

Policy Paper

Subsidiarity and more:

The involvement of national parliaments
in the EU

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[#NationalParliaments](#)
[#Subsidiarity](#)
[#LisbonTreaty](#)



National parliaments participate in political decisions in the EU's multi-level system via the Early Warning Mechanism for monitoring the subsidiarity principle, the Political Dialogue with the European Commission and interparliamentary cooperation. This Policy Paper presents six recommendations for a pragmatic development of existing procedures and practices.

Executive summary

In the light of the Lisbon Treaty, which entered into force ten years ago, this Policy Paper takes stock of the involvement of national parliaments in the EU. It examines subsidiarity control under the Early Warning Mechanism and two other key instruments: Political Dialogue and interparliamentary cooperation.

To pragmatically develop existing procedures and practices and adapt them to changed or changing framework conditions, the Policy Paper proposes:

- extending the eight-week deadline for subsidiarity concerns,
- developing common guiding questions to investigate legal basis, subsidiarity and proportionality,
- looking at the entire policy cycle and setting priorities in national parliaments for scrutiny at an early stage,
- supporting the proposal of the new Commission President to grant the European Parliament an indirect right of initiative and to breathe life into it through “Joint Parliamentary Initiatives” following the green card,
- using modern technology to enable scrutiny processes in all national parliaments to be tracked virtually in real time on the IPEX platform and
- strengthening the administrative basis of interparliamentary cooperation in order to support the proliferation of collaboration.

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Introduction

The Lisbon Treaty, which entered into force on 1 December 2009, has turned the parliaments of EU member states into important players in the European multi-level system. Their involvement should help to reduce the EU's democratic deficit. Over the past decade, the national parliaments have developed and differentiated their European activities in a variety of different ways: the Early Warning Mechanism, Political Dialogue and interparliamentary cooperation are the main instruments set out in the Lisbon Treaty. In their actual work, national parliaments are faced with both the challenge of making effective use of these existing opportunities for participation and the question of whether and, if so, how they wish to develop them further.

“The main instruments set out in the Lisbon Treaty”

The Lisbon Treaty gave national parliaments the right to monitor compliance with the subsidiarity principle in new EU legislative proposals, through the **Early Warning Mechanism**. In doing so, the national parliaments monitor whether EU action in the context of a specific legislative proposal is necessary, or whether the objectives could be better achieved at national (or regional) level. The national parliaments thus play an important role within the EU multi-level system via an early recognition of potential overstepping of competences by the EU institutions.

Beyond the monitoring of subsidiarity, national parliaments also have the opportunity to engage in a written exchange with the European Commission about more general concerns and views: in the **Political Dialogue** they can address opinions to the Commission on all types of official documents.

Moreover, the national parliaments also work together and with the European Parliament. **Interparliamentary cooperation** is also included in the Lisbon Treaty and for example, it can contribute to the success of jointly monitoring the principle of subsidiarity.

1 Early Warning Mechanism

In the case of subsidiarity concerns, national parliaments can issue a reasoned opinion on a European Commission legislative proposal under the Early Warning Mechanism, within eight weeks of its publication. In this way, they play an important role as a watchdog. If more than a third of national parliaments express such concerns, this warrants a yellow card. The Commission must then re-examine its proposal and decide whether to amend, withdraw or retain the proposal; however, every decision must be justified.

This Policy Paper begins by reviewing the Early Warning Mechanism since the entry into force of the Lisbon Treaty, and then proposes extending the review period and developing key questions for the review process.

1.1 Overview subsidiarity monitoring by national parliaments

Since the entry into force of the Lisbon Treaty, only three yellow cards have been issued (in 2012, 2013 and 2016). One reason for this is that a yellow card is difficult to achieve within the given eight-week period. Furthermore, when a yellow card arises, the Commission has no obligation to take the concerns raised into account and withdraw the legislative proposal.¹

Most recently, national parliaments from ten Central and Eastern European member states and the Danish Parliament triggered a yellow card in May 2016, when they opposed the revision of the Posted Workers Directive.² It was only the timely coordination within a regional bloc and the high political importance of the Posted Workers Directive which enabled the yellow card threshold to be breached. However, the Central and Eastern European national parliaments were not so much expressing concerns over subsidiarity but rather political dissatisfaction. In July 2016, the European Commission rejected the concerns over subsidiarity. At several interparliamentary meetings, representatives of the national parliaments who had triggered the yellow card sharply criticized this decision by the European Commission. The revision of the Posted Workers Directive was finally approved by the Council of Ministers and the European Parliament in June 2018.

Table 1: Yellow cards by national parliaments in the context of the Early Warning Mechanism

Reference	Name of the legislative proposal	Number of reasoned opinions
COM(2012) 130 final	Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services („Monti II“)	12 (= 19 votes)
COM(2013) 534 final	Proposal for a Council Regulation on the establishment of the European Public Prosecutor’s Office (EPPO)	14 (= 18 votes)
COM(2016) 128 final	Proposal for a directive of the European Parliament and of the Council amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services	14 (= 22 votes)

Source: Author’s own research. In bicameral systems, each chamber has one vote, while in unicameral systems the national parliament has two votes.

In total, since the entry into force of the Lisbon Treaty, national parliaments have issued 439 reasoned opinions or complaints regarding subsidiarity to the Euro-

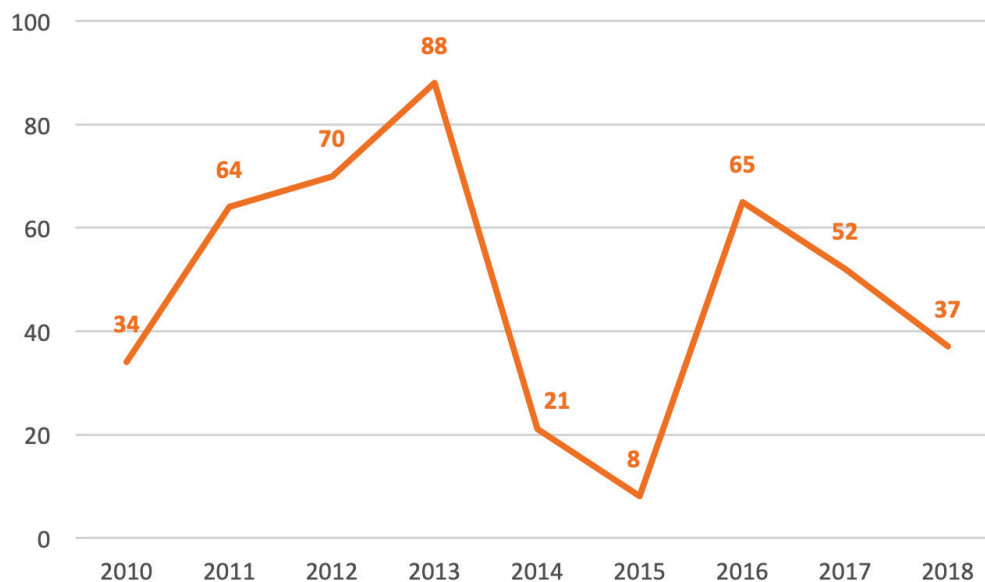
“439 reasoned opinions or complaints regarding subsidiarity to the European Commission”

¹ Only if more than half of the national parliaments expressed concerns over subsidiarity would the threshold for an orange card be reached. In this case, a qualified majority in the Council or a simple majority in the European Parliament would be enough to force the Commission to withdraw its proposal. This has not happened yet.

² Diane Fromage and Valentin Kreilinger, *National Parliaments’ third yellow card and the struggle over the revision of the Posted Workers Directive*, in: *European Journal of Legal Studies* 2017, Vol. 10, No. 1, p. 125–160

pean Commission.³ While the Juncker Commission received only eight reasoned opinions in its first year of office (2015), it received 69 in 2016, with this figure stabilising between 2011 to 2013 (an average of 74 reasoned opinions). The number of reasoned opinions was significantly lower in 2014 and 2015 in the context of the European elections and transition at the institutions. In 2016 and 2017, the national parliaments sent 65 and 52 reasoned opinions to the Commission. In 2018, a total of 37 reasoned opinions were sent. The number of subsidiarity complaints was thus below the long-term average of 50 reasoned opinions. The trend confirms that national parliaments are actively using the Early Warning Mechanism, albeit with varying degrees of intensity over the course of time (see Figure 1).

Figure 1: Trend in the number of opinions from national parliaments under the Early Warning Mechanism (2010–2018)



Source: Author's own graphic, based on the annual reports of the European Commission (2010–2018).

There are major discrepancies among national parliaments with regard to the use of the Early Warning Mechanism.⁴ In 2018, the four most active national parliaments/chambers (Austrian Federal Council, Czech House of Representatives, Irish Parliament and Swedish Parliament) delivered 23 reasoned opinions, which was more than half of the reasoned opinions submitted under the Early Warning Mechanism (37). The 14 national parliaments/chambers which submitted at least one reasoned opinion were offset by the 25 national parliaments/chambers that had not expressed any concerns over subsidiarity in any legislative proposal by the European Commission, in 2018.

Calls for the introduction of what would be referred to as a red card, with which national parliaments could completely block legislative proposals by the European Commission, have continued in recent years. For example, in the context of

“Calls for the introduction of a red card”

³ The terms “reasoned opinion” and “subsidiarity complaint” are hereafter used synonymously.

⁴ Katrin Auel and Christine Neuhold, *Europeanisation of National Parliaments in European Union Member States: Experiences and Best Practices*. Study for the European Parliament's Greens/EFA Group, June 2018, p. 27.

the discussions on the Strategic Agenda of the European Council for 2019-2024, the Polish government called for the introduction of such a procedure, based on the scheme promised by the European Council to the United Kingdom in the run-up to the Brexit referendum in 2016.⁵ Previously, in January 2018, the governments of all four Visegrad countries issued a joint statement on the future of the EU calling for further development of the Early Warning Mechanism by introducing a red card. The European Parliament also addressed subsidiarity monitoring in its report on the application of the provisions of the Treaty concerning national parliaments in April 2018, but noted that “the introduction of the red card procedure is not foreseeable at the current stage of the European integration⁶ process.” However, the vote on the relevant passage in the European Parliament resolution was very close.⁷

The introduction of a red card only receives sporadic support in the EU. It would give the national parliaments even more of a blocking role than the present subsidiarity monitoring process and therefore, it would not be effective at creating a constructive role for the national parliaments.

Over the ten-year period, the Early Warning Mechanism has proved its worth, even if only three yellow cards have been issued. The following section proposes developing the mechanism in a pragmatic manner, by extending the review period and introducing common key questions for the subsidiarity check.

1.2 Further development of the Early Warning Mechanism

The data shows that national parliaments have been actively involved in monitoring subsidiarity for ten years. Recently, there have been several initiatives to review and develop the role of national parliaments in subsidiarity monitoring. In particular, a number of national parliaments have expressed the desire to extend the eight-week period.⁸

Commission President Juncker set up a Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently in 2017, under the leadership of the first Vice-President of the European Commission, Frans Timmermans. This task force should help the EU to focus on “really important issues” and make suggestions on where it might make sense to return competences to the member states.⁹

The working group, consisting of three representatives of national parliaments and three representatives of the Committee of the Regions, presented their final report in July 2018. It laid out the concept of “active subsidiarity” and proposed, in-

⁵ Financial Times, *Poland attempts to revive EU's red-card concession*, 23.5.2019

⁶ European Parliament, *Resolution of 19 April 2018 on the application of the provisions of the Treaty concerning the national parliaments* (2016/2149 (INI)), point R.

⁷ See Valentin Kreiling, *Strengthening parliamentary voices in the EU's multi-level-system*, Jacques Delors Institute Berlin, Policy Paper, June 2018, p. 6.

⁸ The National parliaments of Portugal, Hungary, Luxembourg, Sweden and Poland explicitly declared their support for such an extension in the COSAC 32nd Bi-Annual Report published in November 2019.

⁹ European Commission, *Decision of the President of the European Commission on the establishment of a Task Force on Subsidiarity, Proportionality and “Doing Less More Efficiently”*, C (2017) 7810, 14.11.2017.

ter alia, the introduction of a common grid when performing a subsidiarity check. The national parliaments and EU institutions would then carry out their investigations based on a detailed form. The Task Force also recommended that, in addition to the month of August, the common holiday periods be taken into account when calculating the eight-week period for the subsidiarity check and that this period be extended to 12 weeks in the event of Treaty change. However, it did not find any competences that the EU could return to the member states.¹⁰

In response to the report of the Task Force, the European Commission issued a communication on subsidiarity and proportionality in October 2018, announcing, inter alia, the inclusion of the subsidiarity grid proposed by the Task Force in its own work and calling on the Council and the European Parliament to agree to allow for the Christmas and New Year break when calculating the period for subsidiarity checks by the national parliaments.¹¹ The European Parliament had already stated in April 2018 that the European Commission should introduce a technical notification period within the Early Warning Mechanism in order to extend the eight-week period.¹²

In the current debate on the further development of the Early Warning Mechanism for subsidiarity monitoring, an extension of the review period seems like a reform that could be consensual. The duration of the European legislative process would be increased modestly by extending the deadline.¹³ A longer review period could allow national parliaments to better monitor compliance with the principle of subsidiarity. This would allow more time for national parliaments to form alliances for a possible yellow card (or orange card, if more than half of national parliaments submit reasoned opinions¹⁴).

“Extension of the review period”

It should be noted, however, that in general the possibilities of a far-reaching reform of the Early Warning Mechanism are limited, as long as there is no Treaty change. In 2009, a letter from Commission President Barroso and Commissioner Malmström set out the technical modalities of the Early Warning Mechanism.¹⁵ The European Parliament also sees an opportunity to find a creative solution with respect to the formal date for the submission of a legislative proposal,¹⁶ in other words determining when exactly the clock starts ticking.

¹⁰ *Report of the Task Force on Subsidiarity, Proportionality and ‘Doing Less More Efficiently’.*

¹¹ European Commission, *Communication “The principles of subsidiarity and proportionality: Strengthening their role in the EU’s policy making”*, COM (2018) 703 final.

¹² European Parliament, *Resolution of 19 April 2018 on the implementation of the Treaty provisions concerning national parliaments (2016/2149 (INI))*.

¹³ In the 2004–2009 legislative period, the EU legislative process lasted an average of 60 weeks, while in the 2014–2019 legislative period this figure was 86 weeks (see Bendjaballah and Rozenberg 2019). Given that the legislative process is already much slower, it seems reasonable to extend the deadline for the subsidiarity check by four weeks.

¹⁴ See footnote 1.

¹⁵ See Valentin Kreilinger, *Strengthening parliamentary voices in the EU’s multi-level-system*, Jacques Delors Institute Berlin, Policy Paper, June 2018, p. 14. In October 2019 First Vice-President Frans Timmermans informed national parliaments that from now on the period between 20 December and 10 January of the following will not be counted to the eight-week timeframe.

¹⁶ European Parliament, *Resolution of 19 April 2018 on the implementation of the Treaty provisions concerning national parliaments (2016/2149 (INI))*, para. 18.

The EU institutions should explore every available option to grant national parliaments more time to carry out their subsidiarity checks. In the case of a Treaty change, the deadline should be extended from eight to twelve weeks.

In addition, guiding questions for the subsidiarity check would give better structure to reasoned opinions. A well-defined set of guiding questions would increase the efficiency and comparability of assessments from EU institutions and reasoned opinions from national parliaments.

“Guiding questions for the subsidiarity check”

Unlike in the past, in their monitoring procedures, EU institutions and national parliaments should be guided by common guiding questions when examining the legal basis, subsidiarity and proportionality of a legislative proposal.

By contrast, the introduction of an assessment grid (as proposed by the Task Force) would set limits on national parliaments when monitoring subsidiarity and would therefore encounter greater resistance. The introduction of guiding questions therefore seems to be a promising option.

2 Political Dialogue

In addition to reasoned opinions on subsidiarity monitoring within the context of the Early Warning Mechanism, national parliaments can also submit (general) opinions on Commission documents or policy areas in which the Commission has the power to act. This instrument makes the views of the national parliaments visible and facilitates a dialogue with the European Commission, which responds to all opinions.

Following a review and assessment of the Political Dialogue, this Policy Paper proposes two measures to further strengthen the dialogue in order to make the concerns of national parliaments more visible at European level.

2.1 Overview of the dialogue between the European Commission and national parliaments since the Barroso Initiative

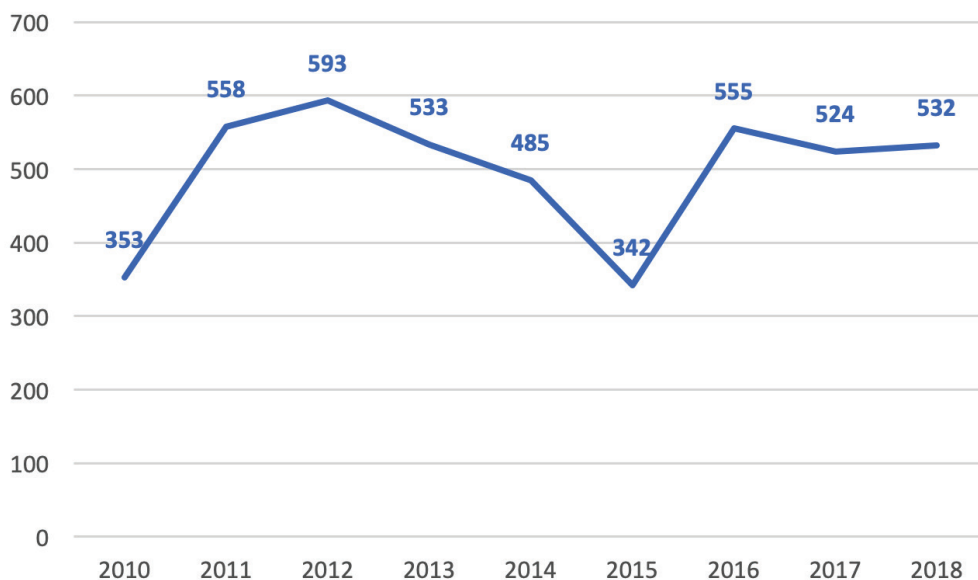
In 2006, Commission President José Manuel Barroso launched an initiative to build direct, informal relations between the European Commission and national parliaments. The Commission has since sent all the documents it produces, including its legislative proposals, directly to the national parliaments and committed itself to respond to their questions and comments. In total, the European Commission has received more than 5,000 opinions since the launch of the Political Dialogue, almost 4,500 opinions since the entry into force of the Lisbon Treaty. For the first time, the “Barroso Initiative” made it possible for national parliaments to participate directly in EU decision-making processes.¹⁷

Under the Juncker Commission, the activity of the national parliaments in the Political Dialogue remained constant at 555, 524 and 532 opinions in the years following 2015, during which there were only 342 opinions (see Figure 2). Most

¹⁷ See Olivier Rozenberg, *The Role of National Parliaments in the EU after Lisbon: Potentialities and Challenges*, March 2017.

of the opinions relate to legislative proposals, but national parliaments are also increasingly looking at non-legislative documents such as communications and other Commission documents.

Figure 2: Trend in the number of opinions from national parliaments in the Political Dialogue (2010–2018)



Source: Author's own graph, based on the annual reports of the European Commission (2010–2018).

National parliaments' activity in the Political Dialogue varies greatly.¹⁸ The ten most active national parliaments/chambers accounted for 83% or 472 opinions in 2018. As in previous years, the Portuguese Assembleia submitted the most opinions (99). This was followed by the Czech Senate (81 opinions), the Spanish Cortes Generales (53 opinions), the German Bundesrat (52 opinions), the Romanian Camera Deputaţilor (48 opinions) and the Romanian Senate (45 opinions). Ten national parliaments/chambers did not submit a single opinion within the Political Dialogue in 2018.

Direct contact with national parliaments was a priority of the European Commission under Jean-Claude Juncker. An example of this is the regular contact between Brexit chief negotiator Michel Barnier and the national parliaments of the 27 member states. Despite the fact that national parliaments have no right of veto over a withdrawal agreement under Article 50 of the EU Treaty, they have still addressed the issue of the Brexit negotiations and articulated their positions in the form of numerous resolutions, reports and plenary debates. Several national parliaments even set up special bodies to oversee the EU-UK negotiations.

In the European Semester, the budgetary and economic policy coordination and monitoring process between European and national levels, dialogue between national parliaments and the European Commission also plays an important role. For example, it would be possible to improve the involvement of national parliaments

¹⁸ See Katrin Auel and Christine Neuhold, *Europeanisation of National Parliaments in European Union Member States: Experiences and Best Practices*. Study for the European Parliament's Greens/EFA Group, June 2018, p. 28.

in the various stages of the European Semester through minimum standards for parliamentary participation.¹⁹

At present, the concerns and opinions of national parliaments expressed in dialogue with the European Commission are hardly visible and their participation in the Political Dialogue is very unevenly distributed. Therefore, this Policy Paper puts forward two proposals to give the national parliaments a stronger voice.

2.2 Further development of the Political Dialogue

With an informal green card, groups of national parliaments have been submitting non-binding proposals for future legislative initiatives to the European Commission since 2015.

The first green card was sent to the European Commission in July 2015: the House of Lords had convinced 16 committee chairpersons of national parliaments and chambers to sign a letter inviting the European Commission to tackle the problem of food waste. In its reply, the European Commission promised to pay particular attention to the proposals of the national parliaments, but if anything, the green card has played a rather marginal role in the Circular Economy Action Plan. However, the UK's impending departure is a major turning point for the national parliaments of the remaining 27 member states, as this means that a key agenda setter for debates on new mechanisms for national parliaments' involvement at EU level is leaving the union.

“The first green card”

A possible extension of the Political Dialogue, so that national parliaments could submit structured proposals to the European Commission for future legislative initiatives, is widely supported by national parliaments.

The green card gives national parliaments the opportunity to express constructive ideas and propose possible legislative initiatives to the European Commission (and not just subsidiarity concerns as through the Early Warning Mechanism). The green card instrument could serve as a bridge between public opinion in individual member states (represented by their national parliaments) and “Brussels” (the European Commission). Green cards could be drawn up through policy-specific interparliamentary meetings, possibly by subgroups of national parliaments, and COSAC could later serve as a forum for an initial assessment of green cards.²⁰

However, the final report of the Task Force on Subsidiarity, Proportionality and ‘Doing Less More Efficiently’ already perceives sufficient scope for national parliaments to have an effective voice in the existing Political Dialogue. It only recommends better coordination and does not support the introduction of a green card. The Task Force felt that national parliaments were already able to undertake such initiatives and therefore no new instrument was needed.²¹

¹⁹ Valentin Kreilinger, *Minimum standards for parliamentary participation in the European Semester*, Jacques Delors Institute Berlin and Bertelsmann Stiftung, Policy Paper, January 2019.

²⁰ See Valentin Kreilinger, *Strengthening parliamentary voices in the EU's multi-level-system*, Jacques Delors Institute Berlin, Policy Paper, June 2018, p. 11.

²¹ *Report of the Task Force on Subsidiarity, Proportionality and ‘Doing Less More Efficiently’*.

Formalising the green card instrument could certainly help the visibility of such initiatives and the Political Dialogue as a whole. However, for national parliaments to be able to exert influence at a very early stage of the legislative process or to trigger legislative proposals from the European Commission, it would be essential that they carefully analyse the Commission's work programme for each coming year:

In their dialogue with the European Commission, national parliaments should consider the entire policy cycle. For example, by analysing the work programme of the European Commission, they could identify priorities for their own monitoring procedures at an early stage, coordinate with other parliaments and, where necessary, submit their own proposals to the Commission.

In this context, the announcement of the new Commission President's intention to give the European Parliament an indirect right of initiative²² is a welcome one: it could open the door to genuine interparliamentary cooperation, where European and national parliamentarians work together to develop initiatives.²³ The European Commission should make a commitment to publicly discuss initiatives from national parliaments after they have been submitted. The European Parliament should see the national parliaments as partners in this regard and not try to ignore or water down their ideas.²⁴

Together with the European Parliament, national parliaments should support the proposal of the new Commission President to grant the European Parliament an indirect right of initiative and put this into practice through their own ideas for initiatives addressed to the European Parliament. Joint parliamentary initiatives should then be given priority by the EU institutions.

If national parliaments organise their European work in this way, taking into account the entire policy cycle, and if the indirect right of initiative for the European Parliament is embedded in an interparliamentary manner, for example if such initiatives are prepared in joint committee meetings, then the two measures will help to overcome the previously existing "jealousies" between the European Parliament and national parliaments as well as link the two parliamentary levels more closely – in line with the representative democracy of the EU based on two channels of legitimacy, as stipulated in Article 10 (2) TEU.

“Exert influence at a very early stage of the legislative process”

“The indirect right of initiative for the European Parliament embedded in an interparliamentary manner”

²² The European Parliament thus seems to have succeeded in strengthening its position once again. See Adrienne Héritier, Katharina L. Meissner, Catherine Moury and Magnus G. Schoeller, *European Parliament Ascendant, Parliamentary Strategies of Self-Empowerment in the EU*, London: Palgrave, 2019.

²³ See Agata Gostynska-Jakubowska, *The role of national parliaments in the EU: Building or stumbling blocks?*, Centre for European Reform, June 2016, p. 10.

²⁴ See Valentin Kreilinger, *Strengthening parliamentary voices in the EU's multi-level-system*, Jacques Delors Institute Berlin, Policy Paper, June 2018, p. 13.

3 Interparliamentary cooperation

Another instrument for national parliaments at European level is cooperation between national parliaments and with the European Parliament. On the one hand, informal cooperation with other parliaments helps to reach the threshold for a yellow card in the Early Warning Mechanism, or to give more weight to a green card. On the other hand, there are regular interparliamentary conferences for formal cooperation.²⁵ After a brief evaluation and review, this Policy Paper sets out two specific proposals to improve interparliamentary cooperation.

3.1 Overview of cooperation between national parliaments and the European Parliament

This cooperation has intensified significantly in recent years through the establishment of two policy-specific conferences (Interparliamentary Conference on Stability, Economic Coordination and Governance, and the Interparliamentary Conference on Common Foreign and Security Policy and the Common Security and Defence Policy) in 2012 and 2013, and not least through the creation of a Joint Parliamentary Scrutiny Group on Europol in 2017.

Box 1: Existing interparliamentary cooperation in the EU

- Conference of Speakers of the Parliaments of the European Union (EUSC)
- Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC)
- Interparliamentary Conference on Common Foreign and Security Policy and the Common Security and Defence Policy (CFSP/CSDP Conference)
- Interparliamentary Conference on Stability, Economic Coordination and Governance in the EU (SECG Conference)
- Joint Parliamentary Scrutiny Group on Europol (JPSG)
- Other policy-specific interparliamentary committee meetings

The Conference of Speakers of EU Parliaments provided significant momentum in this area by creating a Joint Parliamentary Scrutiny Group for the European police authority Europol in April 2017. Art. 12c TEU and Art. 88 TFEU of the Lisbon Treaty already contain clear provisions on the involvement of national parliaments in overseeing Europol. The scrutiny group, which held its constituent meeting in October 2017, represents a new interparliamentary format: each national parliament may appoint up to four members to it; the European Parliament sends 16 members.

“A new inter-parliamentary format”

²⁵ See Nicola Lupo and Cristina Fasone, *Interparliamentary Cooperation in the Composite European Constitution*. Oxford, Hart Publishing, 2017.

The role of the scrutiny group is to oversee the activities of Europol.²⁶

The European Union Agency for Criminal Justice Cooperation (Eurojust) will also be jointly overseen by the European Parliament and national parliaments, based on the provision of Article 85 (1) TFEU. The Eurojust Regulation, amended in 2018, improves the functioning, structure and operational effectiveness of the agency, updates the data protection framework and ensures greater transparency and democratic control: Article 67 of the Eurojust Regulation covers the involvement of the Union institutions and national parliaments in the work of Eurojust and provides, inter alia, that the President of Eurojust “shall appear once a year for the joint evaluation of the activities of Eurojust [...] within the framework of an inter-parliamentary committee meeting, to discuss Eurojust’s current activities and to present its annual report or other key documents of Eurojust.”²⁷

It is precisely through the creation of new bodies for the interparliamentary scrutiny of Europol and Eurojust that national parliaments and the European Parliament have demonstrated their desire to see their cooperation as important, and make it efficient and effective. Interparliamentary cooperation is no longer based primarily on major interparliamentary conferences, as the two bodies show.

3.2 Further development of interparliamentary cooperation

According to national parliaments, there are a number of issues where interparliamentary cooperation should be further developed in the future.²⁸ The following three thematic areas are considered the most important: monitoring of subsidiarity and proportionality, monitoring of legislative proposals, budgetary policy and governments and the exchange of information and best practices. After these come: joint activities of national parliaments, meetings on topics of common interest, and joint control of EU policies.

In April 2019, the Speakers Conference instructed the Finnish Presidency of 2020 to set up a working group in order to achieve the goal of stronger and better interparliamentary cooperation.²⁹ The aim of the working group should be to develop specific proposals to update the guidelines for interparliamentary cooperation issued in 2008.

“Update the guidelines for interparliamentary cooperation”

The personal contact between parliamentarians from different countries made possible by the conferences is important, but this can be supplemented by smaller

²⁶ Valentin Kreiling, *A watchdog over Europe’s policemen. The new Joint Parliamentary Scrutiny Group for Europol*, Jacques Delors Institute Berlin, Policy Paper, June 2017.

Due to disagreements over the functioning of the new committee, delegations postponed the adoption of the Rules of Procedure. Only at the second meeting of the committee in March 2018 was it possible to reach an agreement on the contentious issues and adopt the Rules of Procedure. Among other things, these provide for the right of parliamentarians to question Europol and the establishment of a committee secretariat.

²⁷ *Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust)*, in: Official Journal of the European Union L 295/138 of 21.11.2018.

²⁸ COSAC, *32nd Bi-annual Report*, November 2019, p. 9.

²⁹ *Conclusions of the Conference of Speakers of EU Parliaments*, 8.–9.4.2019, Vienna/Austria, pp. 5–6.

scale formats and digital solutions on the existing “Platform for Interparliamentary EXchange”:

Existing interparliamentary cooperation should be supplemented by modern technology, such as greater use of video conferencing. In addition, the IPEX platform should make it easier than ever before to track scrutiny processes in all national parliaments virtually in real time. New technological possibilities could thus contribute to more intensive interparliamentary exchange.

However, at the end of the day, the involvement of national parliaments cannot be improved without increased administrative support. The tasks are currently shared between the COSAC Secretariat, the Directorate for Relations with National Parliaments in the European Parliament, and the parliamentary dimension of each rotating Presidency.

“Administrative support”

The establishment of a Secretariat-General for Interparliamentary Relations would be a major step towards pooling the as yet fragmented competences and resources.³⁰ Although a majority of national parliaments feel it would be good for the COSAC Secretariat to support regular interparliamentary conferences in future, only the Finnish Eduskunta is currently in favour of creating a joint secretariat.³¹ In the medium term, such an institution could contribute to greater coherence and efficiency in interparliamentary cooperation.

In order to meet the challenges and deal with the significantly increased intensity and frequency of interparliamentary cooperation, national parliaments, together with the EU institutions, should find ways to strengthen the administrative structure of interparliamentary cooperation. Better integration of activities and an increase in the number of staff in existing institutions could be the first steps in this direction. This would allow cooperation to be extended to policy areas such as defence or asylum and migration.

The example of the Joint Parliamentary Scrutiny Group on Europol shows that the creation of focused interparliamentary supervisory bodies is possible. The parliamentary scrutiny of Europol could be a model for the border protection agency Frontex or for the equally sensitive area of defence policy, which cannot be “scrutinised” by parliaments at the relevant interparliamentary conference.

“The creation of focused interparliamentary supervisory bodies”

Conclusion










Ten years after the entry into force of the Lisbon Treaty, national parliaments have become active players in the EU multi-level system. However, the relevant provisions for the Early Warning Mechanism, Political Dialogue and interparliamentary cooperation should be developed in a pragmatic way, so as to adapt the procedures and practices to changed or changing framework conditions (see Table 2):

³⁰ See Valentin Kreiling and Morgan Larhant, *Does the Eurozone Need a Parliament?* Jacques Delors Institute Berlin, Policy Paper, November 2016, p. 11.

³¹ See *COSAC*, p. 12.

- As regards the **Early Warning Mechanism**, since the average total duration of the EU legislative process has increased significantly in recent years and the reasoned opinions of national parliaments are not based on common guidelines, more time should be granted to national parliaments to carry out the subsidiarity check by extending the deadline, and common guiding questions for the monitoring procedure should be drawn up.
- The **Political Dialogue** should have an even greater focus on the entire policy cycle and not only on the Commission proposal at the beginning of the legislative process. The indirect right of initiative promised to the European Parliament by the new Commission President should be supported by the national parliaments and they should also develop joint initiatives with the European Parliament in line with the green card.
- Finally, the organisation of **interparliamentary cooperation** should take into account the digital transformation and the creation of new interparliamentary conferences and committees in the 2010s by strengthening administrative structures, in order to be able to initiate additional interparliamentary formats in other policy areas in the future.

Table 2: Recommendations for improving the involvement of national parliaments in the EU

	Recommendation	Player/recipient/ participant
Subsidiarity monitoring	1. Extension of the eight-week deadline in the Early Warning Mechanism	
	2. Common guiding questions to investigate legal basis, subsidiarity and proportionality	
Political Dialogue	3. Focus on the entire policy cycle: setting priorities for scrutiny procedures at an early stage	 National Parliaments
	4. Joint parliamentary initiatives: Combination of indirect right of initiative for the European Parliament and green card for the national parliaments	  European Parliament National Parliaments
Interparliamentary cooperation	5. IPEX platform: Scrutiny processes in all national parliaments in real time	  European Parliament National Parliaments
	6. Strengthening of the administrative basis of interparliamentary cooperation	  European Parliament National Parliaments

Still, the national parliaments will have to continue to insist on their competences, the fulfilment of information requirements and the opportunity for involvement vis-à-vis their own government and the EU institutions. National parliaments are often not able to fully exercise their scrutiny role, particularly in policy areas and in relation to institutions outside the ordinary legislative procedure (and thus outside the Early Warning Mechanism).³² For example, this applies to the budgetary and economic policy coordination processes in the European Semester, where even strong European or budgetary competences do not guarantee substantial parliamentary involvement. Also, in the Common Commercial Policy or the democratic control of the European Council, the level of involvement of national parliaments is often not sufficient to make their voices heard.

This is why national parliaments are not just concerned with subsidiarity, but particularly with the “more”. The Political Dialogue and interparliamentary cooperation are at least as important for national parliaments as monitoring subsidiarity, as these two instruments allow them – unlike the Early Warning Mechanism – to make a constructive contribution to policy making at the EU level.

“This is why national parliaments are not just concerned with subsidiarity, but particularly with the ‘more’”

³² Ben Crum, *National Parliaments and Constitutional Transformation in the EU*, *European Constitutional Law Review*, 13(4), 2017, p. 817–835. See also Vivien Schmidt, *The “new” EU Governance: “new” intergovernmentalism, “new” supranationalism plus “new” parliamentarism*, Cahiers du Cevipol/Brussels Working Papers, n° 5/2016.

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