly signal to the rapporteur of the EP if a Commission proposal receives much attention from national parliaments, and offer to get them in touch with members of national parliaments (MPs) or to organize a meeting. This way, one could establish a direct connection between the contributions from national parliaments in the framework of the subsidiarity procedure and the political dialogue on the one hand, and the inter-parliamentary contacts between the European Parliament and the national parliaments on the other hand.

Although inter-parliamentary contacts between MEPs and MPs are not a “natural” part of the legislative process, they have intensified in recent years. There are several types of forums where MEPs and MPs can meet and interact.<sup>179</sup> National parliaments find inter-parliamentary meetings organized by the EP particularly useful for networking and exchanging information. The quality of the debates, however, often leaves much to be desired.<sup>180</sup> Especially larger meetings, where parliamentary delegations consist of several persons, lead to frustration both with the MPs and MEPs: there is very little or even no possibility to speak, and having a profound discussion is difficult. In recent years, the emphasis has therefore shifted to the creation of smaller networks

around specific topics, and the organization of small-scale meetings where only rapporteurs, experts or committee chairs are present.<sup>181</sup> These contribute more to the daily work of the parliamentarians, and are indeed also mostly appreciated by the national parliaments.<sup>182</sup>

Contacts between national parliaments and the European Parliament might also be improved through bilateral visits. For national parliaments, such visits have the advantage that they have more influence on the agenda for the meeting. On the part of the MEP, bilateral visits organised in preparation of member states about to take over the presidency of the Council are particularly valued, because they provide for more thorough discussions with a limited number of participants and an opportunity to exchange views on concrete issues that are to rise in the following period of the particular member state's presidency.<sup>183</sup>

Since fairly recently, it is possible to use videoconferences for bilateral meetings. These save time and resources, and can also partially resolve agenda-setting problems that are sometimes in the way of successful cooperation. To this end, the European Parliament has good technological facilities at its disposal, including a few channels for translation. About half of the national parliaments have the necessary facilities for videoconferences.<sup>184</sup>

## 5.4 Effects

The introduction of the subsidiarity test was the result of a gradual process in which the EU's compliance with the subsidiarity principle increasingly became the subject of critical scrutiny. Already before the introduction of the instrument, the European Commission started to pay more attention to the application of the principle.<sup>185</sup> The urgency to take this seriously has further increased since the introduction of the Early Warning System. The knowledge that national parliaments may reject a proposal on grounds of non-compliance with the subsidiarity principle has increased the Commission's awareness that initiatives have to be justified from this perspective. Although national parliaments are still not satisfied with the explanations from the Commission, the number of proposals that are solely justified on the basis of the simple conclusion that the proposal complies with the subsidiarity principle has declined over the last years.<sup>186</sup>

The reasoned opinions as such have only little real influence. That is, at the EU's political stage, reasoned opinions from only one or a few parliaments are a small factor: seeing the large amount of input from various actors, a reasoned opinion soon becomes just one piece of information among many. The fact that national parliaments fairly often submit contradicting opinions does not help to improve this situation. Although national parliaments' disappointment

about the little influence of reasoned opinions is understandable, from a European perspective every individual Chamber of parliament is only one amongst forty-one. Moreover, even when a yellow card has been achieved, the European Commission has discretionary room to decide how to respond. Experience so far has learned that a yellow card does not automatically lead to withdrawal or amendment of the proposal. On balance, the Commission is still primarily oriented toward the Council and the European Parliament: the political assessment whether a proposal may make it through these legislative institutions largely sets the Commission's course.

As stated above, also in the European Parliament reasoned opinions receive little attention. In general, subsidiarity questions are not as pressing as at the national level.<sup>187</sup> It might be that the electoral gains of the Eurosceptic parties will change this attitude in the EP, yet reasoned opinions have so far not played any important role. Indeed, even when a yellow card was reached concerning the proposal for the creation of a European Public Prosecutor, the European Parliament barely referred to this.

Finally, it is difficult to determine in how far reasoned opinions are important in the Council. Evidently, governments should take into account the opinions of their parliaments, yet the level of control that a parliament can exert over the government differs greatly. A number of parliaments stringently control the national government, but this is not the case in all member states. Therefore, it is questionable whether a standpoint from the national parliament (either in a reasoned opinion or otherwise) will be defended by the government in the Council. If in a bi-cameral system the two chambers do not agree with each other (which sometimes happens), the possibility that reasoned opinions have influence on the legislative process through the Council is smaller. Also, it is likely that reasoned opinions that are adopted by parliament in plenary session bear more political influence than those that are decided upon by a standing committee of the parliament.

## **5.5 Points for improvement**

The limited influence of reasoned opinions so far may be discouraging, yet if national parliaments really want to have their voice heard in Brussels, they have to persist. There is a general expectation that the new Commission and the newly elected European Parliament will listen more carefully to the standpoints of the national parliaments. Gradually, they will also be forced to do this given the opinions of the electorate and several governments. Indeed, the rather blunt reaction from the European Commission to the yellow card on the European Public Prosecutor was discussed in the Council, where the ministers told the Commission that they henceforth

expect better reactions to yellow cards in terms of substantive preparation and argumentation.

Yet also the national parliaments themselves can take a number of measures to enhance their voice and influence at the European level.

### ***National parliaments***

At the start of a new Commission period, relatively *many Green and White Papers* are published. This gives national parliaments a chance to be involved at an early stage. The advantage of this early involvement does not only increase the potential to have a real influence as proposals can still be changed relatively easily, but also means that one can build coalitions between national parliaments and create more political strength in an early phase. This might also make it easier for national parliaments to successfully complete their internal procedures and engage in cooperation within the term of eight weeks, which currently often is obstacle.

National parliaments demand timely and qualitatively good reactions from the Commission. However, this warrants an *extensive and clear motivation* from the parliaments. Qualitatively good contributions will generate qualitatively better reactions. To this end, the Commission would greatly value a *division between substantive (political) arguments and subsidiarity arguments*. Also, national parliaments have to make it very clear that a contribution concerns a reasoned opinion, because it is of course somewhat peculiar that the Commission and the European Parliament each decide for their own internally. The recommendation in the Leegte-report to *create a paragraph collectively with other parliaments that serves as opening line for reasoned opinions* should thus be taken to heart. Perhaps, one could even think of jointly designing a complete format.

In order to maximize the political weight of (reasoned) opinions, it would be wise to internally make sure that they are supported and formally *reinforced by the plenary* as much as possible, and to promote this also with other parliaments. National parliaments demand more insight into what exactly happens to the (reasoned) opinions once they have been sent in. This is understandable, particularly if parliaments put in efforts over a longer period of time. Indeed, they also have to make themselves accountable vis-à-vis the electorate. The appointment of a *rapporteur* for important European issues may contribute to this. This person can keep an eye on the European legislative process after the adoption of a reasoned opinion (or another important contribution), and can underline and explain the opinion of the parliament through personal contacts once more. Currently, it is not custom to arrange a meeting between the Commission and the national parliaments that have sent in a reasoned opinion. It is advisable to change this

and arrange a standard meeting after the submission of a reasoned opinion.

Another opportunity to gain better insight into what is done with the input of national parliaments is to *draw up contributions in the form of amendments* where possible. This makes the wishes of a national parliament more concrete to European institutions, which enhances a good and substantive discussion, and makes it easier to trace what exactly happens with the (reasoned) opinions.

### **Cooperation**

The most important lesson might be that it is crucial to see the realization of influence on EU institutions in a long-term perspective. The Early Warning System should be seen in connection with other instruments, and as only one step in a longer process of influencing. People in Brussels concurrently advice national parliaments to *have their voice heard already in the preparatory phase of a legislative proposal*. It is also important to give a *greater emphasis on informal contacts with the European Commission and the European Parliament*. This improves the quality of the discussion, and makes national parliaments less dependent upon the government for acquiring information.

In order to have a real influence, one does not only need qualitatively good arguments and input, but also particularly political strength. The voice of only one parliament is not very impressive. Therefore, a national parliament that wants to make its voice heard has to *cooperate with other parliaments*. In this cooperation, it would be good not only to consider the question how the threshold for a yellow card can be reached, but also to *coordinate the argumentation of the reasoned opinions* as much as possible. It would be more difficult to ignore a series of similar or even a collective letter from several parliaments than individual contributions.

Considering the large discretionary powers of the Commission and the individual responsibility of the European Parliament, national parliaments would be well-advised to maintain good relations with these institutions. The national parliaments do not have many possibilities to enforce their wishes, and are thus dependent upon their persuasiveness and the political goodwill of others. This does not mean that differences of opinions have to be avoided, but that these should be discussed and settled on the basis of mutual respect.

Good relations with the European Commission may be promoted through bilateral contacts. The Commission has welcomed parliamentary delegations, and has encouraged individual Commissioners to visit national parliaments to discuss and explain their proposals. Now that a new Commission has taken office, the national parliament could send each Commissioner

an open invitation to visit the parliament. In cooperation with other parliaments one could also send a collective request to adopt a meeting with the national parliaments as a standard aspect of every mission to a member state. If it clear in advance that the Commissioner has to make time to visit the parliament, this might also resolve problems of agenda-setting.

The relations with the European Parliament may be strengthened through regular participation in inter-parliamentary conferences and intensified bilateral contacts, both on a personal level and by making use of videoconferences. One could invest in the quality of the relationship by making sure that the focus is not on differences of opinions only and search for common interests. For example, both the European Parliament and the national parliaments would benefit from greater openness and transparency in the Council. Also concerning substantive issues the positions of the Parliament and the national parliaments may concur. If MEPs and MPs are able to cooperate and support each other in these situations, differences of opinion, that will naturally always be there, may bear less impact on the relationship.

### ***European instruments***

Currently, the European institutions do not support the creation of new instruments for national parliaments. For example, a “green card procedure” is perceived as undesirable, because even the European Parliament does not have any formal right of initiative. Moreover, the EU institutions find it more important to further develop existing instruments before adding new ones.

Another call from Brussels is the desire to address the vagueness of the principle of subsidiarity. National parliaments could contribute to this by appealing to the European Court of Justice if their reasoned opinions have been ignored, while they still believe that the legislation infringes the subsidiarity principle. Article 8 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality establishes a procedure to do so.

## **5.6 Conclusion**

This chapter showed that the Commission and EP have their own procedures for registering and responding to contributions from national parliaments. The Commission treats ROs and opinions similarly. The aim is to respond within three months. Quicker reactions are difficult, due to complexity and divergent contents of contributions. The fact that answers are rather formal, is seen as an evitable consequence of having a formal procedure. Within the EP, parliamentary proceedings will be put on hold after adoption of a yellow card, until the Commission has responded. In addition, ROs and opinions are entered in a database available within the EP. In

practice, though, MEPs are ill-informed about these contributions, due to information overload. A general sense of rivalry between EP and MEPs might also play a role.

The main effect of the EWS has been a higher urgency within the Commission to take subsidiarity seriously. Reasoned opinions as such, however, have little real influence, because they are just one of a multitude of inputs from various actors. Therefore, the Commission recommends parliaments to become active instead in the pre-legislative stage. However, since the entry into force of the Lisbon Treaty, national parliaments with the exception of Sweden seem to have focused more on already proposed legislation, at the expense of Green and White Papers.

Turning to the future of the EWS, if national parliaments want to have their voice heard in Brussels, they have to persist. There is a general understanding that the Commission and EP will listen more carefully to national parliaments. The latter may also take their own measures to enhance their influence, like reacting to Green and White Papers, and putting more emphasis on informal contacts with the Commission and EP. Concerning ROs, these could be better argued, provided with a standard opening paragraph, be formulated in terms of amendments, and based on coordinated arguments. Clarification of the principle of subsidiarity could be sought by making a case with the ECJ. Relations with the Commission could be strengthened by having more bilateral contacts: relations with the EP could be improved through a constructive search for common interests, through regular participation in common conferences and bilateral contacts. Finally, the creation of new instruments for national parliaments, such as a green card, is not supported by the European institutions.



## 6 | Experiences: Austria

### 6.1 Background

Austria's relation with the EU has been described as rather ambivalent since its accession in 1994. More than two-thirds of those who voted in the respective referendum in 1994 favoured EU membership, but public opinion on the EU soon declined after accession and has remained well below the EU average since then. In the Eurobarometer of May 2011, 37% of the Austrian citizens expressed that they considered EU membership a good thing, against a 27% European average; 25% of the Austrian citizens expressed that they considered EU membership a bad thing against a 18% average.<sup>188</sup>

The Austrian parliament has two chambers: the *Nationalrat* (lower house), where parliamentary power is mainly located, and the *Bundesrat* (upper house), which is seen to play a very subordinate role in national politics. The powers of the *Nationalrat* are limited. This is, as Miklin points out, for three reasons.<sup>189</sup> First, decision making in Austria was dominated by corporatism after the Second World War. As a result, many decisions were taken or negotiated outside parliament. Second, parliament's resources are quite limited, both in terms of parliamentary staff and the resources available to parliamentarians themselves. Third, the electoral system dominated by party lists makes MPs rely heavily on their own party in order to get re-elected. Parliamentarians from the governing (coalition) parties therefore refrain from "biting the hand that feeds them" (i.e. refrain from criticising government openly). The indirectly elected *Bundesrat* (*MPs are elected by the federal parliaments*) has constitutionally very few competencies and in most cases can only delay legislation. Its role in the political process when it comes to national politics is so negligible that there have been debates on whether it should be abolished.<sup>190</sup>

In terms of the scrutiny of EU policy making, the most striking feature of the Austrian parliamentary scrutiny system is its mandating system.<sup>191</sup> Article 23(e) and Article 23k(3) of the Austrian Constitution stipulate that the European Affairs Committee (EAC) of the *Nationalrat* may formulate opinions that legally bind the government in *all negotiations on EU policies* that need to be passed into Federal law, or which bear on the issue of a directly applicable juridical act concerning matters that would need to be codified by federal legislation. Government may

deviate from these opinions only for ‘urgent reasons of foreign or integration policy’, and after consulting the EAC once more. If constitutional law is affected, it may do so only if the EAC does not raise an objection within a certain timeframe. The Austrian *Bundesrat* has similar mandating rights, but only with regard to measures that would restrict its own competencies (or may do so in the future) or when constitutional law is affected.<sup>192</sup> The mandating instrument will be discussed in more detail below.

Within the Austrian parliament, sectoral committees work on EU affairs only in an ad-hoc and informal basis. It is the European Affairs Committee (EAC) (of either the *Bundesrat* or the *Nationalrat*) that adopts the reasoned opinions.

A reform of the Austrian Constitution was carried out in July 2010 in the context of the coming into force of the Lisbon Treaty. Further legal reforms followed which were completed in 2012.<sup>193</sup> The aim of the reforms was to provide both the lower and upper house with means to implement the new competencies of the Lisbon Treaty. This reform made it possible that reasoned opinions on subsidiarity are sent directly to the EU institutions. The reform also provides a basis for the political dialogue and for enhancing the ties with the EU institutions.

Qualitative studies on the Austrian parliament in EU affairs suggest that overall media attention for day-to-day EU scrutiny is rather low. Although the two EU committees (the Main Committee on EU affairs, responsible for the scrutiny of European Council meetings, and the Standing Sub-Committee on EU affairs (EAC), responsible for the Council of Ministers; see below) are the only committees whose meetings are open to the public and thus to the media – all minutes of the meetings are published by the parliamentary administrative staff – they receive little attention. Things look somewhat better when issues are salient enough to reach the plenary (for example, the Lisbon Treaty or the Fiscal Compact). Such issues do receive media attention.<sup>194</sup>

## **6.2 Instruments, procedures and actual functioning**

The *Nationalrat's* Main Committee on EU Affairs<sup>195</sup> is responsible for the lower house's EU-related tasks. The *Nationalrat's* right to submit an opinion in the context of political dialogue or a reasoned opinion lies in principle with this Main Committee on EU Affairs. In practice, the Main Committee delegates these tasks to the *Standing Sub-committee on EU Affairs (EAC)*.<sup>196</sup> It is therefore the Sub-Committee that has carried the bulk of the workload in EU affairs since 1999,<sup>197</sup> and which calls the shots when it comes to day-to-day EU affairs. It is this committee that issues reasoned opinions and participates in the political dialogue. The EAC meets about once a month.<sup>198</sup> The Main Committee on EU Affairs, on the other hand, focuses on the European Council

and the Euro-zone summits. It therefore meets before every European Council meeting and usually also before a Euro-zone summit.

The *Bundesrat* also has an EAC.<sup>199</sup> However, in the *Bundesrat* reasoned opinions may be submitted by both the EAC and by the plenary.<sup>200</sup> Decisions are taken by a simple majority in both cases. All committees are cross-cutting committees, with seats distributed among party groups, according to party size.<sup>201</sup>

### **Reasoned opinions**

Both houses may issue a reasoned opinion of why a legislative proposal is or is not in compliance with the subsidiarity-principle.<sup>202</sup> Both houses of the Austrian parliament work rather separately when being engaged in EU affairs. There is no formal requirement to coordinate between chambers.<sup>203</sup>

### **Procedure**

The coming into force of a new Treaty and the (possible) impact on the role of the national parliament has been anticipated since the years 2003-2004. In 2006, a special division within the 'EU and International Services' of the Parliamentary Directorate (*Parlamentsdirektion*) was set up in order to deal with information provided by the Austrian government and the EU institutions on EU policies.<sup>204</sup> Nowadays, two units within the Parliamentary Directorate assist parliament with its EU-related tasks: the *EU Coordination* and the *European Relations* units.<sup>205</sup> The units work for both houses and play a role in preparing a reasoned opinion. This procedure is outlined in detail in the section below. The procedure to carry out a subsidiarity test and for drafting and deciding on a reasoned opinion applies largely to both houses.

It has become practice in these units to submit all incoming legislative proposals to a *pre-subsidiarity check* on the basis of legal criteria and the information from the Permanent Representation in Brussels or other sources.<sup>206</sup> In practice this means, according to our respondents, that legislative proposals are checked and given certain code-words on a weekly basis. Around three to four times a week parliamentary administrative staff gives recommendations of which proposals could be submitted to a subsidiarity check: MPs of the EAC of both parliaments are informed about this pre-selection by email.<sup>207</sup>

The list containing the pre-selection (*Vorpruefungsliste*) is not politically binding. The administration only provides recommendations of which proposals might be looked into more closely; according to our respondents, it does not recommend a certain scrutiny instrument. Both

academics and practitioners agree that administrators do not go into the political substance of the legislative proposals but perform a formal evaluation of dossiers that might, legally speaking, transgress the subsidiarity principle.

It is then up to the so-called “group advisors” of the political groups of the Austrian Parliament<sup>208</sup> to scrutinize this list and to see what is of political relevance for the respective members of the political groups represented in the EACs. This may be coordinated with officials and Members of Parliament of the respective sectoral committees on a case by case basis, but these are not formally involved (yet). The list of which issues are to be submitted to the subsidiarity check is seen as useful, as MPs, as stated by one of the respondents, can look amongst others at the deadlines and “see how much time there is left to get active”. One might then invite specific experts and might schedule an additional meeting of the EAC. The pre-selection list is thus an important resource for MPs to carry out subsidiarity checks.

After the list has been drawn up, positions are coordinated *across* political group lines. There is a weekly *jour-fixe* on which all the political group advisors and official of the Parliamentary Directorate agree what will be on the agenda of the EACs of the *Nationalrat* or *Bundesrat*. This *jour-fixe* is chaired and initiated by an official working for the second President of the Austrian Parliament.<sup>209</sup> According to our respondents, the “demands” and wishes of the political groups are normally respected and the agenda of the respective EAC is agreed upon consensually. At the moment a Commissions proposal is put on its agenda, the EAC may also ask government to give an opinion on subsidiarity within two weeks.<sup>210</sup>

One of the respondents made clear that the decision to issue a reasoned opinion is determined by political objectives as there are only limited resources. However, the agenda is also determined by the availability of the respective minister which has to attend the meeting of the EAC of the *Nationalrat*. For the practical process, this might imply that a meeting might be scheduled with some delay between the *jour-fixe* and the actual EAC meeting as the schedule of the respective minister is usually very full. In the *Bundesrat* ministers do not need to attend meetings of the EAC. Here, the Heads of Unit of Ministries do attend meetings of the *Bundesrat* together with other officials.

Once the EAC agrees to draw up a reasoned opinion, it is normally the political group advisors that come up with a draft. In the case of the Austrian Social Democratic Party, this draft is also circulated among the social partners. The two largest political parties (Austrian Social Democrats and the Austrian People’s Party) that form the coalition are seen to coordinate their opinions with the respective ministry and each other, so as to find a consensual position in

advance. In some cases, MPs come up with the draft for the reasoned opinion themselves or negotiate amendments “into” the proposed reasoned opinion. An example would be the directive on telecommunications, where a Green MP was able to insert a stipulation on the neutrality of networks. According to some of our respondents, it is thus possible to influence EU politics directly as an MP, especially if one is an expert on certain issues.

The *Bundesrat* also sends Commission proposals to the federal (Länder) parliaments (Landtage). The *Bundesrat* receives the opinions of the federal states in return, if they are on time. The views and opinions of the Länder have to be taken into account by the *Bundesrat*. In this case, the eight weeks deadline for issuing reasoned opinions has an important impact according to our respondent, as the *Bundesrat* EAC only meets once a month. Awaiting the input of the Länder before meeting as EAC is not always possible as one passes the eight-week deadline.

However, within the federal states, Commission legislative proposals frequently do not reach the federal parliaments (the *Landtage*). They are mostly dealt with by administrators or, if things go well, by the *Länder* governments. As a result, the members of the *Länder* parliaments are very often not aware of the position the *Länder* sent to the *Bundesrat*. According to the respondents, this is a problem that is difficult to solve. The *Bundesrat* follows the positions of the *Länder* neither blindly nor just waits for them: it is not in any way turning into a mere post-box for the *Länder*. In fact, the *Bundesrat* is in a key position in EU affairs in Austria: the federal states have recognized that the *Bundesrat* is much more active than the *Nationalrat* in EU affairs.

As said, the “pre-selection” by the political group advisors and officials of the Austrian Parliamentary Directorate (see above) is not binding, and MPs may put issues on the agenda even when they are not on the pre-selection list. According to the respondents, MPs of the *Bundesrat*, make use of this. As opposed to MPs of the *Nationalrat*, they seem to be very active in determining the agenda of the EAC and in deciding which issues to focus on for a subsidiarity test. MPs of the *Bundesrat* make up their mind about which issues to concentrate on in advance, for example on the basis of the Annual Work Programme of the Commission.

It is believed by MPs of the Bundestag that proposals do not always have to be assessed by way of the subsidiarity principle, but can also be treated according to the principle of proportionality under the EWS. In the *Bundesrat* one thus takes the approach that both issues of proportionality and subsidiarity are part of the subsidiarity test.

In the *Nationalrat*, reasoned opinions are normally adopted in the Sub-Committee on EU Affairs (EAC). The document is then sent to be finalized by the Parliamentary Directorate and

formally sent to the European institutions by the First President of the Austrian Parliament. In the *Bundesrat*, reasoned opinions may be submitted by the plenary or by its EAC. So far, only the EAC has adopted reasoned opinions in the *Bundesrat*. Decisions are taken by a simple majority in all cases.<sup>211</sup>

When looking at the quality of the reasoned opinions, one comes to the conclusion that there is a clear political dimension to the reasoned opinions issued so far. According to our respondents, it is a political decision to determine whether a decision should be taken at the national level rather than at the European level. If one comes to the observation that there is no added value to decide on a policy dossier at the EU level, then this is almost naturally based on a political assessment. This “political” dimension of reasoned opinions however, seems not affected by a more general stance “pro” or against European integration, but seems more issue-specific.

### **Political dialogue**

Of the Lisbon instruments, the political dialogue is the instrument used most often by the Austrian parliament. In the context of the political dialogue, sixteen opinions have been adopted by the *Nationalrat* and eighteen by the *Bundesrat* (until the end of 2012). There seems to be a general perception in Austria that this is a very important instrument to directly influence the Commission.<sup>212</sup> In fact, according to our respondents, what starts as a subsidiarity check often ends in a political dialogue with the Commission. This is especially true for the *Nationalrat*, which hardly resorts to the reasoned opinion as it seen to “lack teeth”: that is, not have an impact on EU policy making. Parliamentary scrutiny therefore often results in an opinion in the context of the political dialogue due to the fact that it is the ‘political content that parliamentarians are interested in or concerned with’.<sup>213</sup> The *Bundesrat* however, makes use of both the political dialogue and EWS.

### **Negotiation mandate**

In comparison to other member states, the *Nationalrat* does not resort to the EWS and political dialogue very often, but concentrates more on controlling and binding the Austrian government in EU negotiations. The TTIP is an example of a case in which both the *Bundesrat* and the *Nationalrat* made use of their right to bind the respective minister in the Council, by issuing a so-called binding opinion (*bindende Stellungnahme*) by way of their respective EAC. In this case, the *Bundesrat* also issued a reasoned opinion on TTIP. By doing so, as stated by one of the respondents, one tries to use different channels of parliamentary control and bundles these in

order to increase their effect. Indeed, when a reasoned opinion has been tabled, this has to be taken into account by the Austrian delegation at all stages of the Council negotiations. The minister has to report back on this to the Austrian Parliament.

For an opposition party such as the Greens it is important to follow up what happens in the Council, and what position the government actually took in “Brussels” (whether it actually took the reasoned opinion or the binding opinion by parliament into account when negotiating in EU forums). Here, it is paramount to get information about the Austrian position in Council working parties. In this context, it is possible to request *access to the minutes of the Council Working parties*. These requests have to be answered within two weeks. One can then, as stated by one of the respondents, trace the Austrian position and see whether or not the government stuck to the parliamentary mandate/position.

### **Topical hours**

Another way of creating awareness for EU affairs are the so-called topical hours on EU affairs (*EU aktuelle Stunde*), which take place four times a year. Here, each political group takes turns in determining the agenda of the topical hour. Trade Agreements are an example of such a topic. Within this topical hour, the EU issues selected for debate are debated in-depth and representatives of the government are questioned by directly elected Members of the *Nationalrat*.

### **Agenda**

A different “instrument” that is used in particular by the *Bundesrat* to influence EU policy making, is to *place issues repeatedly on its agenda*. According to our respondents, this is a very effective strategy to affect the EU policy making process. For example, the proposal for a European Public Prosecutor Office (EPPO) was already put on the EAC’s agenda three times, whereas TTIP was on the agenda of the EAC of the *Bundesrat* for four times. In both cases, the chair and vice-chair of the *Bundesrat* got the opinion of the Commission on these EU dossiers and reported this to the *Bundesrat*. After a discussion in the *Bundesrat*, the chairs informed the Commission again on the opinion of the *Bundesrat*. In this respect, the *Bundesrat* engages in a multi-level game of “ping-pong” (between the Commission and the EAC of the *Bundesrat*).

## 6.3 Conditions for use

### *Awareness and capacity*

Overall, the awareness of MPs of European affairs was said to differ greatly. One has to understand that MPs have to deal with European issues on top of their other (national) political tasks. European affairs are considered a kind of additional task, so this has to be dealt with in an efficient manner. Often, according to our respondents, MPs feel that they are swamped with EU documents. In case of the *Bundesrat* however, one does not want to resort to simple “copy and pasting” when drawing up a reasoned opinion as it is believed that is important to get a proper reaction by the Commission.

To try to influence European affairs, one has to create an “appetite for Europe” (*Lust für Europa*) among the colleagues and motivate members. As stated by one of the respondents, one has to try to influence members within one’s own political group and convince them that it is worth working for, and within a different Europe. In this quest, networking within one’s own country and across national boundaries is considered vital by some of our respondent (see below).

### *Role conceptions*

As stated, the Lisbon Treaty has had a much greater impact on the *Bundesrat* than on the *Nationalrat*. European policy making has become the main business of the *Bundesrat* and it is turning into a “European chamber” (*Europa-kammer*). Some of our respondents stated that the Lisbon Treaty provided the *Bundesrat* some form of empowerment and even “reason of existence”, as opposed to national politics, where the *Bundesrat* plays a somewhat of a shadow role. This had an impact on the role conception of the *Bundesrat*: it sees itself as a European player. While this is an effect of the Lisbon Treaty, this role conception in turn influences the use of the Lisbon instruments.

The question is why only the *Bundesrat* has been so active, given that it has the same opportunities to participate in European affairs as the lower house (*Nationalrat*). According to our respondents, this can be explained in part by the fact that both the chair and the vice-chair of the EU committee of the *Bundesrat*<sup>214</sup> are very interested in European politics and are trying to make a difference here. Personalities thus matter and have an effect on the identity of the *Bundesrat*. The individual MPs of the *Bundesrat* however, also seem to be very much informed about the instruments available after Lisbon: Green MPs for example have received training about the Lisbon instruments and their possible use.



When it comes to the role of the opposition in EU affairs one has to note that it is difficult to influence EU affairs, as it is the Austrian government that is seen to represent the Austrian stance. For MPs that are part of Austrian governing parties it seems to be easier to be able to follow and control EU affairs as there are direct links between Austrian MPs and the (officials) of the Austrian government: the “lines are short” between MPs and government within the two big political groups and there is much (informal) information exchange. The incumbent Austrian cabinet is a grand coalition government formed by the left-wing Social Democratic Party of Austria (SPÖ) and the (more) conservative Austrian People's Party (ÖVP) and this is seen to very much dominate Austrian politics. This also has repercussions on the EU level: according to our respondents, opposition parties hold the view that in EU affairs the two big parties make “deals in EU affairs” and side-line the opposition. This is seen to hold true for both the upper and lower house.

### ***Use of EWS instruments as a cost-benefit analysis***

The motivation for MPs of the Austrian parliament to engage with EU affairs is seen by the respondents to also depend on the degree to which a topic receives attention of the public or the media. For a political group as the Greens, one will also have key focal points, such as environment and agricultural policy. Finally, there are topics that are very salient, such as the TTIP.

The fact that the *Nationalrat* is not very active under the EWS, is explained by the fact that the subsidiarity tests by national parliaments are seen as a tool with a limited impact (as noted above). Some even describe the instruments provided to national parliaments as “lacking teeth”. Even if there is a reasoned opinion by national parliament(s), the Commission is seen to just continue as she wants to. It is felt that parliaments have to be able to control what happens with that draft at a later stage of the process, for example what types of changes are made at the first reading of the Ordinary Legislative Procedure.

Apart from the fact that parliaments might “lack teeth” and are somewhat swamped by documents from “Brussels”, there are other weaknesses identified by MPs. For example, MPs are asked to take a position and have an opinion on issues that have only been discussed in the Council working parties once or twice. As such, one has to build the reasoned opinions somewhat on assumptions about the possible outcome of the legislative process. According to one of the respondents, it would be easier to be able to judge issues of subsidiarity and to judge where the proposal is going in general, if there would be more discussions within – and more meetings of – the Council group party (and provided that the parliament would be informed about this).

## 6.4 Effectiveness: Perceived effects

### *Political dialogue and reasoned opinions*

Although the political dialogue is the most pivotal instrument for Austria when it comes to the Lisbon instruments, the conditions under which this tool is used, is seen to hamper their effective use. Some weaknesses are perceived when it comes to the quality and the time-lag of Commission replies under the political dialogue. The Commission has however managed already to reduce the time it takes her to respond from seven to three months. However, in terms of quality, respondents found the answers vague and of little content-value.

This is also the view about reasoned opinions: one must wait for the reply by the Commission, which is sometimes not very relevant, because at times it is a “copy and paste” from previous reasoned opinions. That is, according to some of the respondents, the Commission does not go into the specific issue at stake, but provides rather generic and standard responses that do not respond to the specific concerns raised by the reasoned opinion at stake. There is thus too little concrete effect from using the Lisbon tools.

### *Side effects*

It is seen as positive that the Lisbon Treaty provisions allow national parliaments to be involved earlier in the EU policy making process. This is especially relevant when it comes to very salient issues, such as the Directive on Catastrophes. In this case, the Commissioner herself came to the *Bundesrat* for a hearing, and took the concerns of the *Bundesrat* seriously. One can also see that reasoned opinions are taken seriously even if the quorum is not reached: there is a momentum if around six parliaments issue a reasoned opinion.

The Lisbon Treaty has had, as became clear above, an important impact on the *Bundesrat*. Yet importantly, according to Miklin,<sup>215</sup> both reasoned opinions and the political dialogue have had a significant indirect effect also on the way the *Nationalrat* deals with EU affairs in at least two ways. First, the EAC now meets more often and more regularly than before Lisbon. Second, while in the early days parliamentary engagement with EU affairs started quite late and only when the Austrian position was already well established,<sup>216</sup> today the EAC engages much earlier in the process than before. Depending on the issue, MPs will try to influence the issue already at the stage of agenda-setting by holding parliamentary debates on certain issues, such as on TTIP.

Moreover, according to one of the respondents, another side effect of the Lisbon instruments is that the *Bundesrat* is turning into a “knowledge hub”. For example, members of the Austrian Chambers representing Employers and Employees interest (*Wirtschafts- and*

*Arbeiterkammer*) attend the meetings of the *Bundesrat*. In addition, the council of cities (*Städtebund*) and the chamber of agriculture (*Landwirtschaftskammern*) are regular representatives within the EAC of the *Bundesrat*. A strategy to strengthen this is to invite guests to the EAC of the *Bundesrat*, for example the Governor of the ECB or the ambassador of the member state that is holding the presidency of the Council. This increases the attractiveness of the committee as a focal point for European affairs.

## 6.5 Conditions for effectiveness of the EWS

### *Intra-parliamentary cooperation*

There is no formal requirement to coordinate between the upper and lower house.<sup>217</sup> When it comes to the use of the EWS, both chambers of the Austrian parliament have together submitted eighteen reasoned opinions. Three were adopted by the EAC of the *Nationalrat* and fifteen by the EAC of the *Bundesrat*.<sup>218</sup> Interestingly, both chambers have submitted reasoned opinions on the same dossier only once (until 2012). According to Miklin, this is due to the different priority that is given in the two chambers to EU scrutiny, as well as to conflicting schedules and organizational difficulties in meeting the eight-week deadline.<sup>219</sup> The fact that the administrative staff works for both parliaments thus does not necessarily lead to more cooperation.

### *Inter-parliamentary cooperation*

Evidently, a venue to network beyond national borders is COSAC. However, it is not the only one. Both the chair and the vice-chair of the *Bundesrat* are inter alia also members of the Council of Europe. As such, these MPs have a network to build on. This is part of a purposeful strategy of networking and increasing influence. As stated by one of the respondents: ‘today, one does not need twenty phone-numbers of the Austrian federal states but twenty phone-numbers per member state’.

When cooperating with other parliaments, some of the respondents considered it important that one has to be prepared to make trade-offs on different issues – according to the motto “one time I will help you and then you will help me”. An example of this is the call for solidarity in relation to a proposal against noise at airports. In Austria, airport noise is not a huge problem, but it is a major issue in the UK or France for example. The *Bundesrat* joined these countries in issuing a reasoned opinion. This was not only useful for the system of monitoring noise at the airport of Vienna, the support of other member states on possible other issues was explicitly sought by doing this. This might at the end of the day lead to more concerted efforts

under the EWS.

Due to the fact that the issuing of the multi-coloured cards can only be the result of a concerted effort by parliaments, information about the carrying out of subsidiarity checks has to be circulated to other parliaments. One element in this quest of facilitating the flow of information is the IPEX database. Criticism that was voiced by national parliaments during the COSAC subsidiarity tests, is echoed by Austrian parliamentary staff. According to our respondents, the information on IPEX is not adequate to mobilize all national parliaments (or at least a majority) to support an endeavour, since it is often very much outdated.

The informal network of liaisons in the EP is seen as an effective tool in order to circulate information quickly and effectively. According to our respondents, Austria is very interested in what other parliaments are planning and makes its activity partly dependent on activity in other parliaments.

The Austrian liaison was appointed in July 2005 and, since the Lisbon Treaty, meets with the other liaisons on a weekly basis by way of the so-called Monday Morning Meetings (MMMs). After the MMMs in Brussels, the Austrian liaison reports back what the other member states have in mind and which instruments they use for certain proposals (reasoned opinions, political dialogue, etc). In Vienna, the report from Brussels is examined during the above-mentioned *jour fixe*, on which the political group advisors and officials of the Parliamentary Directorate agree about what will be on the agenda of the EACs of the *Nationalrat* or *Bundesrat*.

### **Cooperation with the EU institutions**

Another strategy that is seen as effective for parliaments to exert influence is to contact the European Parliament and the MEPs of the respective political group. By exchanging information along political group lines (between the national and the European level) one can establish “red lines” and coordinate positions. This would imply that one wants to know at the national level what stance the respective political group takes in the EP and vice versa.<sup>220</sup> An example would be the free trade agreement and the respective provisions on arbitration.

## **6.6 Conclusion**

The Austrian *Nationalrat* explores different avenues of influencing EU decision making. Nowadays, it is much more active than immediately after accession to the EU in trying to bind the respective minister in the Council meeting. Of the Lisbon instruments, the political dialogue is seen as most important by the Austrian *Nationalrat*. Generally however, one can see that the

*Bundesrat* is much more active than the *Nationalrat* in using the political dialogue, and it also uses the EWS very effectively. The active role of the *Bundesrat* in making use of the political dialogue and the EWS has led some to argue that Lisbon has had a much greater impact on the *Bundesrat* than Austrian national politics in the past fifty years.

Currently, the Austrian parliament is working on a reform of the system that is to be finalized by the end of 2014, and that should lead to more efficient use of the Lisbon instruments and increase their impact. The reform of the system was a demand put forward by the Greens in 2010-2011. As discussed above, at the moment there are centralized EU affairs committees both in the *Nationalrat* and the *Bundesrat* that deal with European issues, but there is little involvement of sectoral committees. According to the proposed reform, there will be a greater involvement of the sectoral committees in order to get specific policy related expertise. The sectoral committees will therefore meet two times a year to deal with concrete EU proposals. In parallel, there will be the possibility to pass on proposals from the EAC to the sectoral committees. This will however not be done automatically: whether a proposal is actually passed on to a sectoral committee will still have to be decided by the plenary for each proposal. The practice used by other parliaments to involve sectoral committees in a systematic way is thus only partially adopted. According to the respondents, this is a result of the impression that sectoral committees are “swamped” by EU documents when EU affairs are passed on automatically. This should be avoided in Austria: it is believed that one cannot constantly have sessions of the sectoral committees in order to deal with the information overload from “Brussels”.

An important feature that can be distinguished when it comes to the use of the EWS in Austria is the channelling of resources: administrative staff makes a first screening of which issues might merit further scrutiny, which is then discussed by the political group advisors represented in the Austrian parliament on a weekly basis. This is done consensually in order to agree what should be on the agenda of both EACs. An advantage of this selection strategy is that there is a bundling of resources, while MPs can still add proposals to the agenda of both houses.

In relation to inter-parliamentary cooperation, Austrian MPs try to put policies on the agenda of COSAC and of other EU affairs committees in other Member States actively. In order to do so, it is believed to be key to be part of different institutions (for example to be a member of the Council of Europe). This allows for networking in one’s own member state and across national borders. Moreover, it is felt among MPs that Commission proposals should not be seen in isolation: in order to achieve more yellow cards, one must act in “solidarity” with others and be willing to join them in issuing an RO.

The political dialogue, as said, is the most important post-Lisbon instrument for Austria. However, both the quality and the time-lag of Commission replies under the political dialogue are criticized. While the Commission has managed already to reduce the time it takes her to respond, the quality of its responses is considered weak. This is also the view about the response to reasoned opinions. It appears that the Commission does not go into the specific issue at stake, but provides rather generic and standard responses.

## 7 | Experiences: Germany

### 7.1 Background

Three aspects of the German political system and culture are relevant for the implementation and use of the subsidiarity test, namely its monist system, the unique composition of the *Bundesrat* and the absence of radical anti-Europeanists. Last, but not least, the weight of “Berlin” in European decision making is crucial for an adequate understanding of the (non)use of the subsidiarity instrument by the *Bundestag*.

The German political system is characterized by a strong executive and strong loyalty and discipline of the coalition parties in the *Bundestag* towards their government. As a consequence, the control function of parliament is limited, as the government can almost always rely on a stable and large majority in parliament. The opposition parties behave almost like in the British system, since they are practically excluded from political power. Presently, the opposition (Bündnis 90/Die Grünen and Die Linke) holds a mere 127 out of 631 seats (held by the CDU/CSU and SPD in parliament). Due to the size of the *Bundestag* and its tradition of handling both political and technical issues of policy making in the plenary, the role of assistants to MPs and staff in general is quite substantial, not only in EU-related policy making.

Strictly speaking, the German *Bundesrat* is not a parliamentary assembly, but rather a federal council of the governments of the sixteen *Bundesländer*. Consequently, party majorities in the *Bundesrat* often differ from the coalition of parties in the government. Domestically, this incongruence adds to the political leverage of the *Bundesrat*.

Partly due to the five-percent threshold in national elections, radical leftist and rightist parties with strong anti-European views have a particularly hard time entering the parliament in Germany. Most established EU member states and many new member states have to deal with substantial numbers of Eurosceptical voters and their representatives in parliament. In the *Bundestag*, these views are absent. It remains to be seen whether the *Alternative für Deutschland* will be successful in the next federal elections. For the time being, it is generally assumed that German public opinion is to a large extent pro-European and certainly hedges no strong sentiments against the European project as such. In the Eurobarometer of May 2011, 54% of the German citizens expressed that they considered EU membership a good thing, against a 47%

European average; 16% expressed that they considered EU membership a bad thing against 18% average.<sup>221</sup> Germany's economic prosperity and quick recovery from the Euro-crisis, as well as the political voice of "Berlin" in European decision making via a multitude of channels, may go a long way in explaining the weakness of popular structural anti-Europeanism. As a consequence, public pressure for a critical monitoring of European law making by government or parliament is absent.

The most efficient and reliable way of influencing European legislation is definitely via the national government and the Council. Whereas many other member states debate strategically whether to direct subsidiarity issues to the national government or to the European Commission (or both), for German MPs, reasoned opinions and political dialogue towards the European Commission are not even a second best to the direct communication with the government according to our respondents.

## **7.2 Instruments, procedures and actual functioning**

### ***Reasoned opinions***

The division of labour between the standing sectoral committees (*Fachausschüsse*), the parliamentary plenary and the Committee for European Affairs stands out in comparison to the other 27 EU member states. In many EU member states, the European Affairs Committee (EAC) has a central coordinating and initiating role to play in subsidiarity tests. In the *Bundestag*, the responsibility lies squarely with the sectoral committees, even though the Council of Elders decides which committee will take the lead for a European proposal that is relevant for more than one policy field. The EAC has a rather subordinate role as facilitator: a role that has recently been further reduced by the increased importance of the Financial Committee. It hence is up to the sectoral committees to propose a reasoned opinion to the plenary.

According to the standard procedure of the *Bundestag*, parliament is informed of impending legislation by both the European Commission and the federal government. Ministries provide the MPs with an information sheet on each and every piece of EU draft legislation, which always includes subsidiarity as one issue. In a parallel procedure, the Desk PE2/EU Affairs of the *Bundestag* administration filters subsidiarity-relevant EU initiatives on the basis of the proposal itself, and signals from other parliaments that a reasoned opinion might be forthcoming.

Next, the Council of Elders (*Ältestenrat*)<sup>222</sup> decides which proposals deserve closer scrutiny concerning subsidiarity and which sectoral committee should take the lead in dealing with a specific draft law. 95 per cent of all draft legislation is never discussed in either the plenary or a sectoral committee. Typically, the sectoral committee, after discussing the issue with a



member of the government, either decides to retain the issue for closer scrutiny or formulates an opinion for debate in the plenary. Closer scrutiny implies that subsidiarity is seriously considered and that feedback from other parties involved may come into play, for example within the parliamentary factions and in other national parliaments. Usually, the opinion's addressee is the federal government rather than the European Commission. The government is expected to raise the *Bundestag's* concerns behind closed doors at the European Council or the Council of Ministers. The European Commission is rarely addressed directly.

The same information is provided to the *Bundesrat*. Whereas a reasoned opinion in the *Bundestag* brings together the opinions of the various parliamentary factions in Berlin, the opinion of the *Bundesrat* is negotiated among the governments of the *Länder*. Typically, one of the *Bundesländer* will take the lead in drafting a proposal in one of the sixteen capitals. The *Bundesrat* nevertheless has its own Committee for European Affairs.

Since the introduction of the EWS in the Lisbon Treaty, Germany certainly has not been among the EU member states to make frequent use of this tool. Nor has the *Bundestag* tested the limits of the applicability of the instrument or pushed for improvement of the instrument itself.

### **Political dialogue**

A political dialogue with the European Commission is initiated by way of a resolution of the *Bundestag* plenary (simple majority). The *Bundestag* rarely uses the political dialogue and almost never authorizes the EAC to take decisions on its behalf. The attitude and procedure of the *Bundesrat* are similar. To many MPs, the “soft” instrument of the political dialogue with the European Commission is unknown. This demonstrates that the main counterpart in European affairs for the *Bundestag* (coalition and opposition parties) still is the federal government.

### **Negotiation mandate**

German government is not mandated or legally bound by parliament. However, government must seek the opinion of parliament before Council meetings and takes the position of parliament into account during Council negotiations. If the government deviates from parliament's position it has to account for this deviation.

According to some respondents, it is felt that a formal mandate would only make sense if the government position is expected to deviate from the position of the parliamentary majority. According to Höing a ‘formal and publicly given mandate would reveal differences between the executive and its parliamentary majority, something which political actors try to avoid’.<sup>223</sup>

### 7.3 Conditions for use

Literature has suggested several explanations for the limited use of the Lisbon instruments. As such, some of the explanations below were identified in the literature and corroborated by interviews in Berlin, and some new plausible explanations were added by the interviewees. Most of these explanatory factors are deeply ingrained in the German political system and culture.

#### **Role conceptions**

##### **Executive domination**

In the German political culture, the executive predominates. The parties of the government coalition in parliament are highly loyal to the government. A sense of parliament as a whole – a political actor in its own right – is not strongly developed. Typically, ministers tend to be members of parliaments too. The dichotomy between parties of the coalition and opposition clearly overrules any corporate identity of the parliament as an autonomous institution, despite all insistences on the parliament's authority as the guardian of democracy.

Party discipline within each faction is high, and so is the loyalty to a government coalition involving an MP's own party (or the confrontational attitude of MPs' whose party is not involved). According to our respondents, risking a governmental crisis triggered by a cross-party ad hoc vote against a governmental initiative or European legislation is next to unthinkable. As a consequence, a government coalition proposing a reasoned opinion is unlikely to even attempt to include the opposition parties, whereas the opposition will use the subsidiarity test as a purely political instrument for domestic purposes – as interviewees from opposition parties acknowledged.

A further increase in the popularity and election results of the Eurosceptic party *Alternative für Deutschland* (AfD) might force the hand of parties in parliament to prove their credentials as guardian of the citizens' views and interests vis-à-vis the federal government. Substantial changes seem highly unlikely from today's perspective, as the federal electoral law is biased against new parties entering the *Bundestag*, and the incentives for the mainstream parties to stand by the process of European integration are strong (e.g., a generally pro-European constituency, a dominant position of the German government in Europe and major political and economic benefits from EU integration).

##### **Working parliament**

Additionally, the self-perception of a “working parliament” produces a legalistic approach. Much of the legislative work is done in plenary sessions and not only in the sectoral committees. The

plenary is not used for rhetorical confrontations between government parties and the opposition as for instance in the UK. The loyalty of the coalition parties to the government and the government's leverage in the Council turn the subsidiarity check into an instrument that an opposition party may use to provoke the government coalition – well-aware that a cross-party majority in the *Bundestag* for an RO is highly unlikely.

Due to the size of the *Bundestag* and its substantial administrative staff, MPs are able to specialize in-depth in policy fields in a higher degree than delegates normally do in other national parliaments. In sum, in parliament procedures, legal issues and technical information take precedence over party politics with a larger audience in mind.

### **Use of EWS instruments as a cost-benefit analysis?**

#### **Low expectations and bad publicity**

It is often argued that Germany's dominant position in the European Council (especially since the financial and banking crises) has made the subsidiarity test a quite irrelevant and cumbersome instrument for the *Bundestag*. Unlike the direct contact with the European Commission via the federal government, the subsidiarity instrument generates unwelcome publicity, the impression of anti-European sentiments, and no measurable results – despite all resources invested in inter-parliamentary coordination and communication.

#### **Public awareness?**

Raising public awareness of parliament's instruments to control European legislation is not a priority issue in the *Bundestag* and in German politics in general. The recent successes of the *Alternative für Deutschland* as an explicitly Eurosceptic party may have raised some doubts concerning the stability of the pro-European mind-set of the German voter. Overall, however, German public opinion is still considered to be pro-European.

A content analysis of the German press confirms that even high-quality newspapers (i.c. *Frankfurter Allgemeine Zeitung*, *Süddeutsche Zeitung*) rarely report on the subsidiarity check. Even in the instances of an (attempted) yellow card, public and media interest was lukewarm, to say the least. As a consequence, the parliament feels little pressure to prove its added value as a spokesman for public sentiments and as a protector of national sovereignty against perceived European encroachments.

Political parties that are eager to enhance their public profile in European affairs (and tap into the limited popular resentments against a European leviathan) will not opt for the highly

arcane and ineffective Lisbon instruments. Instead, they will embrace any issue of public enagement against Brussels – typically a specific issue that voters can personally relate and that has a direct impact on their lives.

## **7.4 Effectiveness**

### ***Perceived effects***

Several interviewees were of the opinion that the Commission has become more responsive to national parliaments' concerns about subsidiarity. The link between the EWS and this enhanced responsiveness were considered rather inconclusive. In practice, the European Commission, according to some of the respondents, is more responsive to the parliaments of key member states and not necessarily to those fielding a reasoned opinion. Overall, the low number of reasoned opinions and even lower number of contribution under the political dialogue from the *Bundestag* on the one hand, and the non-committal reactions by the Commission (compared to the clout of the federal government) on the other hand, seem to have produced a downward spiral of decreasing interests in these instruments and decreasing expectations about the reactions of the Commission. Hence, complaints concerning the belated and non-committal replies were not voiced strongly by the interviewees.

### ***Side effects***

#### **Better information flow**

The introduction of the EWS in the Lisbon Treaty has resulted in an improvement of the relevant procedures in the German democratic process and most definitely in the upgrading of information flows to the *Bundestag* and *Bundesrat* on EU initiatives. The improvements, however, are limited to the channels between the *Bundestag* and the European Commission, as well as between the *Bundestag* and the federal government. Quite remarkably (from a Dutch perspective), MPs and members of staff of both government and opposition parties failed to see an added value in spreading awareness of the EWS and knowledge of the related procedures among more MPs and their staff.

The information system for MPs involved in subsidiarity checks is exemplary in more than one respect: neutrality and comprehensiveness. Even oppositional MPs expressed their appreciation of the reports on issues including subsidiarity the ministerial staff attaches to each draft law. The validity and political neutrality of these reports is beyond doubt for deputies and their staff. The German *Bundestag* receives a full set of files on draft laws via two channels:

directly from the European Commission and indirectly from the federal government. In the latter case, the relevant ministries add valuable information of the government's position and the issues concerned.

In 2013, the *Bundestag* has set up a unique information system EuDox collecting all relevant documents in a smart filing system based on policy-issue dossiers. In the database, related documents from various sources (national government, European Commission, Green and White Papers, European Council, *Bundestag*, *Bundesrat*, etc.) are collated in thematic files. Many thousands of documents are collected electronically and compiled into thematic files and searchable by a powerful search engine. A substantial editorial staff provides abstracts and summaries in order to offer easy access and overview for MPs and their staff.

### **Political awareness (for some)**

Upping the awareness among MPs and their staff of the subsidiarity instrument and EU affairs in general has never been an explicit priority in the German case. Consequently, MPs and members of staff from the EU committee and specialists from the sectoral committees have resigned to the fact that the EU is not a priority for most of their colleagues. Obviously, some committees are more actively involved than others because of the subject matter at hand. For example, transport is a policy field that raises subsidiarity issues more often than others. Little urgency is felt to disseminate knowledge of the procedure and its applicability to more members of committees or within one's own party faction. German MPs tend to be experts in particular policy fields and issues. Hence subsidiarity is expected to remain an issue for a relatively small group of MPs and their staff. The limited role of the EAC indicates that more awareness and more use is not a political priority. In sum, some increase in awareness will be the result of more active use of the EWS, but it is not a priority among the potential side effects from the perspective of the EU insiders in the *Bundestag*.

## **7.5 Intra-parliamentary cooperation**

Even though there is no systematic coordination of subsidiarity tests between *Bundestag* and *Bundesrat*, the two inform each other of upcoming initiatives for a reasoned opinion. Apart from information flows from the European Commission and the federal government and ministries to parliament, the Lisbon treaty and the EWS have produced only token improvements in cooperation among the political players. Subsidiarity tests by *Bundestag* and by *Bundesrat* and the Länder are still by and large parallel tracks.

As noted above, the *Bundesrat* is not a senate but rather represents the governments of the *Länder*, whose concern is with the implementation of EU legislation and the sharing of the financial burden between the federal government and the *Länder*. Regional interests often take precedence over party issues. Hence, the difficulties and incongruence between *Bundestag* and *Bundesrat* are of a different nature than the usual difficulties of coordination between the chamber of deputies and senate in other bicameral systems. The executive bias of the German political system, party discipline and the asymmetry of *Bundestag* and *Bundesrat* make cooperation in EU affairs virtually impossible. Tentative initiatives some years ago to improve communication and cooperation seem to have been abandoned without much result.

## 7.6 Inter-parliamentary cooperation (IPC)

Rather uniquely, not only the *Bundesländer* and the main German political parties have their own representatives in Brussels, but so does the *Bundestag* as an institution. The liaison office in Brussels is part of Desk PE 2/European Affairs. Its task is to gather additional information on EU draft laws for the *Bundestag*, at an early stage. The information is included in the EuDox database and shared with political factions and sectoral committees. Its role never is to communicate subsidiarity concerns that may exist in parliament to the European Commission. Additionally, each major political party has its own representative in Brussels, as does every *Bundesland*.

Communication and cooperation with other national parliaments and parties belonging to the same family in the EP is not pursued systematically or with any priority – neither by the opposition nor by the coalition parties. More often than not, contacts are limited to personal acquaintances and German-speaking MPs and MEPs. Part of the explanation may be the extra burden in the German system of MPs who also have to keep in touch with their counterparts in the parliaments of the *Bundesländer* as they are the key to the opinion of the *Bundesrat* in Berlin.

MEPs have the right to be present and even speak at the sessions of the *Bundestag*'s sectoral committees. Special rules have been devised for their presence at the EAC. In practice, however, this right is hardly ever used. With the EuDox system in place, the exchange of information is less dependent on personal contacts between *Bundestag* and EP. EuDox contains formal positions by EP and national parliaments, whereas preliminary subsidiarity concerns by parties or parliaments in other member states are not identified by this system. Mutual visits are generally considered too costly a venue for communication and cooperation. Personal networks and incidental contacts are used, but a more systematic approach to information gathering and cooperation is not on the political agenda and is not identified as a bottleneck in the EWS, as the

interviews at the *Bundestag* confirmed.

German MPs do express objections or reservations about an enhanced role for national parliaments. These revolve around a number of issues. First, there is the concern that the EWS turns into a weapon in the hands of radical Eurosceptic parties throughout Europe. Second, the (veto) power of national parliaments should not be strengthened unduly: that is, without factoring in the population represented by each parliament in proposals for a “green card” – much like the weighted votes in the Council of Ministers. More in general, trust in the executives (for example the national government and the European Commission) makes the *Bundestag* weary of new instruments that would give indiscriminate rights of initiative to national parliaments. This could erode effective policy making and output legitimacy as the European Commission would be forced to respond to and take into account a multitude of uncoordinated drafts and amendments for several national parliaments.

## 7.7 Conclusion

The German case study, and especially the case of the *Bundestag*, suggests that political will and culture rather than institutional procedures and architecture are pivotal for effective use of the post-Lisbon instruments. Overall, the administrative capacities of the staff of the *Bundestag* are unsurpassed among national parliaments in the EU-28. The system involves significant financial and human resources, and a shared information basis that is unarguably a condition *sine qua non* for cooperation in the complex issue of subsidiarity checks. Whereas the *Bundestag* has invested substantially in information flows and effective and efficient procedures, there is a disadvantageous cost-benefit balance for carrying out subsidiarity checks. For larger member states and especially for Germany, the possibilities to influence European decision making directly via the national government are a strong disincentive to use the EWS. This is supported by the German political culture in which the executive predominates and parties of the government coalition are highly loyal to the government.

Despite the relatively meagre interest in the EWS per se, German MPs and their staff are well-aware of the various reports from London, The Hague and Copenhagen. They may not agree with all or even most of the proposals, but a sense that these initiatives cannot be ignored on a European level is definitely there.

The German proposals for a strengthening of the EWS are by and large limited to an extension of the eight-week deadline, partly due to the fact that the *Bundestag* is not in session every week. Yet even this moderate demand is not seconded by all MPs. Some argue that the

eight-week deadline is doable if there is political will, and that no reasoned opinion ever failed for lack of time. Yet comparing recent developments in the Netherlands and Germany, one MP concluded that the financial and banking crises and the aid packages worth many billions of Euros that were decided upon by the heads of state and government without involvement of the national parliaments, may have shaken the loyalty of parliament to government in EU affairs and its stand-offish attitude towards the EWS somewhat. In the *Bundestag*, it has resulted in an enhanced role for the Budget Committee, to the detriment of the EAC. One interviewee in the *Bundestag* argued that the sectoral committees and the Budget Committee have completely sidelined the EAC despite all its efforts to coordinate the EWS in the *Bundestag*.



## 8 | Experiences: Sweden

### 8.1 Background

As has become clear, one third of all reasoned opinions sent to the European Commission are tabled by the Swedish *Riksdag*. The high number of reasoned opinions fits the image of Sweden as a Eurosceptical member state, with a small majority of citizens that were in favour of obtaining EU membership in 1994 (in a referendum 52.3% voted in favour of accession on a turnout of 83.3 per cent) and its decision to remain outside of the Eurozone.

Nowadays however, Swedish citizens adopt a more positive stance. In the Eurobarometer of May 2011, 56% of the Swedish citizens expressed that they considered EU membership a good thing, against a 27% average; and 17% expressed that they considered EU membership a bad thing, against a 18% average.<sup>224</sup> According to Michalski, Sweden has moved ‘from scepticism to pragmatic support’.<sup>225</sup>

Generally speaking, at the moment, the EU is seen as a complement to national decision making that can help solving important problems. According to most of the political parties, therefore, Sweden has agreed to pool decision making powers at the EU level, but only under the premise that the powers delegated to the Union can be retrieved if necessary.<sup>226</sup>

The *Riksdag* – which has 349 members, of which most seats (310) are elected in 28 regions – has been increasingly dedicated to scrutinize EU affairs since Sweden has joined the EU in 1995.<sup>227</sup> At the time of the Swedish EU accession, EU affairs was considered primarily as foreign affairs and was handled mostly by the Ministry for Foreign Affairs – just like all other international relations. However, a number of years after Sweden joined the EU, the perspective shifted: EU-related matters became more and more part of everyday business in all ministries. The responsibility for EU coordination was transferred to the Prime Minister’s Office and all government ministries are nowadays considered as “EU ministries”: that is, dealing with EU-related matters within their own field.<sup>228</sup>

However, EU affairs are still generally considered as an area in which the government and not the parliament should be involved with. In principle, the government should represent Sweden in the EU, and the *Riksdag* has more of a controlling function. The parliament’s involvement with EU affairs is nonetheless considered an important responsibility. When Sweden

joined the EU, the *Riksdag* decided it must play an important role, and that EU law must thus be treated as internal affairs. Different provisions in the *Riksdag* Act provide opportunities for parliament to influence EU affairs at various stages. In this respect, Hegeland claims that the role of the *Riksdag* in EU matters is somewhere in between foreign and domestic policy:<sup>229</sup> giving the *Riksdag* a stronger role than in traditional foreign policy, but not as strong as in domestic policy.

In 2002, the role of the *Riksdag* in EU affairs was stressed in the Swedish Constitution, which stipulates that Government must keep the *Riksdag* continuously informed and consult its appropriate bodies. New provisions were included in the *Riksdag* Act when the Treaty of Lisbon entered into force.<sup>230</sup> The *Riksdag* has to examine *in advance* and influence the way government acts in the EU.

The Swedish *Riksdag* is a strong example of a policy-influencing assembly. Its different *sectoral committees* can influence the content of legislation quite substantially. The committees are important arenas for settlements between the parties, especially during minority governments – the most common form of government in Sweden. Majority governments reduce the need to reach agreements between the parties in parliament, and shift the power instead to the government.

The different sectoral committees also play an important role in EU affairs. A main characteristic of Sweden is its devolved system, which involves a range of parliamentary actors: the Speaker of the Chamber, the European Affairs Committee (EAC), fifteen sectoral committees and the plenary. In addition, the Committee on Constitutional Affairs monitors the application of the subsidiarity principle and sends a yearly report of its main observations to the plenary.

At the administrative level, the so-called “EU Coordination Unit”, which is part of the Secretariat of EU Affairs of the Chamber’s Office, plays an important role in establishing links between the various actors. It is the “linking pin” in EU affairs: the EU Coordination Unit collects and archives different documents and plays an important role in the exchange of information with the liaison-office in Brussels. It also attends COSAC meetings, together with members of the EAC. To further coordinate EU scrutiny activities, administrative staff of sectoral committees attends, if time allows, EAC meetings and vice versa. According to our respondents, parliamentary staff is considered politically neutral and most procedures are arranged in such a way that staff has to take few political decisions.

At the political level, exchange of information between the EAC and sectoral committees is established by the fact that most members of the EAC (seventeen full members and about forty alternate members) are also members of one of the sectoral committees (most sectoral

committees have about 24 alternate members). Parties without a full representation in the EAC have the right to replace a full member of the EAC by a member of the relevant sectoral committee.

Depending on the exact instruments and procedures, the plenary is involved directly in EU scrutiny activities. This is discussed in more detail below.

## **8.2 Instruments, procedures and actual functioning**

The Riksdag has a number of instruments to get involved with EU Affairs. Moreover, as said, government has an obligation to inform parliament about EU Affairs. The most important instruments and their formal procedures, as well as their use and functioning in practice, are discussed below. What is striking is that most scrutiny instruments are used and “bundled” during the EU policy making process: there is a coordinated effort to follow the policy making process from an early stage and make use of the different instruments to exert direct and indirect influence.

### ***Reasoned opinions***

With the exception of delegated acts or legislation in policy areas in which the Commission has exclusive competences, Commission legislative proposals are checked for complying with the subsidiarity principle by fifteen sectoral committees. All proposals must be looked into, as it is believed that only MPs can decide which proposals should be selected for further scrutiny. The Secretariat for EU Affairs divides the proposals over the sectoral committees.

MPs are proportionally represented in the sectoral committees. The members are supported by administrative staff, whose tasks, according to the respondents, in most cases include both national and EU affairs. In some committees, there is staff with specific EU expertise. EU expertise is also sought sometimes from the EU Coordination Unit. In addition, parliamentary staff has contacts with the government administration about EU affairs (see also below).

Decisions on reasoned opinions are prepared in different rounds, namely (as described by our respondents):

- During a first preparatory meeting in the sectoral committee, a decision must be taken on two issues: i) should another committee give its opinion, and ii) should government be asked for its opinion. This opinion must be given within two weeks. The information for taking this decision is provided by the staff that prepares a “Policy Memorandum” (PM) for

every legislative proposal, including legislative packages, which contains information about the content and background of the proposal.

- During a second round, there is a discussion of the legislative proposal and the opinion of government. Staff prepares a new document with additional information (if available). During this stage the decision to draw up a reasoned opinion must be taken. A minimum of five MPs in the Committee is needed to draw up a reasoned opinion. In case the decision is taken to do so, the committee produces a formal document. The staff produces a draft statement on the basis of informal contacts with MPs, and information from the committee meetings. The formal document (“statement”) contains arguments for a subsidiarity infringement (this not sent to Commission), and – in the appendix – a proposal for the final reasoned opinion.
- In a third round, the final decision on the reasoned opinion is taken. In this case, the committee delivers a statement in the plenary where it presents its proposal for a reasoned opinion. In the proposal, there is room for issuing minority position. If there is no proposal for a reasoned opinion, the committee reports by means of an extract of the minutes. When the decision to submit an RO is taken by majority in the Chamber, the reasoned opinion is sent to the Commission. For matters of information, it is sent to the government. Formally, the opinion is not binding for government. However, the reasoned opinion can play a role in discussions between parliament and government during later stages of scrutinizing of the EU policy making process (see below).

*In practice*, the sectoral committees have about six weeks to formulate their position, as a reasoned opinion must be decided upon by the plenary. In this respect, there is a tight deadline, although this is considered manageable by our respondents in most cases. As a result of the strict deadline, there is not much time to go “back and forth” between staff and MPs with the draft. Within the committees, as said, all MPs are involved in preparing the draft, although larger parties, as stated by one of the respondents tend to have more expertise, and thus more input.

In preparing the *PM* for a Commission proposal, administrative staff may have contacts with the government’s administration (informal meetings/phone calls). This makes it easier to ask questions about a proposal (“de-dramatize”). This works both ways, according to our respondents. Informal contacts between parliamentary staff and government officials are considered very useful with the minority governments in Sweden. It turned out to be very much dependent on the sectoral committee whether opinions from other committees are requested.

The subsidiarity principle is generally interpreted in a strict sense, according to all of our respondents: in most cases (about ninety per cent), the focus is on issues of where to place competences. In some cases (about ten per cent according to our respondents), proportionality is addressed as well. According to the Committee on Constitutional Affairs, the Treaty also allows for this as the article on the subsidiarity principle states that the EU 'shall act only, and in so far as the objectives (...) cannot be achieved by the MS'. The words *only and in so far* allow, according to the committee, for an assessment in terms of proportionality. Sometimes reasoned opinions are sent also when there are doubts whether there are sufficient legal grounds for a proposal.

In theory, all decisions in the committee are taken by majority vote. In practice, especially in early stages, they are made by consensus or deliberation. As a result, the real debate takes place in the committees, and there is not much discussion in the plenary. Committees act unanimously most of the time. According to our respondents, there is a minority opinion in about ten percent of the cases. It is only then that there is a plenary debate. This happened for example in the case of the Fourth Railway Package. Plenary debates often take one hour.

### ***Formal deliberations***

The sectoral committees are expected to participate at an early stage in EU policy making. The government therefore informs the committees about work in progress at EU working group and COREPER level, and preferably before these stages. The government is also obliged to have formal deliberations on EU issues when the sectoral committees so request. In this case, the sectoral committees set the agenda. Committees may make an opinion statement or adopt a position in its deliberations with government; these are included in the minutes of the committee. These statements and positions provide an important basis for the negotiation mandate (see below) that is given by the EAC prior to Council negotiations. At the same time these deliberations also provide an opportunity for the government to seek support for its policies at the EU level. *In practice*, there are about fifty deliberations on EU policies a year per year.<sup>231</sup>

### ***'Statement of opinion' on Green and White Papers and other strategic documents***

The sectoral committees are also involved in other scrutiny processes at an early stage of the policy making process. Since 2007, the Riksdag Act prescribes that the Riksdag must look into all Green and White Papers and other strategic documents. The latter for example include Commission Communications on legislative proposals or new policy fields, but also include general reports with a more retrospective character. These strategic documents are selected by

the Speaker of the parliament, after conferring with a special representative of each political party.<sup>232</sup> The EU Coordination unit assists in this. Government explains these documents in explanatory memoranda, which are made public.<sup>233</sup>

The sectoral committees carry out the assessment of these documents and present their findings in a statement. The statement must be presented in the plenary, which decides on it. It is then forwarded to the Commission. *In practice*, there are about twenty examinations per year.<sup>234</sup> These examinations are mostly interpreted as a form of information in the direction of the Commission. The government is not obliged to follow the position adopted in response to Green or White Papers, or reasoned opinions. It is worth noting that these examinations are thus *not considered to constitute a political dialogue* with the Commission in any formal sense by the *Riksdag* itself, although the Commission responds to most of them.<sup>235</sup> In the view of most MPs and the Committee on Constitutional Affairs, only reasoned opinions allow for a direct opportunity for the Chamber to communicate directly with the Commission. This is a reflection of the view that the government represents Sweden in the EU, and that the *Riksdag* has more of a controlling function.

### **Negotiation mandate**

Reasoned opinions as well other “statements of opinion” are often referred to in the consultation that take place before Council meetings, in which the *Riksdag* establishes a *negotiation mandate* for the government. In this case, not only the sectoral committees prepare matters on which the *Riksdag* decides (as is the case with reasoned opinions), but also the European Affairs Committee (EAC) is involved. The *Riksdag* Act stipulates that government must inform the EAC of matters which are to be decided by the Council of the European Union and consult it before any decisions are made in the Council.<sup>236</sup>

Unlike the sectoral committees, the EAC may decide without debate in the Chamber. As said, in the EAC, members of sectoral committees can participate. The negotiation mandate is viewed as the *Riksdag*’s most important instrument in EU Affairs.<sup>237</sup>

The EAC administrative staff prepares a *memorandum* prior to the EAC meeting about the Council agenda. In these memoranda, references are made to earlier reasoned opinions. No reference is made, however, to the parliament’s responses to Green or White Papers. The government also sends information: the relevant ministry sends annotated agendas of Council meetings containing the position of the government. The information is supplemented by documents from the Council and the Commission.

Almost every Friday, the EAC meets and considers the meetings of the Council of ministers that take place the next week. *All* A-points that are on the Council's agenda are discussed by the different parties. The meetings last about two to three hours. During the meetings, ministers and officials are present. The government's provisional points of view on the issues raised by the EAC are presented by the minister. Also, the Prime Minister consults the EAC before a European Council meeting.

During the meeting, ministers also report back on previous negotiations. This gives MPs the possibility to see if the mandate was followed, as well an opportunity to stay informed about complicated matters that were not resolved during the Council meeting.

*In practice*, the parties appoint alternates to the EAC in such a way that most sectoral committees are represented. This is especially true for committees that deal with policies that are strongly affected by EU regulation, such as environment and agriculture.

While there is a possibility to include dissenting views in the record, there is often more consensus on the negotiation mandate than on domestic matters.<sup>238</sup> In 2010 the largest opposition party had a dissenting view in twenty percent of the cases.<sup>239</sup>

The EAC does not report to the plenary and, typically, the EAC meets behind closed doors. The latter is not involved in establishing the mandate. A stenographic report is made that shows the line that the government has obtained the committee's support for. If there is a minority that does not share the majority's point of view, a dissenting opinion can be included in the report. The report is approved and made publicly available within fourteen days (except when secrecy rules prevent this).

The mandate is politically, if not legally, binding. If a minister decides to deviate from the mandate, he or she can be held to account. If the government deviates from the mandate, it must explain its actions to the EAC. This may result in further parliamentary scrutiny, such as by the Committee on the Constitution.<sup>240</sup> According to a respondent, this could attract media attention.

MPs in the EAC also are informed *during* Council negotiations. If decisions must be taken that do not fall within the mandate; contact is sought with MPs via text message and a telephone conference to discuss matters. This happened for example during the European Council meeting when a decision had to be taken on the designate College of Commissioners. The work in the EAC committee is considered very demanding. MPs have to read much (mostly in English), and Commission documents are considered very long. *Experience* with EU Affairs is considered key to function effective and efficient. EAC committee members do receive additional salary for their membership in the committee.

## 8.3 Conditions for use

### *Awareness and capacity*

Basically, Swedish MPs have no choice but to participate in subsidiarity checks. Awareness, therefore, is high. However, there is a high workload for MPs. About twenty to thirty percent of their work in the sectoral committees consists of EU affairs, although this depends on the committee. In general, it is believed that the decentralized system involving the various committees spreads the workload. Moreover, it is considered important that the sectoral committees are involved in this process as subsidiarity tests require detailed knowledge.

Noteworthy is the large staff in Sweden for the different committees (seven/eight clerks per committee of seventeen MPs). Moreover, all MPs have political assistants. Yet, while staff prepares, MPs take the decisions. Little choices are made by staff, although scrutiny processes tend to be more driven by staff when the topic is considered less politically relevant.

### *Role conceptions*

Carrying out of subsidiarity tests is seen as an important responsibility by most Swedish MPs. The *Riksdag* has read the Lisbon Treaty as a duty for national parliaments to perform subsidiarity tests. This responsibility is also stressed by the Committee on Constitutional Affairs. According to our respondents, MPs have a strong feeling of obligation: for that reason all proposals are checked by the *Riksdag*.

This sense of obligation is strengthened by a general feeling that – although EU cooperation is a political reality – further moves towards a supranational state should be prevented. The EWS is seen as *a means for safeguarding national interests*. The feeling to do so is a result of the fact that only a small majority of people was in favour of joining the EU in 1995. Also during the Lisbon negotiations many people were sceptical about the new treaty. The reassurance that there is an effective scrutiny instrument for national parliaments was seen, according to some of our respondents, as a way to convince those who were sceptical.

According to our respondents, this feeling runs in all parties (except for the Liberals). While party discipline within the parliamentary party groups is comparatively high in Sweden (and parties in the government or its supporting parties show a clear tendency to have stronger party discipline than parties in opposition),<sup>241</sup> this is less true for EU affairs.

Subsidiarity tests are their main instrument to get directly involved in the policy process. While it may not be perfect, most MPs, according to our respondents, believe that is their duty – as representatives of the Swedish citizens – to take advantage of this instrument and express their



concerns if necessary. It is believed that it is better to be an insider than an outsider in the decision making processes. If it is not for affecting EU policies directly, there is a belief among many MPs that the EWS and the issuing of reasoned opinions as such allows them to demonstrate to Swedish citizens that they are concerned with EU affairs.

### ***Use of EWS instruments as a cost-benefit analysis***

The different interviews show that the importance attached to carrying out a subsidiarity test is also affected by the feeling that MPs must be involved with politics that matter for Sweden. EU law which, for example, affects national constitutional traditions (such as freedom of speech, transparency) often gain much attention by MPs. But also policy areas that are considered primarily as a national competence attract attention: most reasoned opinions are adopted by the Committee on Finance and Labour Market. Proposals that relate to other policy discussions finally also tend to get more attention, as was the case for the Fourth Railway Package.

In “politically relevant” cases, media attention and activity of interest groups can play a role in boosting MPs attention. In general however, this plays a minor role in carrying out subsidiarity tests. Despite the active role taken by the Swedish parliament in many EU issues, the media pay little attention to EU affairs in general and reasoned opinions in particular: the Early Warning System is much under the radar in Sweden. Also, the yellow card is not an expression known to the Swedish public (except when it comes to sports). Since the entry into force of the Lisbon Treaty, only three articles in leading newspapers deal with the yellow card procedure.<sup>242</sup>

## **8.4 Effectiveness**

### ***Desired effects***

Most MPs adopt a realistic position on the impact of reasoned opinion. While very active in issuing opinions, they realize that national parliaments play only one part in the EU policy making process. According to our respondents, most Swedish parties do not consider national parliaments to be the most important players in the EU: EU affairs should be primarily dealt with by the governments since the EU is first and foremost considered an intergovernmental organization. As said, MPs appear to find it more important that the subsidiarity test allows them to signal to the public that their concerns with EU integration are met.

### ***Perceived effects***

Responses by the Commission to reasoned opinions are generally seen as reasonable. According to our respondents, about half of the replies of the Commission have arguments in substance. The reactions by the Commission are circulated to the MPs, but not discussed in the committees, nor do they follow up on the effect of a reasoned opinion on a case by case basis.

Recently, however, a study has been carried out by the EU Coordination Unit of the *Riksdag* on the impact of reasoned opinions on EU legislation. The study shows that parliament has passed 45 reasoned opinions, concerning 50 legislative proposals. Of the 50 legislative dossiers, 29 have been completed: in 27 cases a legislative act has been adopted, and in 2 cases the European Commission withdrew its proposal (Monti II (COM2012 130) and a regulation on information on medical products (COM2012 49)). An analysis of the adopted legislative acts shows that the objections of the Swedish parliament against the proposal – as expressed in the reasoned opinion – were no longer relevant for 7 cases. In 13 cases the objections were partially no longer relevant. In 5 cases however, the objections were still relevant: the concerns about a breach of the subsidiarity principle still applied. In 4 cases the objections were not specific enough to make it possible to determine if they are still relevant or not without making a political assessment. This was the case for regulation with many details.<sup>243</sup>

Clearly, it is difficult to say to what extent, and through which “path” the objections of the Swedish parliament, as expressed in the reasoned opinions, affected the EU’s legislative process. Nonetheless, by comparing the objections to the proposals with the adopted legislative act, one can estimate if the objections of the parliament are still relevant or if their ground has been partially or completely eliminated in the legislative process.

### ***Side effects***

Through involvement with subsidiarity checks, but also Green or White Papers, MPs get involved in the EU policy process early on, which allows for an early dialogue and deliberation with the government on EU affairs. In preparing their opinions to different EU documents and in discussions on these, MPs also touch upon other, more politically relevant, issues or aspects that must be discussed later on with government. Their early involvement strengthens their position during the negotiations at working group and COREPER level, and in preparing the negotiation mandate.

In general, reasoned opinions are believed to strengthen the government’s negotiation position, although it is realized that it may also work to weaken it. In this respect, there is some

discussion about the use of ROs. According to some, the Swedes “de-valuate” reasoned opinions by sending so many of them without achieving the yellow card. The Liberals – most in favour of EU integration – sometimes mention that all the reasoned opinions give Sweden the image of a Eurosceptical country that tries to block EU decision making. Criticism on the many reasoned opinions by the Swedes is not widely shared among MPs: many MPs believe that the instrument should and must be used to establish more interaction between MPs and the EU-level of decision making.

## **8.5 Inter-parliamentary cooperation (IPC)**

Most international cooperation takes place via the liaison office, which is seen as an informal tool for IPC. The liaison office has close contacts with the sectoral committees and the EU Coordination Unit. Its main task is the exchange of information. The liaison office’s work focuses on following the activities of the European institutions. Together with the sectoral committees, a selection is made of which dossiers to follow. Some sectoral committees make use of the knowledge and information that can be gathered by the liaison, but not all committees do so. The tight deadline often prevents the exchange of information.

While committee staff looks into IPEX, this information system is often regarded as useless, as other NPs have not submitted anything yet.

COSAC meetings are considered by our respondents to have little added value, at least when it comes to cooperate on a specific dossier. The COSAC meetings are considered too formal and its conclusions are considered of little relevance. While the general exchange of information of practices is valued, there is the feeling that there should be more time to really cooperate on specific policy proposals during these meetings, as was the case with the Monti II proposal.

In the overall scrutiny process, inter-parliamentary cooperation does not play a large role. First of all, according to our respondents, this is a result of the fact that all proposals are discussed by the *Riksdag*. In this regard, cooperation is not seen as a means to prioritize or turn attention to specific proposals.

A second reason for limited IPC has to do with the fact that the *Riksdag*, in general, is not that much concerned about issuing a yellow card. While reasoned opinions are seen as important, there is a – somewhat paradoxical – hesitant stance to proactively look for coalitions or to affect other parliaments in adopting a position: individual parliaments should decide for themselves whether the subsidiarity principle is breached. Political cooperation is also considered difficult when there are strong divisions in a sectoral committee; this makes it less likely to

cooperate with other national parliaments. For example, in the case of the Fourth Railway Package, there was much discussion in the committee and plenary: contacting other parliaments might have exacerbated the conflict.

Finally, there are also practical or legal restrictions to cooperation. In the case of Sweden, exchange of political information would require a mandate by the plenary. This mandate seldom materializes: even in cases in which information could have been spread on a very likely reasoned opinion in the past, this did not happen.

Another difficulty that was pointed out by one of our respondents is that information from other parliaments becomes public in Sweden when it is used by the *Riksdag*. Therefore, in as far as alliances with other MS are sought; the general feeling is that this should be established in an informal way or along party lines.

### **Cooperation with other European institutions**

Cooperation with other institutions is limited. As stated, the parliament feels that the government should represent Sweden at the EU level. There is also little exchange between the *Riksdag* and the European Parliament. According to our respondents, this is limited to formal inter-parliamentary meetings.

## **8.6 Conclusion**

Most strikingly, the sectoral committees of the Swedish *Riksdag* receive all relevant documents about EU legislation: all legislative proposals as well as Green and White Papers are scrutinized. Sweden has a very decentralized system, with the involvement of fifteen committees and the EAC, which somewhat shares the burden of EU scrutiny. A clear *advantage* of the system is that no proposal will escape the attention of the *Riksdag*. The system also prevents that civil servants or other actors besides MPs have to make a decision about prioritization. Although checking Commission proposals is considered an important duty by most MPs of the *Riksdag* (in fact, they are obliged to do so), it is also considered a demanding task. There is some discussion in the *Riksdag* on the workload and possibilities for prioritization. Some committees, such as the Finance Committee, question whether it is needed to check all proposals. The Committee on Constitutional Affairs thinks it is important that all proposals are being checked, but there could be a more simplified handling.<sup>244</sup> However, MPs should play a central role in making this selection.

Overall, however, the procedures are said to function well, partly as a result of the fact that MPs of sectoral committees can also become a member of the EAC. Also, staff makes sure

that earlier input by MPs in the scrutiny process (such as an RO) is stressed again in later stages (such as during the EAC meeting prior to Council meeting). The Committee on Constitutional Affairs has nonetheless made some recommendations on how to improve the system. An important recommendation relates to the need that committees monitor the handling of the subsidiarity principle *during* the legislative process. This is especially relevant for cases in which a reasoned opinion is tabled, but also for other proposals this is relevant.

Political parties have so far sought to avoid letting the parliament get as involved in the daily work of the EU as the government. Such a development could jeopardize the relationship between parliament and government, it is believed, and could be inconsistent with the national constitutional order.<sup>245</sup> This view is also shared by the Committee on Constitutional Affairs, and explains why the opinions sent to the Commission are interpreted by Swedish MPs as mere provision of information.

The case study has shown that the coordination between national parliaments should mainly take place by exchanging information. The liaison officers are considered the most appropriate venue for doing so, as well as IPEX – although this system must be improved.

Swedish political parties, it is worth noting, have not taken a clear position as to whether the EWS is an effective instrument or not for influencing EU policy. However, the high activity of the *Riksdag* reveals that the subsidiarity test is at least a means for safeguarding national interests. While the reasoned opinions may not be perfect, it seems that there is not much discussion on other instruments to influence EU policy making process. Influence is sought through early and continuous involvement with EU affairs; all instruments available to do so are being used actively.<sup>246</sup>

While the tight deadline for issuing an RO is not seen as a major problem for Sweden, the *Riksdag* believes that the deadline should be extended to facilitate other parliaments to carry out more checks. This would also facilitate inter-parliamentary cooperation. It is also believed that the threshold should be reconsidered.

# Appendix 1 | List of respondents

## Country experts

- Eric Miklin, Assistant Professor University of Salzburg.
- Claudia Heffler, research assistant, University of Cologne.
- Thomas Persson, senior lecturer, University of Uppsala.

## Respondents

1. Mr Herbert Behrens, Member of Parliament, Member of the Standing Committee on Transport, Bundestag, Germany.
2. Mr Fred Bergman, Substitute Clerk of the Senate, the Netherlands.
3. Mr András Bíró-Nagy, Member of Cabinet, Personal Assistant to the European Commissioner for Employment, Social Affairs and Inclusion Andor László, European Commission.
4. Ms Anna Blomdahl, Secretary, Committee on Transports and Communications, Riksdag.
5. Mr Michele Bordo, Member of Parliament, Chairman of the Committee on EU Policies, Italy.
6. Ms Karin Broms, Permanent Representative of the Parliament to the EU, Swedish Riksdag.
7. Ms Marjolijn Bulk, EU Specialist, Federation Dutch Labour Movement (FNV), the Netherlands.
8. Mr Ole Christensen, Member of the European Parliament, Rapporteur Monti II, Group of the Progressive Alliance of Socialists and Democrats, European Parliament.
9. Mr Carlos Demeyere, Administrator and Liaison Officer, EU Analysis Unit, Chamber of Representatives, Belgium.
10. Mr Thomas Dörflinger, Member of Parliament, Member of the Standing Committee on Transport, Bundestag, Germany.
11. Ms Ilse van den Driessche, Clerk, Committee on Asylum and Immigration/Justice and Home Affairs Council, Senate, the Netherlands.
12. Mr Martijn de Grave, Legal and Institutional Affairs, Co-ordinator for Justice and Home Affairs, Permanent Representation of the Netherlands to the EU.
13. Ms Susanna Haby, Member of Parliament, Member of the Committee on European Union Affairs, Swedish Riksdag.
14. Mr Hans Hegeland, Head of Secretariat, Committee on the Constitution, Swedish Riksdag.

15. Ms Margareta Hjorth, Head of Secretariat, Committee on European Union Affairs, Swedish Riksdag.
16. Mr Hugo D'Hollander, Head of EU Analysis Unit, Chamber of Representatives, Belgium.
17. Mr Antonio Esposito, Counselor, Department for EU Affairs, Chamber of Deputies, Italy.
18. Ms Monika Feigl-Heihs, Policy Advisor, Green Party, Austria.
19. Ms Despoina Fola, Permanent Representative of the Parliament to the EU, Greece.
20. Ms Marie Granlund, Member of Parliament, Vice Chairwoman of the Committee on European Union Affairs, Swedish Riksdag.
21. Mr Guy Kerpen, Philips, the Netherlands.
22. Ms Mendeltje van Keulen, Clerk, European Affairs Committee, House of Representatives, the Netherlands.
23. Ms Caroline Keulemans, EU advisor, Committee on Infrastructure and Environment, House of Representatives, the Netherlands.
24. Mr Gerhard Koller, Head of European Relations Division, Austrian Parliament.
25. Ms Elena Konstantinidou, Head of the Department for European Union, Hellenic Parliament.
26. Ms Joanna Kowalska, Official, Secretary of the EU Affairs Committee, Polish Sejm.
27. Ms Kaja Krawczyk, Head of the European Union Division, Polish Sejm.
28. Mr Haris Kountouros, Official, Legislative Dialogue Unit, Directorate for Relations with National Parliaments, Secretariat, European Parliament.
29. Mr Pascal Leardini, Director, Directorate F Relations with Other Institutions, Secretariat General, European Commission.
30. Ms Carin Lobbezoo, Counsellor, Relations with the European Parliament/Coreper II files, Permanent Representation of the Netherlands to the EU.
31. Mr Peter Luyckx, Member of Parliament, New Flemish Alliance, Belgium.
32. Mr Georg Magerl, Representative of the Austrian Parliament to the European Parliament.
33. Ms Riita Myller, Member of Parliament, Social Democratic Party, Finland.
34. Ms Suzanne Nollen, Permanent Representative of the House of Representatives to the European Parliament, the Netherlands.
35. Mr Jakob Nyström, Official, EU Coordination Office, Swedish Riksdag.
36. Ms Desirée Oen, Deputy Head, Cabinet of the European Commissioner for Transport Siim Kallas, European Commission.
37. Ms Kristina Ortenhed, Secretary, Committee on the Constitution, Swedish Riksdag.
38. Mr Markus Paschke, Member of Parliament, Member of the Standing Committee of Social

Affairs, Germany.

39. Ms Vesna Popovic, Permanent Representative of the Bundestag to the European Parliament, Germany.
40. Ms Harmanda Post, Clerk, Committee on Social Affairs and Employment, House of Representatives, the Netherlands.
41. Mr Mattias Revelius, Head of Secretariat, Committee on Transports and Communications, Swedish Riksdag.
42. Mr Peter Saramo, Administrative Member of the Committee Counsel, Parliament of Finland.
43. Prof. Stefan Schennach, Member of Parliament, Social Democratic Party, Austria.
44. Ms Maria Schininà, Permanent Representative of the Chamber of Deputies to the EU, Italy.
45. Mr Marco Schreuder, Member of Parliament, Green Party, Austria.
46. Mr Hinrich Schröder, Administration Referat PE 2/EU, Bundestag, Germany.
47. Ms Magdalena Skrzynska, Polish Sejm Chancellery Representative to the EU, Poland.
48. Ms Kristi Sober, Head of the European Affairs Committee's Secretariat, Parliament of Estonia.
49. Mr Florian Steininger, Policy Advisor, Social Democratic Party, Austria.
50. Mr Ard van der Steur, Member of Parliament, Committee on European Affairs, House of Representatives, the Netherlands.
51. Ms Tineke Strik, Member of Parliament, Chairwoman of the European Affairs Committee, Senate, the Netherlands.
52. Mr Björn von Sydow, Member of Parliament, Social Democrats, Sweden.
53. Ms Ewa Szymanska, Head of Unit F3 National Parliaments, Consultative Committees, the Ombudsman, Secretariat General, European Commission.
54. Mr Christoph Thum, Senior Member of Staff for European Affairs, Bundestag, Germany.
55. Ms Leonie Tjink, Clerk, Committee on Infrastructure and Environment, House of Representatives, the Netherlands.
56. Ms Janneke Timmer, European Policy Advisor on Education, Culture and Migration/Asylum, House of Representatives, the Netherlands.
57. Ms Satu Tuomikorpi, Liaison Officer, Parliament of Finland.
58. Ms Christine Verger, Director, Directorate for Relations with National Parliaments, Secretariat, European Parliament.
59. Ms Valerie Wilms, Member of Parliament, Member of the Standing Committee on Transport, Bundestag, Germany.
60. Ms Katharina Würzner, Policy Advisor, Freedom Party, Austria.



61. Ms Eleni Zervou, Hellenic Parliament Representative to the European Parliament, Greece.<sup>247</sup>

## Appendix 2 | Patterns in use of EU instruments

Parliament / chamber	Reasoned opinions (2010-2013)	Political Dialogue (2010-2013)	Procedure for EWS	Role: European player <sup>248</sup>	National control role <sup>249</sup>	EU inst strength score <sup>250</sup>	Support for EU Members hip in <sup>251</sup>	No support for EU members hip <sup>252</sup>	No EU trust <sup>253</sup>	EU trust <sup>254</sup>	Staff <sup>255</sup>
Austria Lower	8	24	EAC	NO	YES	0,45	37	25	50	36	5 <sup>256</sup>
Austria Upper	6	37	EAC (mostly)			0,51	37	25	50	36	5
Belgium Lower	5	17	Mixed	NO	NO	0,24	65	11	38	49	5
Belgium Upper	5	3	Mixed			0,16	65	11	38	49	6
Bulgaria	2	23	EAC	NO	YES	0,41	48	10	31	45	10
Cyprus	3	5	EAC	NO	YES	0,27	37	25	55	29	7
Denmark	7	37	Mixed	YES	YES	0,69	55	16	31	54	7
Germany Lower	3	14	Mixed	NO	YES	0,78	54	16	43	35	59
Germany Upper	7	155	Dec			0,62	54	16	43	35	6
Estonia	1	4	Mixed	NO	NO	0,67	49	9	24	47	6
Finland	3	6	Mixed	NO	YES	0,84	47	19	38	56	-
France Lower	2	42 <sup>257</sup>	Mixed	NO	NO	0,55	46	19	47	32	28
France Upper	15	34	Mixed			0,56	46	19	47	32	15
Greece	2	18	EAC	NO	NO	0,26	38	33	70	24	10
UK Lower	13	23	EAC	NO	NO	0,52	26	32	48	17	15

Parliament / chamber	Reasoned opinions (2010-2013)	Political Dialogue (2010-2013)	Procedure for EWS	Role: European player <sup>248</sup>	National control role <sup>249</sup>	EU inst strength score <sup>250</sup>	Support for EU Members hip in <sup>251</sup>	No support for EU members hip <sup>252</sup>	No EU trust <sup>253</sup>	EU trust <sup>254</sup>	Staff <sup>255</sup>
UK Upper	7	62	EAC		NO	0,47	26	32	48	17	24
Hungary	1	3	EAC	NO	YES	0,48	32	22	40	47	7
Ireland	5	23	Mixed	NO	NO	0,47	63	12	43	35	11
Italy Lower	3	74	EAC	YES	NO	0,46	41	17	45	28	16
Italy Upper	6	379	Mixed			0,54	41	17	45	28	18
Latvia	2	4	EAC	NO	NO	0,53	25	21	40	38	6
Lithuania	9	15	Mixed	NO	NO	0,73	49	16	21	55	23
Luxembourg	16	32	Dec	YES	YES	0,40	72	13	38	47	6
Malta	8	11	EAC	NO	NO	0,46	42	18	21	54	0
Netherlands Lower	14	18	Dec	YES	YES	0,66	68	12	32	47	11
Netherlands Upper	10	32	Dec			0,54	68	12	32	47	14
Poland Lower	12	16	EAC	NO	YES	0,44	53	10	33	40	11
Poland Upper	10	28	Mixed			0,45	53	10	33	40	10
Portugal	3	709	Mixed	YES	NO	0,43	39	26	60	32	5
Romania Lower	5	110	Mixed	YES	NO	0,35	57	11	37	51	18
Romania Upper	7	70				0,34	57	11	37		
Slovakia	3	4	EAC	NO	NO	0,49	52	10	51	31	9
Slovenia Lower	1	6	Mixed	NO	NO	0,60	39	21	55	34	7

Parliament / chamber	Reasoned opinions (2010-2013)	Political Dialogue (2010-2013)	Procedure for EWS	Role: European player <sup>248</sup>	National control role <sup>249</sup>	EU inst strength score <sup>250</sup>	Support for EU Members hip in <sup>251</sup>	No support for EU members hip <sup>252</sup>	No EU trust <sup>253</sup>	EU trust <sup>254</sup>	Staff <sup>255</sup>
Slovenia Upper	0	0	Mixed			0,21	39	21	55		1
Spain (both)	9	29	EAC	NO	NO	0,40	55	17	72	17	6 <sup>258</sup>
Sweden	48	119	Dec	YES	YES	0,72	56	17	31	47	
Czech Republic Lower	1	26	EAC	YES	NO	0,58	31	19	53	32	
Czech Republic Upper	3	182	EAC			0,59	31	19	53	32	7

## Appendix 3 | Types of inter-parliamentary meetings<sup>259</sup>

Type of meeting	Actors involved	Source	Aim & Tasks	Frequency
Conference of Speakers of EU Parliaments	Speakers of national parliaments and President of the European Parliament.	Established in 1963  Now formalized in (Art. 9 of Protocol (No 1) on the Role of National Parliaments in the European Union of the Treaty of Lisbon)	<ul style="list-style-type: none"> <li>• exchange opinions, information and experiences on topics related to the role of parliaments</li> <li>• promote research activities and common action and instruments of inter-parliamentary cooperation (e.g. IPEX was created on the basis of recommendations and agreements by the Conference in Rome 2000 and the Hague 2004)</li> <li>• can take binding decision</li> </ul>	Irregularly until 1975.  Since 1975 on an annual basis.
Conference of Parliamentary Committees for Union Affairs (COSAC)	EU affairs committees of national Parliaments (six Members per parliament) and Members of the European Parliament.	Established 1989 at a Speakers meeting  Formally recognized in Amsterdam Treaty, now in Art. 10 of Protocol (No 1) on the Role of National Parliaments in the European Union of the Treaty of Lisbon	<ul style="list-style-type: none"> <li>• Parliaments shall submit contribution appropriate for the attention of the European Parliament, the Council and the Commission.</li> <li>• Promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees.</li> <li>• May organize Inter-parliamentary conferences on specific topics, (common foreign and security policy, including common security and</li> </ul>	Plenary meetings: twice a year.

			<ul style="list-style-type: none"> <li>defense policy).</li> <li>• Decisions are not binding</li> </ul>	
<p>Inter-parliamentary meetings</p> <p>(Meetings organized under sole responsibility of the EP and its committees are referred to as Inter-parliamentary Committee Meetings).</p>	<p>Organized by the Committees of European Parliament</p> <p>Every committee has possibility to decide on degree of cooperation with ,national parliaments in preparation of these meetings</p>		<ul style="list-style-type: none"> <li>• Discussion between committees on concrete issues or specific draft EU legislation, (e.g. on the reform of the EU's agricultural policy or the gender pay gap)</li> </ul>	<p>Irregular (e.g. In 2010:16 In2011: 9 In 2012: 10 In 2013: 8)</p>
<p>Joint Committee Meetings</p>	<p>Organized jointly by the European Parliament and the national Parliament of the country holding Presidency. to bring together MPs and MEPs from corresponding committees</p>		<ul style="list-style-type: none"> <li>• To discuss matters of common concern</li> <li>• The choice of topics, speakers, agenda, documentation, audiovisual and media tools are all devised and agreed upon by the EP together with the co-organizing national Parliament.</li> <li>• (topics: energy supply, Single Market, education and culture, the future of European agriculture and development cooperation)</li> </ul>	<p>Irregular 2009:1 2010:0 2011:2 2012:0 2013:1</p>
<p>Joint Parliamentary Meetings</p>	<p>Organized jointly by European Parliament and national Parliament of the country holding the rotating Council Presidency</p>		<ul style="list-style-type: none"> <li>• They do not aim at arriving at common conclusions but at improving parliamentary awareness for oversight and control over decisions taken at EU level. to reinforce links between Parliamentarians belonging to the same political</li> </ul>	<p>Irregular No meetings since 2011</p>

			<p>families.</p> <ul style="list-style-type: none"><li>• Focus is on cross-cutting issues (e.g. future of Europe, economic crisis, sustainable development) broader, more general discussions and requires complex and long preparations.</li></ul>	
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## Appendix 4 | List of abbreviations

ACTA	Anti-Counterfeiting Trade Agreement
AfD	<i>Alternative für Deutschland</i>
AO	<i>Algemeen overleg</i> (general consultation)
BNC(-fiche)	<i>Beoordeling nieuwe commissievoorstellen</i> (judgement new committee proposals, Dutch Parliament)
CFSP	Common Foreign and Security Policy
COREPER	Committee of Permanent Representatives
COSAC	Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union
CSDP	Common Security and Defence Policy
EAC	European Affairs Committee
ECB	European Central Bank
EP	European Parliament
EPPO	European Public Prosecutor's Office
EU	European Union
EuDoX	<i>Informationssystem für europarelevante Dokumente</i> (Information database for relevant EU documents, German Bundestag)
EWS	Early Warning System
HoR	House of Representatives
IPEX	Inter-parliamentary EU information exchange
MEP	Member of the European Parliament
MMMs	Monday Morning Meetings
MP	Member of Parliament
NGO	Non-governmental organization
OPAL	Observatory of Parliaments After Lisbon
ÖVP	<i>Österreichische Volkspartei</i> (Austrian People's Party)
PM	Policy Memorandum
RO	Reasoned opinion
SPÖ	<i>Sozialdemokratische Partei Österreichs</i> (Social-democratic party Austria)



TTIP      Transatlantic Trade and Investment Partnership  
UK      United Kingdom

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# List of References

## Title page

<sup>1</sup> This second edition contains a number of small factual revisions to the original report, mainly concerning the Austrian, Belgian, and Swedish case.

## Chapter 1: Introduction

<sup>2</sup> Dutch House of Representatives (2011) 'Bovenop Europa: Evaluatie van de versterkte EU-ondersteuning van de Tweede Kamer 2007-2011 [Evaluation of strengthened EU-support of the Lower Chamber 2007-2011]'. The Hague: Dutch House of Representatives. See also: Adviesraad Internationale Vraagstukken (2014), *Naar een Gedragen Europese Samenwerking*.

<sup>3</sup> C. Neuhold and J. Smith (forthcoming) 'Conclusion: From 'Late-Comers' to 'Policy-Shapers'? The Role of National Parliaments in the 'Post-Lisbon' Union', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>4</sup> The Lisbon Treaty also introduced a number of other provisions with regard to national parliaments. First, the Treaty for the first time made the European Commission responsible for forwarding consultation documents (Green and White Papers and communications), the annual legislative programme, and draft legislative acts. Second, national parliaments are attributed a role in treaty revision procedures. In the ordinary procedure, this involvement is modelled to the Convention on the Future of Europe. In the simplified procedure ("Passerelle Clause"), each national parliament has a veto power.

<sup>5</sup> See the OPAL Country Reports:

[www.opal-europe.org/index.php?option=com\\_content&view=article&id=94&Itemid=128](http://www.opal-europe.org/index.php?option=com_content&view=article&id=94&Itemid=128)

<sup>6</sup> In this report, the term parliamentary control will also include parliamentary scrutiny.

<sup>7</sup> I. Cooper (2012) 'A "Virtual Third Chamber" for the European Union? National Parliaments after the Treaty of Lisbon', *West European Politics*, 35(3), 442.

<sup>8</sup> E. Miklin (2014), 'Kissing Alive the Sleeping: National Parliaments and the Early Warning System', Paper presented at the first annual conference of the ERASMUS academic network on parliamentary democracy in Europe (PADEMIA), 12-13 June 2014, Brussels.

<sup>9</sup> I. Cooper (2012) 'A "Virtual Third Chamber" for the European Union? National Parliaments after the Treaty of Lisbon', *West European Politics*, 35(3), 442.

<sup>10</sup> *Ibid.*, 447.

<sup>11</sup> This approach assumes that the incentives for control are naturally given, because the parliament delegates tasks to the executive, which needs to be controlled.

<sup>12</sup> *Ibidem*; K. Auel (2007) 'Democratic Accountability and National Parliaments: Redefining the Impact of Parliamentary Scrutiny in EU Affairs', *European Law Journal*, 13(4), 487-504.

<sup>13</sup> A.L. Högenauer and C. Neuhold (2012) 'National Parliaments after Lisbon: Administrations on the Rise?', Paper presented at the 42<sup>nd</sup> UACES Annual Conference, 3-5 September 2012, Passau, p. 4; P. Kiiver (2012a) 'The Institutional and Procedural Logic of the Early Warning System', *SSRN Electronic Journal*; P. Kiiver (2012b) *The Early Warning System for the Principle of Subsidiarity: Constitutional Theory and Empirical Reality* (Abingdon: Routledge).

<sup>14</sup> T. Christiansen, A.L. Högenauer and C. Neuhold (2014) 'National Parliaments in the Post-Lisbon European Union: Bureaucratization rather than Democratization?' *Comparative European Politics*, 12(2), 121-140.

<sup>15</sup> K. Auel (2005) 'Introduction: The Europeanisation of Parliamentary Democracy', *The Journal of Legislative Studies*, 11(3-4), 303-318.

<sup>16</sup> B. Wessels (2005) 'Roles and Orientations of Members of Parliament in the EU Context: Congruence or Difference? Europeanisation or Not?', *Journal of Legislative Studies*, 11(374), 446-465; K. Auel and A. Benz (2005) 'The Politics of Adaptation: The Europeanisation of National Parliamentary Systems', *The*

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<sup>18</sup> K. Auel (2006) 'The Europeanisation of the German Bundestag: Institutional Change and Informal Adaptation', *German Politics*, 15(3), 249-268; K. Auel (2007) 'Democratic Accountability and National Parliaments: Redefining the Impact of Parliamentary Scrutiny in EU Affairs', *European Law Journal*, 13(4), 487-504.

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<sup>22</sup> K. Gatterman and C. Heffler (2013) 'Political Motivation and Institutional Capacity: Assessing National Parliaments' Incentives to Participate in the Early Warning System', *OPAL Online Paper Series*, No. 15.

<sup>23</sup> See for example C. Neuhold (2011) 'Late Wake-up Call or Early Warning?: Parliamentary Participation and Cooperation in Light of the Lisbon Treaty', paper prepared for the UACES Conference 'The Lisbon Treaty Evaluated: Impact and Consequences', 31 January - 1 February, London.

<sup>24</sup> Parliaments interact in a setting without a clear authoritative centre, while quick action is required to effectively use the Lisbon instruments.

<sup>25</sup> COSAC (2013) 'Twentieth Bi-Annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', 4 October, Vilnius.

<sup>26</sup> A. Maurer and W. Wessels (eds) (2001) *National Parliaments on their Ways to Europe. Losers or Latecomers?* (Baden-Baden: Nomos Verlag.); Raunio, T. (2005) 'Holding Governments Accountable in European Affairs: Explaining Cross-National Variation', *Journal of Legislative Studies*, 11(3-4), 319-342; Winzen, T. (2012) 'National Parliamentary Control of European Union Affairs: A Cross-National and Longitudinal Comparison', *West European Politics*, 35(3), 37-41.

<sup>27</sup> Please note that the two groups will not be analyzed in isolation; use of the EWS and the innovative instruments will be charted for both groups.

<sup>28</sup> The *Bundesrat*, the Upper Chamber representing the Länder, uses the EWS more frequently. The case study, however, is limited to the *Bundestag* as the counterpart of the *Tweede Kamer*

<sup>29</sup> Prof. dr. Carla van Baalen, prof. dr Paul Bovend'Eert en prof. dr. Henri de Waele (all Radboud University Nijmegen).

## **Chapter 2: EU scrutiny in the Tweede Kamer**

<sup>30</sup> Dutch House of Representatives (2011) 'Bovenop Europa: Evaluatie van de versterkte EU-ondersteuning van de Tweede Kamer 2007-2011 [Evaluation of strengthened EU-support of the Lower Chamber 2007-2011]'. The Hague: Dutch House of Representatives.

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<sup>32</sup> This extension was made definitive in 2011, see *Parliamentary Papers II, 2010-2011*, 32726, nr. 1.

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- <sup>37</sup> A.L. Högenauer (forthcoming) 'The Dutch Parliament and EU affairs: Decentralizing scrutiny', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan), p. 401.
- <sup>38</sup> Ibidem.
- <sup>39</sup> K. Gattermann, A.L. Högenauer and A. Huff (2013) 'National Parliaments After Lisbon: Towards Mainstreaming of EU Affairs?' *OPAL Online Paper Series*, No. 13, quoted in A.L. (forthcoming) 'The Dutch Parliament and EU affairs: Decentralizing scrutiny', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan), p. 401.
- <sup>40</sup> Dutch House of Representatives (2011) 'Bovenop Europa: Evaluatie van de versterkte EU-ondersteuning van de Tweede Kamer 2007-2011 [Evaluation of strengthened EU-support of the Lower Chamber 2007-2011]'. The Hague: Dutch House of Representatives
- <sup>41</sup> Ibid., p. 3
- <sup>42</sup> Ibid., p. 5
- <sup>43</sup> Ibidem.
- <sup>44</sup> Ibid., p. 9.
- <sup>45</sup> Ibid., p. 11.
- <sup>46</sup> A.L. Högenauer (forthcoming) 'The Dutch Parliament and EU affairs: Decentralizing scrutiny', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan), p. 412.
- <sup>47</sup> Dutch House of Representatives (2012) *Brief betreffende afspraken met betrekking tot de informatievoorziening over Europese besluitvorming*. Brief aan de minister van Buitenlandse Zaken. Kenmerk 13-EU-B-008.
- <sup>48</sup> Rijkswet houdende goedkeuring Verdrag van Lissabon tot wijziging van het Verdrag betreffende de Europese Unie en het Verdrag tot oprichting van de Europese Gemeenschap, 10 July 2008.
- <sup>49</sup> A.L. Högenauer (forthcoming) 'The Dutch Parliament and EU affairs: Decentralizing scrutiny', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan), p. 410.
- <sup>50</sup> Amendement Wiegman-Ten Broeke, *Parliamentary Papers 2007-2008*, 31384, nr. 23.
- <sup>51</sup> *Procedureregeling parlementair behandelvoorbehoud*, [www.tweedekamer.nl/images/8RvO\\_Procedureregeling\\_parlementair\\_behandelvoorbehoud\\_181-238566.pdf](http://www.tweedekamer.nl/images/8RvO_Procedureregeling_parlementair_behandelvoorbehoud_181-238566.pdf)
- <sup>52</sup> A.L. Högenauer (forthcoming) 'The Dutch Parliament and EU affairs: Decentralizing scrutiny', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan), p. 406, 409.
- <sup>53</sup> Ibid., 411.
- <sup>54</sup> P. Kiiver (2012b) *The Early Warning System for the Principle of Subsidiarity: Constitutional Theory and Empirical Reality* (Abingdon: Routledge).
- <sup>55</sup> A.L. Högenauer (forthcoming) 'The Dutch Parliament and EU affairs: Decentralizing scrutiny', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan), p. 411.
- <sup>56</sup> Dutch House of Representatives (2014) 'Voorop in Europa: Over de rol van de Tweede Kamer en nationale parlementen in de Europese Unie' [Eindrapport rapporteurschap "Democratische legitimiteit"]. The Hague: Dutch House of Representatives.

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- <sup>57</sup> Dutch House of Representatives (2014) 'Democratic Legitimacy in the EU and the Role of National Parliaments' [work in progress]. The Hague: Dutch House of Representatives, 1.10.
- <sup>58</sup> Ibid., 1.5.
- <sup>59</sup> Ibidem.
- <sup>60</sup> Ibid., 1.2.
- <sup>61</sup> Ibid., 1.3.
- <sup>62</sup> Dutch House of Representatives (2014) 'Voorop in Europa: Over de rol van de Tweede Kamer en nationale parlementen in de Europese Unie' [Eindrapport rapporteurschap "Democratische legitimiteit"]. The Hague: Dutch House of Representatives, p. 20.
- <sup>63</sup> On the other hand, another interviewee points out that his instrument breaks with the existing national practice of providing all party groups a say during parliamentary proceedings, which is especially at the detriment of smaller party groups.
- <sup>64</sup> Dutch House of Representatives (2014) 'Democratic Legitimacy in the EU and the Role of National Parliaments' [work in progress]. The Hague: Dutch House of Representatives, 1.13.
- <sup>65</sup> Dutch House of Representatives (2014) 'Voorop in Europa: Over de rol van de Tweede Kamer en nationale parlementen in de Europese Unie' [Eindrapport rapporteurschap "Democratische legitimiteit"]. The Hague: Dutch House of Representatives, p. 12-13.
- <sup>66</sup> Dutch House of Representatives (2014) 'Democratic Legitimacy in the EU and the Role of National Parliaments' [work in progress]. The Hague: Dutch House of Representatives, 1.2.
- <sup>67</sup> A.L. Högenauer (forthcoming) 'The Dutch Parliament and EU affairs: Decentralizing scrutiny', in C. Heffttler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan), p. 412.
- <sup>68</sup> Dutch House of Representatives (2014) 'Democratic Legitimacy in the EU and the Role of National Parliaments' [work in progress]. The Hague: Dutch House of Representatives, 2.7.
- <sup>69</sup> Ibid., 2.5.
- <sup>70</sup> Ibid., 2.6.
- <sup>71</sup> Ibid., 2.5.
- <sup>72</sup> Ibid., 2.7.
- <sup>73</sup> B. van den Bos (2010) Nationale Parlementen Grote Verliezer van Europese Integratie? *Internationale Spectator*, 64(12), p. 631.
- <sup>74</sup> B. Soetendorp and K. Hanf (1998) 'The Netherlands: Growing doubts of a loyal member', in K. Hanf and B. Soetendorp (eds) *Adapting to European integration: Small states and the European Union* (Harlow: Addison Wesley Longman), 36-51.
- <sup>75</sup> B. van den Bos (2010) 'Nationale Parlementen Grote Verliezer van Europese Integratie? *Internationale Spectator*, 64(12), p. 627.
- <sup>76</sup> Dutch House of Representatives (2014) 'Democratic Legitimacy in the EU and the Role of National Parliaments' [work in progress]. The Hague: Dutch House of Representatives.
- <sup>77</sup> Only the PVV voted against.
- <sup>78</sup> Dutch House of Representatives (2011) 'Bovenop Europa: Evaluatie van de versterkte EU-ondersteuning van de Tweede Kamer 2007-2011 [Evaluation of strengthened EU-support of the Lower Chamber 2007-2011]'. The Hague: Dutch House of Representatives, p. 18.
- <sup>79</sup> E. Mastenbroek, E. Versluis, and A. Spendzharova (2014) 'Clawing ack lost powers? Dutch parliamentary scrutiny over the transposition of EU social policy directives', *West European Politics*, 37(4), 750-768.
- <sup>80</sup> Dutch House of Representatives (2014) 'Voorop in Europa: Over de rol van de Tweede Kamer en nationale parlementen in de Europese Unie' [Eindrapport rapporteurschap "Democratische legitimiteit"]. The Hague: Dutch House of Representatives, p. 9.
- <sup>81</sup> Ibidem.
- <sup>82</sup> Dutch House of Representatives (2014) 'Democratic Legitimacy in the EU and the Role of National Parliaments' [work in progress]. The Hague: Dutch House of Representatives, 3.8.
- <sup>83</sup> Ibid., 3.9.
- <sup>84</sup> A.L. Högenauer (forthcoming) 'The Dutch Parliament and EU affairs: Decentralizing scrutiny', in C. Heffttler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke:

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Palgrave Macmillan), p. 413.

<sup>85</sup> Ibidem.

<sup>86</sup> Dutch House of Representatives (2014) 'Democratic Legitimacy in the EU and the Role of National Parliaments' [work in progress]. The Hague: Dutch House of Representatives, 3.9.

<sup>87</sup> A.L. Högenauer (forthcoming) 'The Dutch Parliament and EU affairs: Decentralizing scrutiny', in C. Heffttler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan), p. 413.

<sup>88</sup> Dutch House of Representatives (2014) 'Voorop in Europa: Over de rol van de Tweede Kamer en nationale parlementen in de Europese Unie' [Eindrapport rapporteurschap "Democratische legitimiteit"]. The Hague: Dutch House of Representatives, p. 25.

<sup>89</sup> Ibid., p. 23.

<sup>90</sup> J. Kester and M. van Keulen (2011) 'De Tweede Kamer methode: Versterkte parlementaire invloed op Europese besluitvorming'. *RegelMaat*, 26(6), 305.

<sup>91</sup> Dutch House of Representatives (2014) 'Voorop in Europa: Over de rol van de Tweede Kamer en nationale parlementen in de Europese Unie' [Eindrapport rapporteurschap "Democratische legitimiteit"]. The Hague: Dutch House of Representatives, p. 28.

<sup>92</sup> A.L. Högenauer (forthcoming) 'The Dutch Parliament and EU affairs: Decentralizing scrutiny', in C. Heffttler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan), p. 415.

<sup>93</sup> Dutch House of Representatives (2014) 'Voorop in Europa: Over de rol van de Tweede Kamer en nationale parlementen in de Europese Unie' [Eindrapport rapporteurschap "Democratische legitimiteit"]. The Hague: Dutch House of Representatives.

<sup>94</sup> Ibid., p. 28.

<sup>95</sup> Ibidem.

<sup>96</sup> A.L. Högenauer (forthcoming) 'The Dutch Parliament and EU affairs: Decentralizing scrutiny', in C. Heffttler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan), p. 413.

### Chapter 3: Facts and figures (EU-28)

<sup>97</sup> Dutch House of Representatives (2014) 'Voorop in Europa: Over de rol van de Tweede Kamer en nationale parlementen in de Europese Unie' [Eindrapport rapporteurschap "Democratische legitimiteit"]. The Hague: Dutch House of Representatives.

<sup>98</sup> COSAC (2013) 'Twentieth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', 4 October, Vilnius.

<sup>99</sup> Ibidem.

<sup>100</sup> Ibid., p. 17.

<sup>101</sup> Ibid., p. 21.

<sup>102</sup> Ibid., p. 23.

<sup>103</sup> Ibidem.

<sup>104</sup> Adapted from: COSAC (2013) 'Twentieth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', 4 October, Vilnius, p. 15.

<sup>105</sup> COSAC (2013) 'Twentieth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', 4 October, Vilnius, p. 14. . Unfortunately, the report does not mention which parliaments these are.

<sup>106</sup> Ibid., p. 16.

<sup>107</sup> Ibid., p. 22.

<sup>108</sup> Ibid., p. 20.

<sup>109</sup> Ibidem.

<sup>110</sup> OPAL Country Reports are available online at [www.opal-europe.org](http://www.opal-europe.org).

<sup>111</sup> See the OPAL Country Reports, available at [www.opal-europe.org](http://www.opal-europe.org); See also European Parliament (2013) 'National Parliaments' Internal Procedures for Subsidiarity Checks', 8 April, available online ([www.europarl.europa.eu](http://www.europarl.europa.eu)).

<sup>112</sup> House of Lords (2014) 'The Role of National Parliaments in the European Union', 9<sup>th</sup> Report of Session

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2013-14, London.

<sup>113</sup> COSAC (2013) 'Twentieth Bi-Annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', 4 October, Vilnius.

<sup>114</sup> Sources of these data: European Commission (2011) Annual Report 2010 on Relations between the European Commission and National Parliaments, COM(2011) 345 final; European Commission (2012) Annual Report 2011 on Relations between the European Commission and National Parliaments, COM(2012) 375 final; European Commission (2013) Annual Report 2012 on Relations between the European Commission and National Parliaments, COM(2013) 565 final; IPEX (2014) 'Written report on the work of IPEX in 2013', available at [www.ipex.eu](http://www.ipex.eu).

In order to measure the use of the Political Dialogue and the EWS, we used the official data published annually by the Commission in its reports on relations between the European Commission and national Parliaments. When interpreting the data, it is important to note that the Commission considers all documents sent by national parliaments as part of the Political Dialogue. Thus, all *opinions* sent by national parliaments, including opinions under Protocol No. 1 to the Lisbon Treaty and all *reasoned opinions* sent under Protocol No. 2 to the Lisbon Treaty are included in the Commission's data of the use of the Political Dialogue. The Commission treats *reasoned opinions* as a special kind of opinions. The Commission reports only those opinions which clearly state a breach of subsidiarity and which were sent within the eight weeks time frame as falling under the EWS.

<sup>115</sup> Sources of these data: European Commission (2011) Annual Report 2010 on Relations between the European Commission and National Parliaments, COM(2011) 345 final; European Commission (2012) Annual Report 2011 on Relations between the European Commission and National Parliaments, COM(2012) 375 final; European Commission (2013) Annual Report 2012 on Relations between the European Commission and National Parliaments, COM(2013) 565 final; IPEX (2014) 'Written report on the work of IPEX in 2013', available at [www.ipex.eu](http://www.ipex.eu)

<sup>116</sup> COSAC (2013) 'Twentieth Bi-Annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', 4 October, Vilnius.

<sup>117</sup> K. Auel, O. Rozenberg and A. Tacea (forthcoming) 'Fighting Back? And, if so, how? Measuring Parliamentary Strength and Activity in EU Affairs', in C. Hefftlar et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>118</sup> C. Neuhold and J. Smith (forthcoming) 'Conclusion: From 'late-comers' to 'policy-shapers'? – The role of national parliaments in the 'post-Lisbon' Union', in C. Hefftlar et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>119</sup> See C. Hefftlar et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>120</sup> See the OPAL Country Reports, available at [www.opal-europe.org](http://www.opal-europe.org).

<sup>121</sup> See also A. Buzogány (2013) 'Learning from the Best? Interparliamentary networks and the Parliamentary Scrutiny of EU Decision-Making', in J. Fossum and B. Crum (eds) *Practices of Interparliamentary Coordination in International Politics* (Colchester: ECPR Press), p. 17-32; C. Hefftlar and K. Gattermann (forthcoming) 'Interparliamentary Cooperation in the European Union: Patterns, Problems and Potential' in C. Hefftlar et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>122</sup> Swedish EU Presidency (2010) 'The Stockholm Guidelines for the Conference of Speakers of EU Parliaments', EU Speakers' Conference, 14-15 May, Stockholm.

<sup>123</sup> C. Hefftlar and K. Gattermann (forthcoming) 'Interparliamentary Cooperation in the European Union: Patterns, Problems and Potential' in C. Hefftlar et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>124</sup> A. Buzogány (2013) 'Learning from the Best? Interparliamentary networks and the Parliamentary Scrutiny of EU Decision-Making', in J. Fossum and B. Crum (eds) *Practices of Interparliamentary Coordination in International Politics* (Colchester: ECPR Press), p. 21.

<sup>125</sup> Conference of Speakers of the European Union Parliaments (2008), *Guidelines for inter-parliamentary cooperation in the European Union*, adopted 21 July 2008, Lisbon.

<sup>126</sup> COSAC (2014) 'Twenty-first Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', 19 June, Athens. This effect has not been substantiated by

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follow-up research, but see K. Gatterman and C. Heffler (2013) 'Beyond Institutional Capacity: The Effects of Political Motivation on Parliamentary Behaviour in the Early Warning System, *OPAL Online Papers Series* No. 15.

<sup>127</sup> Ibidem.

<sup>128</sup> Ibidem.

<sup>129</sup> A.L. Högenauer. and C. Neuhold (2013) 'National Parliaments after Lisbon: Administrations on the Rise?' *OPAL Online Paper Series*, No. 12, p. 15-16.

<sup>130</sup> COSAC (2013) 'Twentieth Bi-Annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', 4 October, Vilnius; COSAC (2014) 'Twenty-first Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', 19 June, Athens.

<sup>131</sup> See the homepage of IPEX: <http://www.ipex.eu/IPEXL-WEB/home/home.do>.

<sup>132</sup> V. Knutelská (2013) 'Cooperation among National Parliaments: An Effective Contribution to EU Legitimation?' in J. Fossum and B. Crum (eds) *Practices of Interparliamentary Coordination in International Politics* (Colchester: ECPR Press), p. 43.

<sup>133</sup> See for example the OPAL Country Reports, available at [www.opal-europe.org](http://www.opal-europe.org); COSAC (2014) 'Twenty-first Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', 19 June, Athens.

<sup>134</sup> V. Knutelská (2013) 'Cooperation among National Parliaments: An Effective Contribution to EU Legitimation?' in J. Fossum and B. Crum (eds) *Practices of Interparliamentary Coordination in International Politics* (Colchester: ECPR Press), p. 44-45.

<sup>135</sup> Ibid., p. 42.

<sup>136</sup> Ibid., p. 43.

<sup>137</sup> European Parliament (2014) Interparliamentary meetings organised by the European Parliament, available at [www.europarl.europa.eu/webnp/cms/pid/11](http://www.europarl.europa.eu/webnp/cms/pid/11).

<sup>138</sup> C. Heffler and K. Gattermann (forthcoming) 'Inter-parliamentary Cooperation in the European Union: Patterns, Problems and Potential', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>139</sup> European Parliament (2009) 'National Parliaments, European Parliament, Yearbook', available at ([www.europarl.europa.eu/webnp/webdav/shared/Publications/Yearbook/Yearbook%202009.pdf](http://www.europarl.europa.eu/webnp/webdav/shared/Publications/Yearbook/Yearbook%202009.pdf));

European Parliament (2010) 'National Parliaments, European Parliaments, Yearbook', available at ([www.europarl.europa.eu/webnp/webdav/shared/Publications/Yearbook/Yearbook%202010.pdf](http://www.europarl.europa.eu/webnp/webdav/shared/Publications/Yearbook/Yearbook%202010.pdf));

European Parliament (2011) 'National Parliaments, European Parliament, Yearbook', available at ([www.europarl.europa.eu/webnp/webdav/shared/Publications/Yearbook/Yearbook%202011.pdf](http://www.europarl.europa.eu/webnp/webdav/shared/Publications/Yearbook/Yearbook%202011.pdf)).

<sup>140</sup> C. Heffler and K. Gattermann (forthcoming) 'Inter-parliamentary Cooperation in the European Union: Patterns, Problems and Potential', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan); European Parliament (n.d.) 'Joint Committee Meetings', available at [www.europarl.europa.eu/webnp/cms/pid/1605](http://www.europarl.europa.eu/webnp/cms/pid/1605).

<sup>141</sup> K. Gattermann (2014) 'Opportunities, Strategies and Ideologies: The Incentives of European Parliament Political Groups for Inter-parliamentary Cooperation', *OPAL Online Papers Series*, No. 16.

<sup>142</sup> [European Parliaments \(2014\) Joint Parliamentary Meetings, available at www.europarl.europa.eu/webnp/cms/pid/10.](http://www.europarl.europa.eu/webnp/cms/pid/10)

<sup>143</sup> COSAC (2014) 'Twenty-first Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', 19 June, Athens.

<sup>144</sup> C. Heffler and K. Gattermann (forthcoming) 'Inter-parliamentary Cooperation in the European Union: Patterns, Problems and Potential', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>145</sup> COSAC (2013) 'Twentieth Bi-Annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', 4 October, Vilnius.

<sup>146</sup> Ibid., p. 18.

<sup>147</sup> Ibid. p. 17.

<sup>148</sup> C. Heffler and K. Gattermann (forthcoming) 'Inter-parliamentary Cooperation in the European Union: Patterns, Problems and Potential', in C. Heffler et al. (eds) *Palgrave Handbook of National*



#### **Chapter 4: Experiences in nine parliaments**

<sup>149</sup> H. Hegeland (forthcoming) 'The Swedish Parliament and EU Affairs: From Reluctant Player to Europeanized Actor', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>150</sup> See the Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union, 4 July 2013. Available online: [www.bundestag.de/htdocs\\_e/bundestag/committees/a21/legalbasis/euzbbg/248870](http://www.bundestag.de/htdocs_e/bundestag/committees/a21/legalbasis/euzbbg/248870).

<sup>151</sup> T. Delreux and F. Randour (forthcoming) 'Belgium: Institutional and administrative adaptation but limited political interest', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>152</sup> As established in the 'Cooperation Act', 13 February 2011, see: <http://oide.sejm.gov.pl/oide/en/#2.1>.

<sup>153</sup> J. Barcz and A. Pudło (forthcoming) 'The Polish Parliament and EU Affairs', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>154</sup> T. Delreux and F. Randour (forthcoming) 'Belgium: Institutional and administrative adaptation but limited political interest', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan); See also: [www.vlaamsparlement.be/vp/informatie/diensteuropa/beleidsdomein/algemeen/europromotoren.html](http://www.vlaamsparlement.be/vp/informatie/diensteuropa/beleidsdomein/algemeen/europromotoren.html).

<sup>155</sup> T. Delreux and F. Randour (forthcoming) 'Belgium: Institutional and administrative adaptation but limited political interest', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>156</sup> Ibidem.

<sup>157</sup> The principles of subsidiarity and proportionality are related, yet separate principles. While subsidiarity refers to the appropriate level at which a legislative measure should be taken, proportionality refers to the principle that the form and content of a measure should not go beyond its aim. Both principles regulate the exercise of powers by EU institutions.

<sup>158</sup> B. Crum and J. Fossum (2013) *Practices of Inter-parliamentary Coordination in International Politics* (Colchester: ECPR Press).

<sup>159</sup> K. Auel, O. Rozenberg and A. Tacea (forthcoming) 'Fighting Back? And, if so, how? Measuring Parliamentary Strength and Activity in EU Affairs', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>160</sup> Ibidem.

<sup>161</sup> German Constitutional Court (2009) Lissabon-Urteil des Bundesverfassungsgerichts, June, BVerfG, 2 BvE 2/08..

#### **Chapter 5: The view of the European institutions**

<sup>162</sup> The broad outlines of the procedure can be found on the website of the European Commission. See: [http://ec.europa.eu/dgs/secretariat\\_general/relations/relations\\_other/npo/index\\_en.htm](http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm).

<sup>163</sup> European Commission (2009) Annual report 2008 on relations between the European Commission and national parliaments, COM (2009) 343 final, p. 9-10. European Commission (2010) Annual report 2009 on relations between the European Commission and national parliaments, COM (2010) 291 final,, p. 11.

<sup>164</sup> European Commission (2011) Annual report 2010 on relations between the European Commission and national parliaments, COM (2011) 345 final, p. 12.

<sup>165</sup> European Commission (2012) Annual report 2011 on relations between the European Commission and national parliaments, COM (2012) 375 final, p. 10.

<sup>166</sup> European Commission (2013) Annual report 2012 on relations between the European Commission and national parliaments, COM (2013) 565 final, p. 9.; European Commission (2014) Annual report 2013 on relations between the European Commission and national parliaments, COM (2014) 507 final., p. 11.

<sup>167</sup> COSAC (2012) 'Eighteenth Bi-annual Report: Developments in European Union, Procedures and

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Practices Relevant to Parliamentary Scrutiny' 27 September, Nicosia, p. 1.

<sup>168</sup> European Commission (2005) Report from the Commission on "Better lawmaking 2004" pursuant to Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality, COM (2005) 98 final, p. 6.

<sup>169</sup> For more details, see the Impact Assessment Guidelines, 15 January 2009, p. 21-22:

[ec.europa.eu/smart-regulation/impact/commission\\_guidelines/commission\\_guidelines\\_en.htm](http://ec.europa.eu/smart-regulation/impact/commission_guidelines/commission_guidelines_en.htm).

<sup>170</sup> COSAC (2012) 'Eighteenth Bi-annual Report: Developments in European Union, Procedures and Practices Relevant to Parliamentary Scrutiny' 27 September, Nicosia, p. 12.

<sup>171</sup> European Commission (2011) Annual report 2010 on relations between the European Commission and national parliaments, COM (2011) 345 final, p. 6; European Commission (2013) Annual report 2012 on relations between the European Commission and national parliaments, COM (2013) 565 final, p. 6; European Commission (2014) Annual report 2013 on relations between the European Commission and national parliaments, COM (2014) 507 final, p. 6.

<sup>172</sup> Internal overview prepared by the Secretariat-General of the European Commission, September 2014.

<sup>173</sup> Can be found on the website of the European Parliament.

See: [www.europarl.europa.eu/aboutparliament/en/00a4c9dab6/Rules-of-procedure.html](http://www.europarl.europa.eu/aboutparliament/en/00a4c9dab6/Rules-of-procedure.html)

<sup>174</sup> Internal review of the relations between parliamentary committees and national parliaments, prepared by the Conference of Committee Chairs, 29 November 2011.

<sup>175</sup> See for example: European Parliament (2002) Report on the relations between the European Parliament and the national parliaments in European integration, A5-0023/2002, p. 14-15; European Parliament (2014) Report on relations between the European Parliament and the national parliaments, A7-0255/2014, p. 14; COSAC (2014) 'Twenty-first Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', 19 June, Athens, p. 31.

<sup>176</sup> See the reports on 'Inter-parliamentary relations between the European Parliament and national parliaments under the Treaty of Lisbon' for 2010-2011, 2012 and 2013-2014.

<sup>177</sup> For example, see:

<http://www.europarl.europa.eu/webnp/cms/pid/1876;jsessionid=1EE16DE3E9CE8F1C6B5C96A1C3CD0BD9>

<sup>178</sup> For example, compare European Parliament (2014) Report on relations between the European Parliament and the national parliaments, A7-0255/2014;; European Parliament (2011) EU Regulatory Fitness and Subsidiarity and Proportionality - 19th report on Better Lawmaking, A7-0056/2014.

<sup>179</sup> For an overview and explanation of the forums, see:

<http://www.europarl.europa.eu/webnp/cms/pid/11>.

<sup>180</sup> COSAC (2014) 'Twenty-first Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', 19 June, Athens, p. 24.

<sup>181</sup> European Parliament (2012) 'Inter-parliamentary relations between the European Parliament and national parliaments under the Treaty of Lisbon' p. 9-11; European Parliament (2014) 'Inter-parliamentary relations between the European Parliament and national parliaments under the Treaty of Lisbon: Annual Report 2013-2014', p. 5 and 14.

<sup>182</sup> COSAC (2014) 'Twenty-first Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', 19 June, Athens, p. 29.

<sup>183</sup> Internal review of the relations between parliamentary committees and national parliaments, prepared by the Conference of Committee Chairs, 29 November 2011.

<sup>184</sup> Parliaments and Chambers that have these facilities are: Danish *Folketing*, German *Bundestag*, Estonian *Riigikogu*, Irish *Dáil Éireann*, Irish *Senead Éireann*, Greek *Vouli ton Ellinon*, Spanish *Senado*, French *Assemblée nationale*, French *Sénat*, Italian *Camera dei Deputati*, Italian *Senato*, Cypriot *Vouli ton Antiprosopon*, Latvian *Saeima*, Lithuanian *Seimas*, Dutch *Tweede Kamer*, Dutch *Eerste Kamer*, Polish *Sejm*, Portuguese *Assembleia da República*, Romanian *Camera Deputatilor*, Finnish *Eduskunta*, Swedish *Riksdag*, British House of Commons, British House of Lords. Information from: Internal overview prepared by the Directorate for Relations with National Parliaments, Secretariat-General of the European Parliament, September 2014.

<sup>185</sup> Since 2001 the Commission for example publishes yearly reports on better lawmaking, subsidiarity

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and proportionality. In November 2006, an Impact Assessment Board was created, which *inter alia* critically studies the subsidiarity aspects of new legislative proposals.

<sup>186</sup> See for example Swedish Riksdag (n.d.) 'The Riksdag and the EU', available at [www.ipex.eu/IPEXL-WEB/parliaments/institution/serik.do](http://www.ipex.eu/IPEXL-WEB/parliaments/institution/serik.do), p. 2.

<sup>187</sup> See for example: European Commission (2007) 'Better lawmaking 2006, pursuant to Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality', COM (2007)286, p. 8; European Commission (2009) Report from the Commission on subsidiarity en proportionality, COM(2009)504 , p. 9; European Commission (2012) Report from the Commission on subsidiarity and proportionality, COM(2012)373, p. 5.

## Chapter 6: Experiences – Austria

<sup>188</sup> Eurobarometer (2011). See [http://ec.europa.eu/public\\_opinion/cf/index\\_en.cfm](http://ec.europa.eu/public_opinion/cf/index_en.cfm).

<sup>189</sup> E. Miklin (forthcoming) 'The Austrian Parliament and EU Affairs: Gradually living up to its legal potential', in C. Hefftl et al. (2014) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>190</sup> Ibidem

<sup>191</sup> B. Blümel and C. Neuhold (2001) 'The parliament of Austria: A large potential with little implications' in A. Maurer and W. Wessels (eds) *National parliaments on their ways to Europe: Losers or latecomers?* (Baden-Baden: Nomos), pp. 313–336.

<sup>192</sup> E. Miklin (forthcoming) 'The Austrian Parliament and EU Affairs: Gradually living up to its legal potential', in C. Hefftl et al. (2014) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>193</sup> The reform concerned the constitution (Bundesgesetzblatt I No. 57/2010), the rules of procedure of both chambers (Bundesgesetzblatt I No.114/2011; Bundesgesetzblatt I No. 141/2011) and the passage of an EU Information Law (Bundesgesetzblatt I No.113/2011) (Miklin, forthcoming).

<sup>194</sup> E. Miklin (2013a) 'Inter-Parliamentary Cooperation in EU Affairs and the Austrian Parliament: Empowering the Opposition?', *Journal of Legislative Studies*, 19(1), 22-41.

<sup>195</sup> In formal terms (according to the Austrian Constitution (art. 23 k(2), B-VG) it is the Main Committee *meeting as* the Main Committee on EU Affairs.

<sup>196</sup> See: art. 23f (4) art. 23g and art. 23k (2) B-VG).

<sup>197</sup> While both committees were planned when Austria joined the EU in 1995, internal discussions about who should chair it meant that the Standing Sub Committee did not meet for the first time until 1999 (Blümel and Neuhold, 2001).

<sup>198</sup> E. Miklin (forthcoming) 'The Austrian Parliament and EU Affairs: Gradually living up to its legal potential', in C. Hefftl et al. (2014) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>199</sup> It has fourteen members and fourteen substitute members, and is also composed according to party group size.

<sup>200</sup> According to art. 23f (4), art. 23g and art. 23k (3) of the Austrian constitution.

<sup>201</sup> The Main Committee of the Nationalrat has 26 members, while the Standing Sub-committee has 16 members and 16 substitute members. However, some parliamentarians sit on both committees.

<sup>202</sup> Constitution, Art. 23g.

<sup>203</sup> E. Miklin (forthcoming) 'The Austrian Parliament and EU Affairs: Gradually living up to its legal potential', in C. Hefftl et al. (2014) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>204</sup> COSAC (2010a) 'Thirteenth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', prepared by the COSAC Secretariat and presented to the XLIII Conference of Community and European Affairs Committees of Parliaments of the European Union, 31. May-1. June.

<sup>205</sup> These divisions are *inter alia* in charge of the EU database and support the three Austrian European Affair Committees.

<sup>206</sup> The administrative level responsible consists mainly of two lawyers of the sub-unit EU relations of the EU and international services.

<sup>207</sup> In the Nationalrat it would be the members of the Sub-committee on EU affairs that are informed in

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this context as they would at the end of the day issue the reasoned opinion or act within the political dialogue.

<sup>208</sup> Each political group in the Austrian parliament has a political group advisor. These are responsible for both the Main-Committee and the EU Sub-committee on EU Affairs. Within their realm of competence fall the upper and lower house of the Austrian parliament (*Bundesrat* and *Nationalrat*) when dealing with EU issues.

<sup>209</sup> The current second President of the *Nationalrat* is Karlheinz Kopf.

<sup>210</sup> COSAC (2010b) 'Annex to Thirteenth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', prepared by the COSAC Secretariat and presented to: XLIII Conference of Community and European Affairs Committees of Parliaments of the European Union, 31. May-1. June, p. 25ff.

<sup>211</sup> E. Miklin (forthcoming) 'The Austrian Parliament and EU Affairs: Gradually living up to its legal potential', in C. Heffler et al. (2014) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>212</sup> Ibidem

<sup>213</sup> Ibidem.

<sup>214</sup> These members represent the Austrian coalition partners of the Austrian Social Democratic Party and the Austrian People's Party.

<sup>215</sup> E. Miklin (forthcoming) 'The Austrian Parliament and EU Affairs: Gradually living up to its legal potential', in C. Heffler et al. (2014) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>216</sup> B. Blümel and C. Neuhold (2001) 'The parliament of Austria: A large potential with little implications' in A. Maurer and W. Wessels (eds) *National parliaments on their ways to Europe: Losers or latecomers?* (Baden-Baden: Nomos), p. 313–336.

<sup>217</sup> Ibidem.

<sup>218</sup> Data from Directorate of Austrian Parliament, 24<sup>th</sup> September 2014.

<sup>219</sup> E. Miklin (forthcoming) 'The Austrian Parliament and EU Affairs: Gradually living up to its legal potential', in C. Heffler et al. (2014) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>220</sup> This would imply that MEPs would want to know what position the same political group "defends" in the national parliament.

## Chapter 7: Experiences – Germany

<sup>221</sup> Eurobarometer (2011). See [http://ec.europa.eu/public\\_opinion/cf/index\\_en.cfm](http://ec.europa.eu/public_opinion/cf/index_en.cfm).

<sup>222</sup> The Council of Elders comprises the President of the German Bundestag, the Vice-Presidents and 23 other Members. The Council assists the President, helping to ensure that the business of the Bundestag is coordinated effectively and conducted as smoothly as possible and acts as a forum where procedural disputes are discussed and mediated.

<sup>223</sup> O. Höing (forthcoming) 'With a little help of the Constitutional Court. The Bundestag on its way to an active policy-shaper', in C. Heffler et al. (2014) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

## Chapter 8: Experiences – Sweden

<sup>224</sup> Eurobarometer (2011). See [http://ec.europa.eu/public\\_opinion/cf/index\\_en.cfm](http://ec.europa.eu/public_opinion/cf/index_en.cfm).

<sup>225</sup> A. Michalski (2013) 'Sweden: From Scepticism to Pragmatic Support' in S. Bulmer and C. Lequesne (eds) *The Member States of the European Union* (Oxford: Oxford University Press), cited in H. Hegeland (forthcoming) 'The Swedish Parliament and EU affairs: From reluctant player to Europeanized actor', in C. Heffler et al. (2014) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>226</sup> H. Hegeland (forthcoming) 'The Swedish Parliament and EU affairs: From reluctant player to Europeanized actor', in C. Heffler et al. (2014) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).

<sup>227</sup> Ibidem.

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- <sup>228</sup> Ibidem.
- <sup>229</sup> H. Hegeland (2006), *Nationell EU-parlamentarism: riksdagens arbete med EU-frågorna*, Santérus Academic Press Sweden, Stockholm.
- <sup>230</sup> H. Hegeland (forthcoming) 'The Swedish Parliament and EU affairs: From reluctant player to Europeanized actor', in C. Heffler et al. (2014) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).
- <sup>231</sup> Ibidem.
- <sup>232</sup> Ibidem.
- <sup>233</sup> Ibidem.
- <sup>234</sup> Ibidem.
- <sup>235</sup> See, ibidem.
- <sup>236</sup> The Riksdag Act, ch. 10, art. 10.
- <sup>237</sup> H. Hegeland (forthcoming) 'The Swedish Parliament and EU affairs: From reluctant player to Europeanized actor', in C. Heffler et al. (2014) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).
- <sup>238</sup> H. Hegeland(2006) *Nationell EU-parlamentarism: riksdagens arbete med EU-frågorna*, Santérus Academic Press Sweden, Stockholm, in H. Hegeland (forthcoming) 'The Swedish Parliament and EU affairs: From reluctant player to Europeanized actor', in C. Heffler et al. (2014) *Palgrave Handbook of National Parliaments and the European Union*, (Basingstoke: Palgrave Macmillan).
- <sup>239</sup> H. Hegeland (forthcoming) 'The Swedish Parliament and EU affairs: From reluctant player to Europeanized actor', in C. Heffler et al. (2014) *Palgrave Handbook of National Parliaments and the European Union*, (Basingstoke: Palgrave Macmillan).
- <sup>240</sup> Ibidem.
- <sup>241</sup> Country report by Thomas Persson, *EU scrutiny in the Swedish Riksdag*, Uppsala University.
- <sup>242</sup> Data from *Retriever Research (Mediearkivet)* on 24 September 2014. The words used in the search were a combination of "EU" and "yellow card".
- <sup>243</sup> Information obtained from the *Riksdag*, 2014, unpublished.
- <sup>244</sup> Ibidem.
- <sup>245</sup> Country report by Thomas Persson, *EU scrutiny in the Swedish Riksdag*, Uppsala University.
- <sup>246</sup> Ibidem.

## **Appendix 1: List of country experts and respondents**

- <sup>247</sup> The interview presents the personal views of the interviewee.

## **Appendix 2: Patterns in use of EU instruments**

- <sup>248</sup> C. Neuhold and J. Smith (forthcoming) 'Conclusion: From 'late-comers' to 'policy-shapers'? – The role of national parliaments in the 'post-Lisbon' Union', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan). Data only available for Lower Chambers.
- <sup>249</sup> See ibidem. Data only available for Lower Chambers. This role encompasses the roles of policy shaper and government watchdog
- <sup>250</sup> OPAL institutional strength score, source: Source: K. Auel, O. Rozenberg and A. Tacea (forthcoming) 'Fighting Back? And, if so, how? Measuring Parliamentary Strength and Activity in EU Affairs', in C. Heffler et al. (eds) *Palgrave Handbook of National Parliaments and the European Union* (Basingstoke: Palgrave Macmillan).
- <sup>251</sup> Eurobarometer (2011). See [http://ec.europa.eu/public\\_opinion/cf/index\\_en.cfm](http://ec.europa.eu/public_opinion/cf/index_en.cfm).
- <sup>252</sup> Eurobarometer (2011). See [http://ec.europa.eu/public\\_opinion/cf/index\\_en.cfm](http://ec.europa.eu/public_opinion/cf/index_en.cfm).
- <sup>253</sup> Eurobarometer 2014 spring edition, [http://ec.europa.eu/public\\_opinion/archives/eb/eb81/eb81\\_publ\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb81/eb81_publ_en.pdf), p. 91.
- <sup>254</sup> Eurobarometer 2014 spring edition, [http://ec.europa.eu/public\\_opinion/archives/eb/eb81/eb81\\_publ\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb81/eb81_publ_en.pdf), p. 91.
- <sup>255</sup> COSAC (2013) 'Twentieth Bi-Annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', 4 October, Vilnius.

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<sup>256</sup> Two chambers together.

<sup>257</sup> 40 opinions were sent in 2013 of which 25 were sent without the *Assemblée Nationale* wanting a reply.

<sup>258</sup> *Cortes Generales*.

### **Appendix 3: Types of inter-parliamentary meetings**

<sup>259</sup> European Parliament (n.d.) Interparliamentary meetings organised by the European Parliament, available at [www.europarl.europa.eu/webnp/cms/pid/11](http://www.europarl.europa.eu/webnp/cms/pid/11).

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