

# Constitutional and Legislative Affairs Committee

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Meeting Venue:

**Committee Room 2 – Senedd**

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Meeting date:

**28 April 2014**

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Meeting time:

**14.30**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

**Gareth Williams**

Committee Clerk

029 2089 8008/8019

[CLA.Committee@wales.gov.uk](mailto:CLA.Committee@wales.gov.uk)

**Name**

Deputy Committee Clerk

029 2089 xxxx

[Name@wales.gov.uk](mailto:Name@wales.gov.uk)

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## Agenda

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**1 Introduction, apologies, substitutions and declarations of interest**

**2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3** (Pages 1 – 2)

**CLA(4)-12-14 – Paper 1 – Statutory instruments with clear reports**

Negative Resolution Instruments

**CLA393 – The National Health Service (General Dental Services Contracts and Personal Dental Services Agreements) (Wales) (Amendment) Regulations 2014**

Negative procedure: Date made: 31 March 2014; Date laid: 1 April 2014; Coming into force date: 1 May 2014.

**CLA394 – The Public Audit (Wales) Act 2013 (Approved European Body of**

### **Accountants) Order 2014**

Negative procedure: Date made: 1 April 2014; Date laid: 2 April 2014; Coming into force date: 22 April 2014.

### **CLA395 – The Welfare at Time of Killing (Wales) Regulations 2014**

Negative procedure: Date made: 8 April 2014; Date laid: 9 April 2014; Coming into force date: 20 May 2014.

## **3 Papers to note**

**The National Assembly for Wales (Remuneration) Measure 2010 (Disqualification from Remuneration Board) Order 2014 (Pages 3 – 6)**

**CLA(4)–12–14 – Paper 2 – The National Assembly for Wales (Remuneration) Measure 2010 (Disqualification from Remuneration Board) Order 2014**

**Correspondence in relation to CLA362 – The Leasehold Valuation Tribunals (Fees) (Wales) (Amendment) Regulations 2013 (Pages 7 – 10)**

**CLA(4)–12–14 – Paper 3 – Letter from Minister for Housing and Regeneration**

**CLA(4)–12–14 – Paper 4 – Letter from Chair to Minister for Housing and Regeneration**

**Correspondence in relation to the Draft Wales Bill (Pages 11 – 15)**

**CLA(4)–12–14 – Paper 5 – Letter from Secretary of State for Wales**

**CLA(4)–12–14 – Paper 6 – Letter from Chair to Secretary of State for Wales**

**Letter from Chair of Petitions Committee (Pages 16 – 30)**

**CLA(4)–12–14 – Paper 7 – Letter from Chair of Petitions Committee**

**CLA(4)–12–14 – Paper 7 Annexe– Letter from Chair of Petitions Committee**

**CLA389 – The Education (Student Loans) (Repayment) (Amendment) Regulations 2014** (Pages 31 – 32)

**CLA(4)–12–14 – Paper 8** – Government Response in relation to CLA389 The Education (Student Loans) (Repayment) (Amendment) Regulations 2014

**CLA(4)–12–14 – Paper 9** – Committee Report on CLA389 The Education (Student Loans) (Repayment) (Amendment) Regulations 2014

**Supplementary Legislative Consent Memorandum Deregulation Bill: Amendments in relation to Agricultural Holdings Act 1986, Breeding of Dogs Act 1973 and Breeding and Sale of Dogs (Welfare) Act 1999** (Pages 33 – 36)

**CLA(4)–12–14 – Paper 10** – Supplementary Legislative Consent Memorandum Deregulation Bill: Amendments in relation to Agricultural Holdings Act 1986, Breeding of Dogs Act 1973 and Breeding and Sale of Dogs (Welfare) Act 1999

**Correspondence from House of Lords, European Union Committee** (Pages 37 – 115)

**CLA(4)–12–14 – Paper 11** – Letter from Lord Boswell, Chair of European Union Committee

**CLA(4)–12–14 – Paper 12** – House of Lords Report on the Role of National Parliaments in the European Union

**4 Evidence in relation to the Inquiry on the Disqualification of Members from the National Assembly for Wales** (Pages 116 – 140)

**Electoral Commission** (*3pm*)

Kay Jenkins, Head of Wales Office, Electoral Commission

**CLA(4)–12–14 – Paper 13** – Written Evidence Electoral Commission

**Electoral Reform Society** (*3.45pm*)

Stephen Brooks, Director, Electoral Reform Society Wales

**CLA(4)–12–14 – Research Service brief**

**5 Motion under Standing Order 17.42 to resolve to exclude the public**

**from the meeting for the following business:**

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

**Draft Report Deregulation LCM (Pages 141 – 172)**

**CLA(4)–12–14 – Paper 14 – Draft Report Deregulation Bill;**

**CLA(4)–12–14 – Paper 15 – Annexe 1, Letter from Chair, Draft Deregulation Bill;**

**CLA(4)–12–14 – Paper 16 – Annexe 2, Legal Advice Note;**

**CLA(4)–12–14 – Paper 17 – Legislative Consent Memorandum**

**1. FIELD\_TITLEFIELD\_FOOTNOTE F\_PR**

**2. FIELD\_FOOTNOTE**

**FIELD\_FOOTNOTE**

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# Agenda Item 2

Constitutional and Legislative Affairs Committee  
Statutory Instruments with Clear Reports  
28 April 2014

**CLA393 – The National Health Service (General Dental Services contracts and personal Dental Services Agreements) (Wales) (Amendment) Regulations 2014**

**Procedure:** Negative

These Regulations amend, with effect from 1 May 2014, the National Health Service (General Dental Services contracts) (Wales Regulations 2008 and the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006. The amendments provide that where a patient is referred to a specialist contractor for Advanced Mandatory Services that reimbursement for Units of Dental Activity is to be distributed between the ‘high street’ dentist and the specialist contractor. Currently reimbursement is not apportioned – both the dentist and the specialist contractor receive reimbursement for the full number of Units of Dental Activity.

**CLA394 – The Public Audit (W) Act 2013 (Approved European Body of Accountants) (Regulations) (Order) 2014**

**Procedure:** Negative

This Order provides that the Chartered Institute of Public Finance and Accountancy (“CIPFA”) and the Chartered Institute of Management Accountants (“CIMA”) are approved European bodies of accountants, and are therefore within the definition of ‘accountancy body’ for the purposes of section 19 (9) of the Public Audit (Wales) Act 2013 (“the 2013 Act”).

## **CLA395 – The Welfare of Animals at the Time of Killing (Wales) Regulations 2014**

**Procedure:** Negative

The Regulations make provision in Wales for the administration and enforcement of Council Regulation No 1099/2009 on the protection of animals at the time of killing. In addition, the Regulations also revoke the Welfare of Animals (Slaughter or Killing) Regulations 1995 (S.I. 1995/371) and amending instruments insofar as they apply to Wales.

# Agenda Item 3.1

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2014 No. 1004 (W. 93)**

## **CONSTITUTIONAL LAW**

### **The National Assembly for Wales (Remuneration) Measure 2010 (Disqualification from Remuneration Board) Order 2014**

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

Section 5 of the National Assembly for Wales (Remuneration) Measure 2010 (“the Measure”) provides for the amendment of Schedule 1 to the Measure which contains a list of persons who are disqualified from being a member of the National Assembly for Wales Remuneration Board (“the Board”).

Section 5(1) of the Measure enables Schedule 1 to be amended (by adding or removing an office or person, or by altering the description of such an office or person) following a resolution of the National Assembly for Wales (“the Assembly”).

Subsection (2) confers a power on the Counsel General to the Welsh Assembly Government (“the Counsel General”) to give effect to the Assembly’s resolution by the making of an Order. Subsection (4) provides that the Counsel General must exercise that power as soon as is reasonably practicable after being notified in writing by the Presiding Officer that a resolution has been passed by the Assembly.

The Counsel General received written notification from the Presiding Officer on 3 April 2014 that a resolution to amend Schedule 1 to the Measure had been passed by the Assembly on 2 April 2014 (NDM5481).

Article 2 of this Order gives effect to the Assembly’s resolution by amending the list of persons who are disqualified from being members of the Board in Schedule 1 to the Measure. Members of the House of Lords and persons who were members of either of the panels appointed by the Assembly Commission to review the pay and allowances of Assembly Members

in pursuance of the Assembly Commission's resolutions of 4 July 2007 and 8 May 2008 are no longer disqualified from being members of the Board.



**2014 No. 1004 (W. 93)**

**CONSTITUTIONAL LAW**

**The National Assembly for Wales  
(Remuneration) Measure 2010  
(Disqualification from  
Remuneration Board) Order 2014**

*Made*

*11 April 2014*

*Coming into force in accordance with article 1*

The Counsel General makes the following Order in exercise of the powers conferred by section 5(2) and (3) of the National Assembly for Wales (Remuneration) Measure 2010(1), following written notification from the Presiding Officer under section 5(4) of that Measure, that a resolution has been passed by the National Assembly for Wales(2).

**Title, commencement, interpretation and application**

**1.**—(1) The title of this Order is the National Assembly for Wales (Remuneration) Measure 2010 (Disqualification from Remuneration Board) Order 2014.

(2) This Order comes into force on the day after the day on which it is made.

(3) In this Order—

“the Measure” (“*y Mesur*”) means the National Assembly for Wales (Remuneration) Measure 2010.

(4) This Order applies in relation to Wales.

**Amendment to Schedule 1 (Disqualification from Membership of the Board)**

**2.** Paragraph 1 of Schedule 1 to the Measure is amended as follows:

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(1) 2010 nawm 4.  
(2) NDM5481.

- (a) in sub-paragraph (e) omit “House of Lords,”;
- (b) omit sub-paragraph (m).

*Theodore Huckle QC*

The Counsel General to the Welsh Assembly  
Government

11 April 2014



Llywodraeth Cymru  
Welsh Government

Carl Sargeant AC / AM  
Y Gweinidog Tai ac Adfywio  
Minister for Housing and Regeneration

Eich cyf/Your ref  
Ein cyf/Our ref CS/00382/14

David Melding AM  
Chair - Constitutional & Legislative Affairs Committee

LegislativeProgramme.TeamMailbox@wales.gsi.gov.uk

15<sup>th</sup> April 2014

Dear David

## **CLA362 – The Leasehold Valuation Tribunal (Fees) (Wales) (Amendment) Regulations 2014**

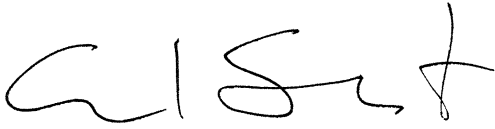
Thank you for your letter of 13 March in relation to the Committee's consideration of the above Statutory Instrument. I am pleased that the Committee is now content with the statutory instrument following concerns raised about the context.

As you rightly point out, the 'Employment and Support Allowance (Consequential Provisions) (No 3) Regulations 2008 made consequential changes to nine sets of Welsh regulations, but only made those changes to the English text. The Department of Work and Pensions have been made aware of the need to amend the Welsh legislation in both languages. In the case of bilingual statutory instruments, the Welsh Government asked the Wales Office to take the matter up with UK Government colleagues to ensure that UK Government Departments request translated amendments from the Welsh Government for insertion into UK statutory instruments.

I note the point that Committee would have expected to see specific commentary regarding regulation 2(4)(c) in the Explanatory Memorandum and can only apologise at this oversight as it ought to have been mentioned in the Explanatory Memorandum. I have alerted my officials to this to avoid any occurrence in future.

In the light of Committee concerns about the omission of bi-lingual amendments from the 'Employment and Support Allowance (Consequential Provisions) (No 3) Regulations 2008', the Welsh Government will carry out further checks to the Welsh and English texts of any other sets of bilingual regulations amended in English only by these Regulations. This will be done to ensure that any necessary amendments needed to align the Welsh text with the English have been made.

I trust you will find this information helpful.

A handwritten signature in black ink, appearing to read 'Carl Sargeant'.

**Carl Sargeant AC / AM**  
Y Gweinidog Tai ac Adfywio  
Minister for Housing and Regeneration

**Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Constitutional and Legislative Affairs Committee**

Carl Sargeant AM  
Minister for Housing and Regeneration  
Welsh Government  
5th Floor  
Tŷ Hywel  
Cardiff Bay

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Wales



13 March 2014

Dear Minister

**CLA362 – The Leasehold Valuation Tribunals (Fees) (Wales) (Amendment) Regulations 2014**

The Constitutional and Legislative Affairs Committee considered the above Statutory Instrument at its meeting on 3 March 2014.

Whilst we were content with the instrument, you will see from our report (attached) that we had concerns regarding the context. Amendments to the Welsh version of the principal regulations were required following amendments to the English version by the *Employment and Support Allowance (Consequential Provisions) (No.3) Regulations 2008*. The 2008 Regulations purported to make consequential changes to nine sets of Welsh regulations, but only made changes to the English text. In the case of the present Regulations, there has therefore been a discrepancy between the Welsh and English texts for over five years.

The Committee therefore seeks reassurance from the Welsh Government that action has been taken to bring into line the Welsh and English texts of the other sets of regulations amended in English only by the 2008 Regulations.

While we note a reference to the specific issue we refer to above has been included in the Explanatory Note, we would have expected to see some commentary regarding regulation 2(4)(c) in the Explanatory Memorandum,

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possibly under the section entitled 'Matters of Special Interest to the Constitutional and Legislative Affairs Committee'.

I look forward to receiving your response to the points issues we have raised in due course.

Yours sincerely

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

**David Melding AM**  
**Chair**



Wales Office  
Swyddfa Cymru

## Agenda Item 3.3

Office of the Secretary of State for Wales  
Gwydyr House  
London, SW1A 2NP

Swyddfa Ysgrifennydd Gwladol Cymru  
Tŷ Gwydir  
Llundain, SW1A 2NP

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David Melding AM  
Chair  
Constitutional & Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
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Ref: 66SOS14

7 April 2014

Dear David,

I am writing in reply to your letter received on 17 March, which set out your Committee's views on a number of issues pertaining to the draft Wales Bill.

You will be aware that the Wales Bill has now been introduced in the House of Commons and received its Second Reading on 31 March. This provided the opportunity for Members on all sides of the House to debate the Bill's provisions, including a number of the issues you have raised.

Your Committee will be pleased to note that clause 21 of the Bill devolves power to the Assembly to determine its own budgetary procedures. This was recommended by the Silk Commission in its Part I report and by the Welsh Affairs Committee in its pre-legislative scrutiny of the draft Bill. Devolving this power will enable the Assembly to determine the procedure for setting the annual budget and would, for example, allow for an annual Finance Act to replace the current annual budget motion.

Clause 24 of the Bill (clause 21 of the draft Bill) imposes a duty on the Law Commission to provide advice and information to Welsh Ministers. In effect, this will allow Welsh Ministers to refer matters to the Law Commission directly, whereas at present this needs to be done via a UK Government department. We believe this represents the right balance between giving further powers to Welsh Ministers to pursue legislative changes within devolved competence without imposing too onerous a duty on the Law Commission.

It would not be appropriate for Welsh Ministers to be on the same footing as the Lord Chancellor and Scottish Ministers as Wales does not have its own legal system. The Scottish Ministers are responsible for the programme of law reform at the Scottish Law Commission, and the Lord Chancellor is responsible for the programme of law reform at the Law Commission of England and Wales. In the context of those two legal systems, equivalence for Wales (and for Welsh Ministers) in this area would clearly not be appropriate.

I have considered carefully the point you raise in regard to clause 27 (clause 24 of the draft Bill). The clause empowers HM Treasury, by order, to make supplementary, incidental or consequential provision as appears appropriate in connection with bringing into force the provisions in Part 2 of the Bill (relating to Finance). An order made under this section may make modifications both to Acts of Parliament and Acts and Measures of the Assembly (and subordinate legislation), and an order including such provision is subject to the affirmative resolution procedure in the House of Commons.

You expressed concern that any change to an Act or Measure of the Assembly should be endorsed by the Assembly. As you know, the UK Government seeks the consent of the Assembly, via a Legislative Consent Motion, whenever it needs to legislate in areas of devolved legislative competence. The Bill extends the Assembly's legislative competence to include devolved taxes, and the consent of the Assembly would be sought in future if a HM Treasury order made under clause 27 sought to amend an Assembly Act relating to devolved taxes. Given this, I do not believe that we need to make specific provision in the Wales Bill.

Finally, you also call for the Assembly to have legislative competence for its electoral arrangements. The Government does not consider this Bill to be the right vehicle to consider such a change, and believes that it is best considered in the wider context of responding to the Silk Commission's Part II report.

A handwritten signature in black ink, appearing to read 'David Jones', with a large, stylized initial 'D' and 'J'.

**Rt. Hon. / Y Gwir Anrh. David Jones MP / AS**  
**Secretary of State for Wales**  
**Ysgrifennydd Gwladol Cymru**





March 2014

Dear

Draft Wales Bill

I refer to the draft Wales Bill, which was published by the UK Government on 18 December 2013.

We have been taking a close interest in this Bill given its constitutional significance.

In particular, we have seen your exchange of correspondence with the Presiding Officer on the draft Bill. We would like to place on record our endorsement of the points she has raised.

There are some additional points we would like to make based on our consideration of the draft Bill and the work of our committee over the last few years.

#### *Budgetary procedures*

We fully support the Silk Commission's recommendation to give the Assembly control over its budgetary procedures (recommendation 32 of *Empowerment and Responsibility: Financial Powers to Strengthen Wales*), in

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line with position in Scotland. In our view, this would be a pragmatic and sensible approach, allowing the Assembly to take advantage of the new financial powers being provided through the draft Bill in a co-ordinated and efficient way.

*Clause 21: The work of the Law Commission so far as relating to Wales*

In 2012, we conducted an inquiry into a separate Welsh jurisdiction. Most witnesses were supportive of having a body to review Welsh law and that its membership should be flexible and draw on expertise in the law schools and the profession. We recommended that:

a body should be entrusted with reviewing and assisting with the consolidation of Welsh law. Such a body could form part of the existing Law Commission for England and Wales or be a newly established body.

We note that clause 21 of the draft Bill inserts new provisions into the *Law Commissions Act 1965* in order to impose a new duty on the Law Commission to provide advice and information to the Welsh Ministers directly. This makes it clear that the Welsh Ministers will be able to refer law reform matters to the Law Commission themselves. However, the draft Bill does not place Welsh Ministers on the same footing as UK Government Ministers or Scottish Ministers, with regard to the Law Commission or the Scottish Law Commission, respectively. For instance, the Law Commission will not be under a duty to provide the Welsh Ministers with a comprehensive programme of consolidation and revision of statute law in devolved areas.

We believe that placing a duty on the Law Commission would ensure that the Welsh legal constitution develops in a clear, coherent and logical way. Such a duty would send a clear message about the importance of law reform in Wales and will ensure that this work can be planned and undertaken in a timely way, and in line with the developing body of Welsh law.

In our view the required change could be achieved by amending section 6 of the 1965 Act to extend the definition of 'the Minister' to include Welsh Ministers in relation to the Law Commission. This would reflect the way that the Scottish Ministers are included in relation to the Scottish Law Commission. This permits Scottish Ministers to request comprehensive programmes of consolidation and statute law revision and to approve recommendations made by the Scottish Law Commission.

In light of our comments, we strongly support therefore recommendations 32 and 33 of the Silk Commission's most recent report *Empowerment and Responsibility: Legislative Powers to Strengthen Wales*.

*Clause 24: Power to make supplementary, consequential, etc provision*

Clause 24 is of particular concern to us. As currently drafted, it permits HM Treasury to make consequential amendments that result from Part 2 of the

draft Bill, which could amend a Measure or Act of the Assembly. It would seem to us appropriate that any changes by the UK Parliament to an Act or Measure passed by the Assembly, *of whatever nature*, should be endorsed by the Assembly. This is a significant constitutional principle.

In our view, not requiring the consent of the Assembly has the potential to undermine the devolution settlement; it would be wholly inappropriate for a law made by the Assembly to be amended by the Treasury with the consent of the UK Parliament, potentially following discussions between the UK and Welsh Governments. Not involving the legislature that made the original law would be constitutionally incredible.

### *Electoral arrangements*

The draft Wales Bill makes several proposals with regard to electoral arrangements. We strongly believe that it is entirely legitimate for the Assembly to have legislative competence over its own electoral arrangements. We consider therefore that the National Assembly and the Welsh Government should at least have the same powers as those granted to the Scottish Parliament and Scottish Government through the *Scotland Act 2012*.

# Agenda Item 3.4

Y Pwyllgor Deisebau  
Petitions Committee

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



David Melding AM  
Deputy Presiding Officer  
Chair  
Constitutional and Legislative Affairs  
Committee  
National Assembly for Wales  
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Cardiff Bay  
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Bae Caerdydd / Cardiff Bay  
Caerdydd / Cardiff  
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Our ref: P-04-454

April 2014

Dear

David

You may recall that Mr Nortridge Perrott submitted a petition in January 2013 about Assembly Members holding two elected positions simultaneously. The petition wording was:

*The petitioner asks the Welsh Government to bring forward legislation to bar the practice currently exhibited by 7 currently serving Assembly Members to hold TWO elected positions simultaneously, namely holding office as a Councillor within the Welsh Jurisdiction and also holding office as an elected Assembly Member in the National Assembly of Wales.*

I wrote to you in February 2013 asking for the Constitutional and Legislative Affairs (CLA) Committee's views on the petition. At the time CLA Members agreed that it would be inappropriate for the Committee to look at the issue contained in the petition in isolation from other electoral issues.

However, I understand that the Welsh Government has recently asked CLA to review the National Assembly for Wales Disqualification Order in readiness for the next Assembly elections in 2016. In the light of this, the Petitions Committee would be grateful if CLA could consider as part of its review the principle raised in Mr Nortridge Perrott's petition and whether it can be addressed by amending the Disqualification Order.

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In the hope that it may help you in considering this matter, I enclose correspondence we have received as part of our consideration of the petition from:

- the Presiding Officer;
- the then Minister for Local Government and Government Business;
- the Electoral Commission;
- the WLGA; and
- the Electoral Reform Society;

I also enclose previous correspondence from the petitioner, which argues in part that the Disqualification Order offers an opportunity to address his concerns.

I would be grateful if you could let me know the outcome of your review so that I may keep the petitioner informed.

Yours sincerely



**William Powell AC / AM**  
Cadeirydd / Chair

*(Please respond to the Committee Clerk at:  
[Stephen.George@wales.gov.uk](mailto:Stephen.George@wales.gov.uk))*

Enc Letter of 26 February 2013 from the Presiding Officer  
Letter of 22 May 2013 from the Minister for Local Government and  
Government Business  
Correspondence of 2 June 2013 from the Petitioner  
Correspondence of 21 June 2013 from the Petitioner  
Letter of 5 July 2013 from the Electoral Commission  
Correspondence of 26 September 2013 from the WLGA  
Correspondence of 27 September 2013 from the Electoral Reform Society  
Correspondence of 6 February 2014 from the Petitioner



William Powell AM  
Chair, Petitions Committee  
National Assembly for Wales  
Cardiff Bay  
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Your ref:  
Our ref: PO412/RB/VH

26 February 2013

*Dear William*

Thank you for the letter from the Petitions Committee regarding the ability of Assembly Members to hold more than one elected office.

Section 16 of The Government of Wales Act 2006 sets out the terms under which someone may not stand as a candidate to the Assembly and a Statutory Instrument (The National Assembly for Wales Disqualification Order) outlining which specific offices preclude candidacy is passed before each Assembly election.

This is not an issue that the Commission has discussed and therefore does not have a view on it.

*Rosemary*

**Rosemary Butler AM, Presiding Officer**

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Lesley Griffiths AC / AM  
Y Gweinidog Llywodraeth Leol a Busnes y Llywodraeth  
Minister for Local Government and Government Business



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref

William Powell AM  
Chair Petitions Committee  
National Assembly for Wales  
Cardiff Bay

22 May 2013

Dear Bill,

You wrote to my predecessor and the Council General seeking views on amending legislation to prevent Assembly Members standing for election to a principal council in Wales or for serving councillors to stand for election to the National Assembly for Wales.

I am responding on behalf of the Welsh Government. I understand the reasoning behind the petition. I will consider the matter carefully ahead of the next elections to the National Assembly for Wales. Any proposal to amend the legislation will be subject to full consultation.

Regards,

**Lesley Griffiths AC / AM**  
Y Gweinidog Llywodraeth Leol a Busnes y Llywodraeth  
Minister for Local Government and Government Business

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*Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)*

**P-04-454 Call to end Councillor and Assembly Member Dual Role – Correspondence from the Petitioner to the Chair, 02.06.2013**

**WRITTEN SUBMISSION: Petitions Committee --18/6/2013.—OPEN DOCUMENT**

**Deadline 7/6/2013-Local Government and Government Business**

7.12

P-04-454 Call to end Councillor and Assembly Member Dual Role

For Inclusion -----Committee Deliberations.-18-06-2013.-----

- ACTION request lead Petitioner;-N PERROTT
- ARGUMENT provision lead petitioner:
- PROCEDURAL request lead petitioner.

ACTION :

The Petition Committee has the following options:

**Action on a Petition**

23.8 If a petition is admissible, the Presiding Officer must refer that petition to a responsible committee.

23.9 The responsible committee must:

- (i) refer the petition to the government, any other committee of the Assembly or any other person or body for them to take such action as they consider appropriate;
- (ii) report to the Assembly; or
- (iii) take any other action which the committee considers appropriate.

23.10 The responsible committee must notify the petitioner of any action taken under Standing Order 23.9.

**ACTION POINTS\*\***

**Petition Committee refer to a RESPONSIBLE committee—it is suggested CLACttee with a view to drafting amending legislation. \*\*\*to bar the possibility of AM's holding simultaneously membership of a Principal Unitary Authority concurrently with Membership of the National Assembly of Wales.**



*Petition Committee report to Assembly that a reference is to be made to the Electoral Commission to seek it's view on the "ending of the dual role" and seeking from the Electoral Commission case examples from other Jurisdictions.[USA,EU jurisdictions].*

*Op cit-Electoral Commission*

Prioritising our regulatory activity

Audit, advice and campaign monitoring

December 2010

(Updated May 2012)

2.27 By definition we will not hold information of this kind about every registered party, and so it cannot be used to create formal profiles. We will log and collate relevant information as we receive it, but will not publish it. **Our Advice and Guidance Team will refer to the information we hold when considering whether it is appropriate to offer advice on our own initiative. This process is underpinned by our horizon scanning activity which gathers media reports about emerging trends and likely areas on which we may need to target in future.** The types of information we will log are set out in Appendix C and can be grouped under three headings:

- public profile
- governance and capacity
- external factors

*Petition Committee in response to Ministerial correspondence from WG to ask for resource to be deployed to assist the drafting of an amending measure to give effect to the proposed change to legislation required in amending the National Assembly Order.*

Under Nat Assembly -STANDING ORDER

24.14 Legislation, which is neither government legislation, committee legislation nor Commission legislation, is referred to as "Member legislation".

Where none of the THREE possible routes to legislative change are forthcoming

The Petition Committee via the Assembly report to Members who would be invited to

-Canvas any views and interest from AM's who would be interested to -Bring forward draft legislation in a Private Assembly Members capacity as Assembly

Member legislation to allow the Drafting, Consultation and Tabling of the proposed legislative change - if any of the available THREE avenues prove not to come to fruition.

**PROCEDURAL:**

**General Principles**

11. The law requires that the interests of parties who are affected by a proposed Order are dealt with fairly, justly and openly; that all the evidence is fully considered and that decisions are based only on material considerations to which all the parties have had access. The Assembly's decisions, and hence any Order which is authorised by the Assembly, can be challenged in the courts if these principles are not followed.

The 29-1-13 Petition Committee meeting did 5 things:

1. Contacted the Minister

I am responding on behalf of the Welsh Government. I understand the reasoning behind the petition. I will consider the matter carefully ahead of the next elections to the National Assembly for Wales. Any proposal to amend the legislation will be subject to full consultation.

2. Wrote to CLAC committee[see e mail -18/2/13-asking for FULL transparency]
3. Wrote to Assembly Commission .

Section 16 of The Government of Wales Act 2006 sets out the terms under which someone may not stand as a candidate to the Assembly and a Statutory Instrument (The National Assembly for Wales Disqualification Order) outlining which specific offices preclude candidacy is passed before each Assembly election.

4. Wrote to Counsel General---indicating whether there are any legal impediment to change .—no advice or view has been adduced in correspondence.—save for-reference in Minister's letter.-COUNSEL[typo]

Dear Bill,

You wrote to my predecessor and the Council General seeking views on amending legislation to prevent Assembly Members standing for election to a principal council in Wales or for serving councillors to stand for election to the National Assembly for Wales.

5. Requested a legal briefing- no advice or briefing available.

-\*\*REQUEST\*\*Legal advice is required to be disclosed.to petitioner.\*\*

The CLAC deliberations were held in CAMERA [18-2-13] and details of correspondence from PETITIONS COMMITTEE to CLAC have been redacted.

### ACTION POINT-\*\*

The LEAD petitioner requests that all e mail traffic, letters, correspondence and memoranda ,notes of meetings be made available in a BUNDLE to the lead Petitioner in the interests of transparency and due process and General Principles of Law @11 above.

### Summary-

- It is a straightforward task to amend the Order.
- It is straightforward requirement to determine the efficacy of the change both in principle and policy terms.
- It is straightforward to open the proposed change to wider debate and consideration.

NORTRIDGE PERROTT

P454-Lead Petitioner/

## **P-04-454 Call to end Councillor and Assembly Member Dual Role – Correspondence from the petitioner to the Committee, 21.06.2013**

Petitions Committee

You asked or the Committee asked for Clarification.

The BAR would only apply to COUNCILLORS holding PAID elected positions with WALES ,ie receiving a TAXABLE ALLOWANCE/Liable for National Insurance for being a member of a Unitary Authority,whether taken or renounced.

TOWN and Community Councillors are NOT paid positions...

The Mischief to remedy is NOT to HOLD two elected PAID positions within Welsh Jurisdiction simultaneously and where ONE paid elected position is already occupied at the time of Nomination to contest an Assembly seat,then this fact BARS the person seeking Nomination and sitting as an Assembly member. The nomination for an Assembly election by a candidate would BAR a candidate from standing unless the other PAID elected position is first relinquished prior to acceptance of nomination..[akin to Hof Commons Disqualifn Act and Civil Servants-a parallel--all be it Civil servants are not paid elected positions.]

The territorial and electorate extent of a TOWN /Community Councillor does not overlap to the same degree as a Unitary Authority Councillor.

two by products are:

1 More will be encouraged to Stand and fewer will have "two " hats.

2 Legislative competence [Primary] in the Assembly is then not Conflated with local bye law legislative competence.

3 Resources available to a serving AM could not be used to bolster the other election campaign and vice versa.

Hope Clarifies.

Nortrdge Perrott  
p454/lead petitioner/

William Powell AM - Chair  
 Petitions Committee  
 National Assembly for Wales  
 Cardiff Bay  
 Cardiff  
 CF99 1NA

5 July 2013

Dear William,

Thank you for seeking the view of the Electoral Commission on the petition submitted by Nortridge Perrott on multiple mandates.

The Commission, in its response to the UK Government's Green Paper on future electoral arrangements for the National Assembly for Wales, commented on this issue (albeit at that time relating to the UK Parliament and the National Assembly for Wales):

### Question 6: Multiple Mandates

1. *Whilst the Commission does not have a specific view on the question of multiple mandates, we would consider that any decision relating to this question should place the interest of the voter or voters first. For example, what would voters expect of their elected representatives and how can an elected representative ensure the best possible level of service for the electorate? Can this be achieved by representing voters at a variety of different levels (for example at the UK Parliament and the National Assembly for Wales) and the experience which this brings about or should the focus be entirely on one legislature?*
  
2. *The Green Paper does refer to the European Parliament and the restrictions in place in order to qualify for election to this legislature. In order to achieve a consistent approach to this issue it may also be appropriate to look at those members who are both elected councillors (at local authority level) and AMs as this is another clear example of a multiple mandate.\**

The Electoral Commission  
 Companies House  
 Crown Way  
 Cardiff CF14 3UZ

Y Comisiwn Etholiadol  
 Tŷ'r Cwmnïau  
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Putting voters first  
 Rhoi pleidleiswyr yn gyntaf

An independent body established by Act of the UK Parliament  
 Corff annibynnol a sefydlwyd gan Ddeddf Seneddol y DU

We welcome correspondence in Welsh and English  
 Rydym yn croesawu gohebiaeth yn Gymraeg a Saesneg



As you may already be aware, the Northern Ireland Executive's Minister for the Environment, Alex Attwood MLA, has also announced his intention to ban "double jobbing" (being a local councillor and an MLA) in Northern Ireland from April 2014.

The Commission would be happy to consider providing a more detailed response to this specific question at a later point dependent on any decision taken by the Petitions Committee and / or by the Minister for Local Government and Government Business.

Yours sincerely,



**Rhydian Thomas**  
**Deputy Head – Electoral Commission Wales**

02920 346804

[rthomas@electoralcommission.org](mailto:rthomas@electoralcommission.org)

\* The Electoral Commission's response to the UK Government's Green Paper on future electoral arrangements for the National Assembly for Wales (August 2012)

**P-04-454 Call to end Councillor and Assembly Member Dual Role  
– Correspondence from the Welsh Local Government Association  
to the Clerking team, 26.09.13**

Kayleigh thanks for this. It is not so much that we missed it as frankly its not in our purview. This fundamentally is a matter for political parties to sort out and I would not wish to see any state interference in this. There are currently councillors who are AMs and if parties are content with that then so be it. Hope this helps

Cheers Steve



**P-04-454 Call to end Councillor and Assembly Member Dual Role – Correspondence from Electoral Reform Society Wales to the Clerking team, 27.09.2013**

Dear Kayleigh,

Many thanks for your email regarding the issue under consideration by the Petitions Committee. To confirm for your records, I'm the director of ERS Cymru and the contact for future request for information.

The Electoral Reform Society Cymru does not support the proposal that the Welsh Government should bring forward legislation to bar Assembly members from holding office as a councillor in Wales (so called 'double jobbing').

The Society would expect that any conflict of interest, perceived or otherwise, that may arise from an individual holding office in both a local authority and the National Assembly, should be dealt with under exist arrangements. Ultimately it should be for the voters to decide whether or not they are content for an individual to hold both local and national office. The Society does however support further consideration of the implications of 'double jobbing' for AMs who are also MPs, which we expect to be part of the UK Government's forthcoming Draft Wales Bill.

Best wishes

Stephen Brooks

**P-04-454 Call to end Councillor and Assembly Member Dual Role –  
Correspondence from the Petitioner to the Committee, 06.02.14**

MY RESPONSE:

To Chair..

Please maintain an active interest on behalf of the Petitions Committee to ensure the practice of DOUBLE JOBBING does not become a possibility at the NEXT Assembly elections:

1 BY Drafting a possible amendment to the relevant legislation to achieve this end.

2 By considering across the piece ALL possible difficulties in DUAL serving on BOARDS,NDPB's and other ASPB ;so that the difficulties encountered by CANDIDATES at the last Assembly election who had to stand down because of the vagaries and ambiguities of the current ELIGIBILITY criteria to stand as an Assembly candidate are without ambiguity.

3 USE the Electoral Commission and the NI Executive to formulate a clearer ,cleaner and mor accessible CANDIDATE base for the Assembly..

Consider also the increase to 80 members and HOW the principles of CANDIDATURE eligibility should be translated to an enlarged Assembly.

your sincerely#

N Perrott/  
Swansea /Petitioner/

# Agenda Item 3.5

## **The Education (Student Loans) (Repayment) (Amendment) Regulations 2014.**

These composite Regulations amend some of the provisions in the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470).

These composite Regulations will apply to England and Wales and are subject to negative resolution procedure in the National Assembly for Wales and in both House of the UK Parliament. Because the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

## **Rheoliadau Addysg (Benthyciadau i Fyfirwyr) (Ad-dalu) (Diwygio) 2014.**

Mae'r Rheoliadau cyfansawdd hyn yn diwygio rhai o'r darpariaethau yn Rheoliadau Addysg (Benthyciadau i Fyfirwyr) (Ad-dalu) 2009 (O.S. 2009/470).

Bydd y Rheoliadau cyfansawdd hyn yn gymwys i Gymru a Lloegr ac maent yn ddarostyngedig i'r weithdrefn penderfyniad negyddol yng Nghynulliad Cenedlaethol Cymru ac yn nau Dŷ Senedd y DU. Gan y bydd y Rheoliadau yn ddarostyngedig i graffu gan Senedd y DU, ystyrir nad yw'n rhesymol ymarferol i'r offeryn hwn gael ei wneud na'i osod yn ddwyieithog.

## Constitutional and Legislative Affairs Committee Report

### CLA389 – The Education (Student Loans) (Repayment) (Amendment) Regulations 2014

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470) (“the Principal Regulations”). The Principal Regulations govern the repayment of income–contingent student loans paid to students under section 22 of the Teaching and Higher Education Act 1998(c.30). The changes made by these Regulations relate to the provision of information and the making or repayments.

#### Procedure: Negative

#### 1. Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Being a Composite Order, this Order has been made in English only.

[Standing Order 21.2(ix) – that the instrument is not made in both English and Welsh.]

#### 2. Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

#### 3. Government Response

No government response was received at the time of the meeting.

#### 4. Committee Consideration

The Committee considered the regulations at its meeting on 31 March 2014 and report to the Assembly in line with the technical reporting points under section 1 above.

# Agenda Item 3.6

## SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

### DEREGULATION BILL: AMENDMENTS IN RELATION TO AGRICULTURAL HOLDINGS ACT 1986, BREEDINGS OF DOGS ACT 1973 AND BREEDING AND SALE OF DOGS (WELFARE) ACT 1999

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies the legislative competence of the National Assembly.
2. The Deregulation Bill (the “Bill”) was introduced in the House of Commons on 23 January 2014. The Bill can be found at:

<http://services.parliament.uk/bills/2013-14/deregulation.html>

#### Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Cabinet Office. The UK Government’s policy objectives for the Bill is to remove or reduce unnecessary regulatory burdens that hinder or cost money to businesses, individuals, public services or the taxpayer.
4. The Bill includes measures relating to general and specific areas of business, companies and insolvency, the use of land, housing, transport, communications, the environment, education and training, entertainment, public authorities and the administration of justice. The bill also provides for a duty on those exercising specified regulatory functions to have regard to the desirability of promoting economic growth. In addition, the Bill will repeal legislation that is no longer of practical use.

#### Provisions in the Bill for which consent is sought

*Agricultural Holdings Act 1986; resolution of disputes by third party determination*

5. The consent of the Assembly is sought to the amendment to the Deregulation Bill, tabled on 13 March 2014 which makes amendments to various sections of and the Schedules to the Agricultural Holdings Act 1986. Those amendments to the 1986 Act make provision which enables the parties to agree for the settlement of disputes (other than those relating to a notice to quit) by an independent expert rather than arbitration.
6. Currently the Agricultural Holdings Act 1986 provides three methods of resolving disputes between landlords and tenants, namely:
  - a. the Agricultural Land Tribunal (in relation to Wales);

- b. arbitration; and
  - c. the Courts.
7. Arbitration is the primary method of dispute resolution under the Agricultural Holdings Act 1986. Most disputes, particularly those governed by practical agricultural considerations, are compulsorily referable to arbitration under the Agricultural Holdings Act 1986 which does not provide for an alternative dispute mechanism. The effect of the amendment will be to provide the parties concerned with a less burdensome alternative dispute resolution process which is quicker and cost-effective.
  8. The amendments to the Agricultural Holdings Act 1986 apply in relation to Wales.
  9. The amendments to the Agricultural Holdings Act 1986 do not include powers for Welsh Ministers to make subordinate legislation.
  10. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to:
    - a. Agriculture (under paragraph 1 of Part 1, Schedule 7 to the Government of Wales Act 2006); and
    - b. Housing (under paragraph 11 of Part 1, Schedule 7 to the Government of Wales Act 2006).

*Breeding of Dogs Act 1973 (c.60) and Breeding and Sale of Dogs (Welfare) Act 1998 (c.11)*

11. The consent of the Assembly is sought to the amendment to the Deregulation Bill, tabled on 18 March 2014 which repeals:
  - a. Sub-section 1(4)(i) of the Breeding of Dogs Act 1973 (and makes the necessary consequential amendments); and
  - b. Sub-sections 8(1)(e) and 8(3) of the Breeding and Sale of Dogs (Welfare) Act 1999 (and makes the necessary consequential amendments).
12. The proposed repeal of sub-section 1(4)(i) of the Breeding of Dogs Act 1973 and sub-sections 8(1)(e) and 8(3) of the Breeding and Sale of Dogs (Welfare) Act 1999 (together with the necessary consequential amendments) set out in the Deregulation Bill extends to England and, with the consent of the Assembly, Wales.
13. Section 1(4)(i) of the Breeding of Dogs Act 1973 currently requires the local authority, in determining whether to grant a licence to a breeding establishment for dogs, to have regard to the need for securing the

keeping of accurate records. Subsections 8(1)(e) of the Breeding and Sale of Dogs (Welfare) Act 1991 currently makes it an offence for the keeper of a licensed breeding establishment to sell to the keeper of a licensed pet shop or a licensed Scottish rearing establishment a dog which, when delivered, is not wearing a collar with an identifying tag or badge. Subsection 8(3) of the 1991 Act currently makes it an offence for the keeper of a licensed pet shop to sell a dog which, when delivered to him, was wearing a collar with an identifying tag or badge but is not wearing such a collar when delivered to the purchaser.

14. In England and Wales, new legislation is being developed (which will replace the existing legislation on dog breeding and identification) which, essentially, requires the identification of an animal by a microchip. If the existing requirements to retain paper records on dog identification were to be retained, this would be a duplicate requirement and retention would be a needless burden on small businesses. For information, the repeal of the dog breeding legislation mentioned above does not remove the requirement for a dog owned by a person to ensure that it has a collar and a tag identifying it and to which a lead can be attached.
15. For information, in relation to Wales, the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 is due to be laid and made before summer recess and to come into force 6 months later. It contains appropriate identification mechanisms such as the need to microchip a dog before it leaves a breeding premises and appropriate records on dog breeding.
16. On that basis it is considered that the dog breeding provisions being revoked by the amendment in the Deregulation Bill are no longer needed and, consequently, the proposed revocations should apply in relation to Wales.
17. The Deregulation Bill provision described above simply repeal sub-section 1(4)(i) of the Breeding of Dogs Act 1973 and sub-sections 8(1)(e) and 8(3) of the Breeding and Sale of Dogs (Welfare) Act 1999 (and makes the necessary consequential amendments). This Bill provision does not, consequently, provide any powers for the Welsh Ministers to make subordinate legislation.
18. It is the view of the Welsh Government that (in so far as these provisions relate to Wales) these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Animal Health and Welfare under paragraph 1 of Part 1 of Schedule 7 to the Government of Wales Act 2006.

#### **Advantages of utilising this Bill rather than Assembly legislation**

19. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply

in relation to Wales. The proposed amendments are technical and non-contentious. In addition, the inter-connected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for the Bill provisions for both to be taken forward at the same time in the same legislative instrument.

### **Financial implications**

20. There are no financial implications for the Welsh Government.

**Alun Davies AM**  
**Minister for Natural Resources and Food**  
**April 2014**



# Agenda Item 3.7



HOUSE OF LORDS  
European Union Committee

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David Melding AM  
National Assembly for Wales  
Cardiff Bay  
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CF99 1NA

24 March 2014

*Dear David,*

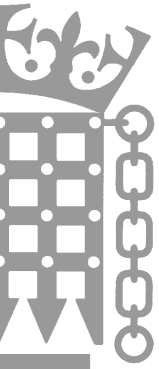
In July last year, my Committee in the House of Lords launched an inquiry into the role of national parliaments in the EU. You may be aware that this inquiry has now concluded, and the Committee published its report, entitled *The Role of National Parliaments in the European Union*, today.

I have enclosed a hard copy of the report for your consideration, and the consideration of your committee. Further information about the inquiry is available on our website at [www.parliament.uk/hleu](http://www.parliament.uk/hleu).

I would be very pleased to discuss it with you by correspondence, should you wish, and at the next European Chairs – UK (ECUK) meeting.

*T*  
*Tim*

Lord Boswell  
Chairman of the European Union Committee



HOUSE OF LORDS

European Union Committee

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9th Report of Session 2013–14

# The Role of National Parliaments in the European Union

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Ordered to be printed 11 March 2014 and published 24 March 2014

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Published by the Authority of the House of Lords

*London* : The Stationery Office Limited  
£14.50

HL Paper 151

Pack Page 38

### *The European Union Committee*

The Committee considers EU documents in advance of decisions being taken on them in Brussels, in order to influence the Government's position and to hold them to account.

The Government are required to deposit EU documents in Parliament, and to produce within two weeks an Explanatory Memorandum setting out the implications for the UK. The Committee examines these documents, and 'holds under scrutiny' any about which it has concerns, entering into correspondence with the relevant Minister until satisfied. Letters must be answered within two weeks. Under the 'scrutiny reserve resolution', the Government may not agree in the EU Council of Ministers to any proposal still held under scrutiny; reasons must be given for any breach.

The Committee also conducts inquiries and makes reports. The Government are required to respond in writing to a report's recommendations within two months of publication. If the report is for debate, then there is a debate in the House of Lords, which a Minister attends and responds to.

The Committee has six Sub-Committees, which are:

Economic and Financial Affairs (Sub-Committee A)  
Internal Market, Infrastructure and Employment (Sub-Committee B)  
External Affairs (Sub-Committee C)  
Agriculture, Fisheries, Environment and Energy (Sub-Committee D)  
Justice, Institutions and Consumer Protection (Sub-Committee E)  
Home Affairs, Health and Education (Sub-Committee F)

### *Our Membership*

The Members of the European Union Committee are:

Lord Boswell of Aynho (Chairman)	Lord Hannay of Chiswick	The Earl of Sandwich
Lord Bowness	Lord Harrison	Baroness Scott of Needham Market
Lord Cameron of Dillington	Lord MacLennan of Rogart	Lord Tomlinson
Baroness Corston	Lord Marlesford	Lord Tugendhat
Lord Dear	Baroness O'Cathain	Lord Wilson of Tillyorn
Baroness Eccles of Moulton	Baroness Parminter	
Lord Foulkes of Cumnock	Baroness Quin	

### *Information about the Committee*

For information freely available on the web, our homepage is <http://www.parliament.uk/hleu>. There you will find many of our publications, along with press notices, details of membership and forthcoming meetings, and other information about the ongoing work of the Committee and its Sub-Committees, each of which has its own homepage.

### *General Information*

General information about the House of Lords and its Sub-Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>

### *Select Committee Staff*

The current staff of the Committee are Jake Vaughan (Clerk), Luke Hussey (Second Clerk) and Karen Sumner (Committee Assistant).

### *Contacts for the European Union Committee*

Contact details for individual Sub-Committees are given on the website. General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW. General enquiries 020 7219 5791. The Committee's email address is [euclords@parliament.uk](mailto:euclords@parliament.uk)

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Evidence is published online at <http://www.parliament.uk/hleu> and available for inspection at the Parliamentary Archives (020 7219 5314)

References in footnotes to the Report are as follows:

Q refers to a question in oral evidence.

Witness names without a question reference refer to written evidence.

## **SUMMARY**

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National parliaments can contribute actively to the good functioning of the European Union. This is not only the view of the House of Lords European Union Committee: it is stated clearly in the Treaty on European Union. It has never been more important that national parliaments should play a full and active role, both individually and collectively. However, much more could be achieved, within the existing Treaty structure.

This report is aimed at a wide range of policymakers and others, within the UK and across the EU. We offer it as a contribution to an ongoing debate. We suggest a range of practical options, which could improve the involvement of national parliaments in the formulation and implementation of EU policies.

Treaty change is not necessary to enhance the role of national parliaments in the EU. More than anything else, this is a matter for the will of parliamentarians. Important improvements should be secured through the autonomous action of national parliaments, and through actions collectively agreed between the national parliaments, the Commission, the Council and the European Parliament where relevant.

The effective involvement of national parliaments is fundamental to ensuring that there is accountability, and legitimacy, for the actions of the Union. Our report highlights five areas where national parliaments can and should be more effective in the shaping of EU policies and legislation.

### **National scrutiny**

Effective scrutiny by national parliaments of the activities of their own governments on EU matters is essential.

National scrutiny systems will inevitably vary according to the national context. Whatever system suits the national context, it is vital that national parliaments carefully scrutinise the EU activities of their national governments, and hold them to account. While each national parliament will determine for itself the best means of doing this, we can nonetheless learn from each other. The Conference of Parliamentary Committees for EU Affairs (COSAC) could contribute to strengthening these processes.

### **Dialogue between national parliaments and the EU institutions**

National parliaments should have a greater role in considering EU policies at an early stage, before hard and fast battle lines have been drawn. The European Commission says that it would welcome this 'upstream' or 'pre-legislative' scrutiny of policies. However, the Commission itself must do much more to show that it can be responsive to suggestions and concerns raised by national parliaments, whether at this early stage of policy development, or later on.

As part of this proactive role, groups of like-minded national parliaments, acting together, should be able to make constructive suggestions for EU policy initiatives.

## **The reasoned opinion procedure**

The Lisbon Treaty 2009 gave national parliaments a formal role in the scrutiny of EU legislation, allowing each chamber to issue a reasoned opinion if it considers that a proposal breaches the principle of subsidiarity (under which EU-level action may be taken only if the objective cannot be achieved at national or local level), and triggering a ‘Yellow Card’ if over one third of national chambers or parliaments issue reasoned opinions. Technical deficiencies have meant that the procedure has not been as effective as hoped. These deficiencies could, and should, be corrected. The key ways to improve the working of the reasoned opinion procedure are:

- *scope*: to extend the scope of the procedure to include the proportionality principle—that is, that the proposal should not exceed what is necessary to achieve the objectives of the EU Treaties;
- *deadline*: to increase the deadline for national chambers to issue a reasoned opinion on a legislative proposal, from 8 weeks to 12 or 16 weeks;
- *effect*: for the Council and Commission to undertake that, if a Yellow Card is issued, the Commission will take seriously its duty of review, and either withdraw or substantially amend the proposal in question.

## **Inter-parliamentary co-operation**

National parliaments and the European Parliament have a vital, and complementary, role to play in the European Union. It is not a ‘zero sum’ game: greater involvement for one should not be at the expense of the other. There is scope for national parliaments and the European Parliament to engage more effectively with each other, sharing information and debating key policies.

It is a strength of the Union that each national parliament acts independently, reflecting the situation of each Member State and the views of its citizens. However, in order to maximise their effectiveness in shaping European policies and legislation, national parliaments must co-operate. COSAC can encourage this co-operation, particularly with some small practical adjustments to its working methods. Inter-parliamentary co-operation on all matters, including economic and financial matters, should involve all 28 Member States.

## **Economic and financial governance**

The political and economic reforms required in the wake of the eurozone crisis have challenged the EU’s democratic framework. The European Parliament has a vital role to play in holding EU institutions to account, but the principle of democratic accountability can only be upheld if there is, in addition, an enhanced role for national parliaments. National parliaments must have more effective purchase on the steps towards enhanced economic surveillance, as encapsulated in the European Semester. Means must be found to ensure that EU institutions are accountable not only to the European Parliament but also to national parliaments.

# The Role of National Parliaments in the European Union

## CHAPTER 1: INTRODUCTION

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1. National parliaments can contribute actively to the good functioning of the European Union. This is not only the view of the House of Lords European Union Committee: it is stated clearly in the Treaty on European Union.<sup>1</sup> It is the starting point for our report.
2. It has never been more important that national parliaments should play a full and active role, both individually and collectively. The challenges posed by the long economic and financial crisis have reduced trust in all political institutions, both national and international, and including the institutions of the EU. National parliaments reflect national political opinion and pressures, and together they reflect the diversity of the citizens and the Member States of the European Union. National parliaments can therefore make a contribution to restoring trust, and can make a contribution to the better working of the EU.
3. As one of the witnesses to our inquiry, Dr Joanne Hunt, Cardiff University, stated: “there is widespread agreement that national parliaments—individually the cornerstone of any constitutional democracy—may be able to provide an effective and convincing way of shoring up the democratic legitimacy gaps which are perceived to exist within the EU order”.<sup>2</sup> There is also a widespread feeling that much more could be achieved, within the present Treaty structure.

### The current role of national parliaments in the EU

4. Before the Lisbon Treaty 2009, the EU Treaties hardly recognised the role of national parliaments in the governance of the European Union. The Lisbon Treaty made significant changes, including setting out the right of national parliaments to be kept informed by the institutions of the EU; to co-operate with other national parliaments and the European Parliament; to ensure respect for the principle of subsidiarity;<sup>3</sup> and to take part in the evaluation of justice and home affairs policies.<sup>4</sup> Appendix 4 charts the evolution of the role of national parliaments over time, through successive EU treaties.
5. Beyond the formal treaty provisions, the European Commission has also indicated an increased willingness to engage with national parliaments, notably since the launch in 2006 of the ‘Barroso initiative’, under which the Commission more actively seeks the views of national parliaments.
6. The House of Lords has appointed a Committee to examine European matters, with sub-committees to examine particular policy areas, since 1974. For some national parliaments the Barroso initiative and, in particular, the

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<sup>1</sup> Article 12, Treaty on European Union.

<sup>2</sup> Dr Joanne Hunt.

<sup>3</sup> Subsidiarity is defined in Box 1 in Chapter 4.

<sup>4</sup> Articles 5 and 12, Treaty on European Union.



changes made by the Lisbon Treaty, have created greater incentives and tools for parliaments to become more engaged in the scrutiny of EU policies, and to share information and expertise.

7. The four key activities of national parliaments in relation to the EU can be summarised as being:
- to scrutinise, influence and hold to account their own governments;
  - to engage in dialogue with the EU institutions, notably the European Commission and the European Parliament;
  - to conduct a subsidiarity check on EU legislative proposals (the reasoned opinion procedure);
  - inter-parliamentary co-operation.

This report examines in turn each of these key activities, in Chapters 2 to 5.

8. This introduction has already referred to the long economic and financial crisis. The crisis has posed particular challenges of democratic accountability for the major policy responses to the crisis which are currently being considered and implemented. Chapter 6, which draws heavily on the recent inquiry conducted by our Sub-Committee on Economic and Financial Affairs on the policy proposals relating to ‘Genuine Economic and Monetary Union’, concentrates on this aspect of the role of national parliaments.<sup>5</sup>

### Conduct of the inquiry

9. The membership of the House of Lords European Union Committee is listed in Appendix 1.
10. We launched our inquiry in July 2013, and received 38 responses to our open request for written evidence. Between October 2013 and January 2014 we heard oral evidence from 28 people and organisations, in London, Brussels, Paris and via videoconferences. The names of those who submitted evidence are listed in Appendix 2 and the evidence received is available online.<sup>6</sup> The original call for evidence is in Appendix 3. We are very grateful to everyone who has contributed evidence, and we hope they find this report of interest.
11. For obvious reasons we have been especially concerned to discuss these matters with colleagues from other parliaments. Committees and Members of 19 other national chambers, and the European Parliament, provided invaluable formal evidence.<sup>7</sup> We were also able to take advantage of the reports and meetings organised by the Conference of Parliamentary Committees for EU Affairs (COSAC).<sup>8</sup> At the COSAC Conference held in Vilnius in October 2013 three of our Members enjoyed a lively discussion with around 100 colleagues on the role of national parliaments in the EU,

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<sup>5</sup> House of Lords European Union Committee, ‘*Genuine Economic and Monetary Union*’ and the implications for the UK (8th report, Session 2013–14, HL Paper 134).

<sup>6</sup> Evidence Volume available at [www.parliament.uk/hleu](http://www.parliament.uk/hleu).

<sup>7</sup> In this report, the first time we cite a contribution from another national parliament or chamber we specify from which committee the contribution was made. After that (and in the footnotes), in the interests of readability we simply cite the parliament or chamber. We are aware, however, that there will be a range of views on these matters within each national parliament and chamber, and we do not wish to imply that we think the entire parliament or chamber has reached a firm and conclusive view on these matters.

<sup>8</sup> Available at [www.cosac.eu](http://www.cosac.eu).

and we repeat our thanks to our hosts from the Lithuanian Seimas for organising this meeting.<sup>9</sup>

12. We have been greatly struck by the breadth and quality of thought from colleagues in other parliaments, and from many other people with an interest in this subject. Proposals to enhance the role of national parliaments in the EU have already been put forward by other national parliaments, including the Dutch Tweede Kamer<sup>10</sup> and the Danish Folketing,<sup>11</sup> and governments including the UK Government.<sup>12</sup> Considerable work has also gone into the launch of the new inter-parliamentary conferences on foreign and security policy, and on economic and financial governance, which we consider further in Chapter 5. All of this excellent work has greatly assisted our thinking, and has highlighted the level of interest in the subject.
13. Any examination of EU institutions and processes requires the use of a large number of specialist terms and acronyms, and this report is no exception. Appendix 7 contains a glossary of terms and a list of the acronyms used in this report.

### Our aim

14. This report is made formally to the House of Lords, but it is also aimed at a wide range of policymakers and others, within the UK and across the EU.
15. **This report is intended as a contribution to an important and ongoing debate. Because of this, in several places we put forward a range of practical options which could improve the involvement of national parliaments in the scrutiny, formulation and implementation of EU policies, for further consideration by national parliaments and others, rather than presenting a definitive blueprint for change. We look forward to continuing this debate with Members of other parliaments, representatives of the EU institutions, and others.**
16. **In the context of our own chamber we consider that this report raises important questions about the effective scrutiny of EU matters, and so we make this report to the House for debate.**

### Implementing improvements

17. The focus of this inquiry has been on improvements which could be made in the short term, and several witnesses commented that treaty change should not be a priority for enhancing the role of national parliaments in the EU. The European Affairs Committee of the Hellenic Parliament, for example, commented that “a Treaty revision is not considered necessary for the time

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<sup>9</sup> There is a note of this meeting in Appendix 5.

<sup>10</sup> Dutch Tweede Kamer (November 2013), *Democratic Legitimacy in the EU and the role of national parliaments: work in progress*.

<sup>11</sup> European Affairs Committee, Danish Folketing (January 2014), *Twenty-Three Recommendations to strengthen the role of national parliaments in a changing European governance*.

<sup>12</sup> Including in speeches by the Rt. Hon. David Cameron MP, Prime Minister, on 23 January 2013 (known as the ‘Bloomberg speech’); and by the Rt. Hon. David Lidington MP, Minister for Europe, on 16 January 2014, entitled ‘*Where does democratic authority lie in the EU?*’. Transcripts of both speeches are available at [www.gov.uk/government/speeches](http://www.gov.uk/government/speeches).

being. We should first examine and make best use of the full possibilities and potential of the current treaties".<sup>13</sup>

18. As the EU has developed, the Treaties have tended to catch up with evolving practice. In the longer term the portions of the Treaties addressing the role of national parliaments might be amended accordingly, but there is no pressing need for treaty change to enhance the role of national parliaments. There were some suggestions for more fundamental changes, such as a European Chamber of Parliaments,<sup>14</sup> but this report has focused on what could be achieved within the structure of the existing Treaties.
19. **Treaty change is not necessary to enhance the role of national parliaments in the EU: substantial improvements can, and should, be achieved without treaty change. To a significant degree it is a matter for the will of parliamentarians to insist on securing substantial and lasting changes, and of their governments to give effect to that will. Important improvements could be achieved through the autonomous action of national parliaments, and through actions collectively agreed between the national parliaments, the Commission, the Council and the European Parliament where relevant. This report sets out options for reforms which could be pursued in such agreements.**
20. **Even in these difficult economic circumstances it is important that national parliaments, including that of the UK, ensure that sufficient resources are devoted not only to effective scrutiny but also to other aspects of their involvement with the European institutions and each other. Expenditure on improving EU legislation through scrutiny is seldom wasted.**

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<sup>13</sup> Committee on European Affairs, Hellenic Parliament. See also Elisabeth Guigou, Chair of the Foreign Affairs Committee of the French Assemblée Nationale, note of evidence session; René Leegte, Q 60; Carlo Casini MEP, Q 133; Dr Ben Crum & Professor John Erik Fossum.

<sup>14</sup> Professor Stelio Mangiameli. See also Charles Grant, Q 4; Richard Yung, Q 146. See also Claude Bartolone (October 2013), 'What Should be the Position of National Parliaments in the Construction of a European Political Union?', *European Issues* 291, in which the President of the French Assemblée Nationale advocates, in time, a "Congress of Parliaments" for the European Union.

## CHAPTER 2: NATIONAL SCRUTINY

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### Effective national scrutiny

21. **Effective scrutiny by national parliaments of the activities of their own governments in the European Union is essential. It is fundamental to ensuring that there is accountability, and legitimacy, for the actions of the Union. It should be recognised as core business for every parliament.**
22. National parliaments are uniquely well placed to reflect the diversity of the Member States and citizens of the European Union. This wide range of national conditions makes it impossible to generalise about how each national parliament should scrutinise and hold to account its own government. There is no single system that will suit every national parliament and chamber. As Simon Hix, Professor of European and Comparative Politics, London School of Economics, put it, “there are very, very different parliamentary traditions ... I think it is right that there should be a lot of discretion for Parliaments to try to work out what are the most appropriate mechanism for scrutiny themselves”.<sup>15</sup>
23. **National scrutiny systems will inevitably vary according to the national context. Whatever system suits the national context, it is vital that national parliaments carefully scrutinise the EU activities of their national governments, in order to ensure that the positions of national Ministers are effectively examined, and that the Ministers who constitute the Council are held to account for their decisions.**
24. **While each national parliamentary chamber is unique, we can nonetheless learn from each other. COSAC can be a very good forum for this learning, and we return to this point in Chapter 5. We cite two examples relating to our work in the House of Lords. First, we have taken a cue from the Dutch Tweede Kamer, amongst others, and begun to use the Commission’s annual work programmes more explicitly in examining the year ahead and publicly highlighting areas of particular interest.<sup>16</sup> Second, this Committee also intends to follow practice in other parliaments and experiment with holding sessions with the UK Minister for Europe before European Councils, to feed into Government preparations, rather than holding them afterwards to discuss the conclusions reached.**
25. **In addition, we continue to seek to improve our engagement with the Members of the House of Lords who are not currently serving on the EU committees. In this context, we observe that it is important that the whole House continues to scrutinise the EU activities of the UK Government, through debate, questioning and the scrutiny of legislation. As we have said, this is core business, not the preserve of a group of specialists.**

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<sup>15</sup> Q 22.

<sup>16</sup> In the UK context we note that the Scottish Parliament, Northern Ireland Assembly and National Assembly for Wales also make good use of the annual Commission Work Programmes in identifying proposals and policies of particular interest.

26. Remaining with the UK Parliament, in November 2013 the House of Commons European Scrutiny Committee published a report on *Reforming the Scrutiny System in the House of Commons*.<sup>17</sup> That report included recommendations such as reviewing, with the Government, the categories of document which are subject to formal scrutiny; improving Parliament's access to *limité* documents; and agreeing procedures with the Government for effective and proportionate scrutiny of delegated and implementing acts. We look forward to working with our colleagues in the Commons, and with the UK Government, to introduce these practical changes.
27. For parliamentary scrutiny to be effective, it is essential that governments take a constructive approach, working transparently and engaging in meaningful dialogue with national parliaments and their scrutiny committees. As we say in the preceding paragraph, **we are always willing to consider, with the Government and our colleagues in the Commons, improvements to the scrutiny process. In our day-to-day work scrutinising EU policies and the EU activities of the UK Government, it is essential that the Government consistently provide high quality and timely written information, in the form of explanatory memorandums on EU documents and correspondence, and that Ministers meet committees regularly. A good flow of information by government officials, including the UK Representation in Brussels (UKRep), is also crucial. The UK Government usually does this well and the current Minister for Europe, the Rt. Hon. David Lidington MP, has been an effective advocate for national parliamentary scrutiny. However, there are unacceptable variations in performance including in the quality of explanatory memorandums, particularly between departments, and we urge the Government to continue to focus on consistently supporting and engaging effectively with national parliamentary scrutiny of EU matters.**

### Different systems

28. A distinction is sometimes made between scrutiny systems which are based on the examination of documents, and systems which are based on the direct examination (and perhaps mandating) of Ministers before and after Council meetings.<sup>18</sup> **In our view, effective EU scrutiny systems are most likely to include elements of both examination of documents and direct discussions with Ministers (and other interested parties). Scrutiny of documents enables parliaments to engage early on with Commission consultations, and to propose precise changes to legislative proposals. Contact with Ministers allows direct exchanges of views, and allows Members to influence or control the government's position, or to challenge the government to explain and defend their view.**
29. Some of our witnesses identified the problem that detailed European scrutiny work can be the preserve of a small group of Members who specialise in European affairs, and that other Members can find it difficult to engage in detailed consideration of EU matters. These witnesses argued that EU scrutiny work should be conducted by the relevant sectoral committees of the

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<sup>17</sup> House of Commons European Scrutiny Committee, *Reforming the Scrutiny System in the House of Commons* (24th Report, Session 2013–14, HC 109).

<sup>18</sup> For example, UK Government.

national parliament (so that, for example, EU transport policy would be scrutinised by the committee responsible for national transport policy).<sup>19</sup>

30. Dominic Hannigan TD, Chairman of the Joint Committee on European Affairs, Irish Houses of the Oireachtas, suggested that the mainstreaming of EU scrutiny in the Oireachtas had been effective, but “may have gone a bit too far” and that there needed to be effective feedback from the sectoral committees to the European Affairs Committee.<sup>20</sup> Andrzej Gałażewski, Vice-Chairman, EU Affairs Committee of the Polish Sejm, noted that their sectoral committees were now more involved in scrutiny work, and that they sometimes held joint meetings between the European affairs committee and one of the sectoral committees.<sup>21</sup> The House of Lords’ set-up is probably unusual, with a central EU Committee which appoints six subject-specialist sub-committees, but it does show one way in which policy expertise and familiarity with the workings of the EU can be combined. The Committee considers that **it is important to involve a wide range of Members, and committees where possible, in the examination of European policies. Such policy expertise needs to be combined effectively with knowledge and understanding of EU policymaking processes and EU institutions.**

### Practicalities of scrutiny work

#### *Access to information*

31. National parliaments now receive legislative proposals, and other documents such as consultation papers, direct from the Commission. The Commission and other EU institutions make available a huge amount of information on their web pages. The national parliaments, together with the European Parliament, have a website, IPEX, “for the mutual exchange of information ... concerning issues related to the European Union”,<sup>22</sup> which is considered further in Chapter 5. Gediminas Kirkilas, Chair of the EU Affairs Committee of the Lithuanian Seimas, expressed a commonly held view that “the challenge is not the access to the EU information, but rather the processing its ever increasing amount”.<sup>23</sup> With certain specific exceptions, such as, perhaps, during trilogue negotiations (considered in Chapter 3), national parliaments now have reasonable access to information.

#### *Capacity*

32. Even when it is considered as core business, no chamber has a limitless capacity to engage with EU affairs. There are many competing demands on the time of Members of national parliaments, and European scrutiny will only ever be one element of the work of each national chamber. Eva Kjer Hansen, Chair of the European Affairs Committee of the Danish Folketing,

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<sup>19</sup> For example, Commissioner Maroš Šefčovič, Q 97; Dr Anna-Lena Högenauer & Professor Christine Neuhold.

<sup>20</sup> Q 69.

<sup>21</sup> Q 52.

<sup>22</sup> IPEX is the “Inter-Parliamentary EU information eXchange”. Quote from [www.ipex.eu/IPEXL-WEB/about/aboutIpeXL.do](http://www.ipex.eu/IPEXL-WEB/about/aboutIpeXL.do).

<sup>23</sup> Gediminas Kirkilas, Seimas of Lithuania. See also Italian Camera dei Deputati; Professor Stelio Mangiameli; National Council of Slovenia; Davor Jancic.

commented that “voters are not much interested in European affairs. So in an election campaign, no-one cares about the work that you are doing at European level”.<sup>24</sup>

*Prioritisation and resources*

33. Having said this, certain techniques and supporting factors should help to improve the amount and quality of engagement by Members of national parliaments. In particular, **it is often helpful if there is effective prioritisation, so that each national chamber and its committees concentrate on the policies which matter the most to it.** There are many different ways in which national chambers can prioritise their consideration of EU policies and proposals. In the House of Lords the Chairman of the EU Committee conducts a weekly sift of all EU documents to identify which of them require further detailed scrutiny by one of the subject-specialist Sub-Committees. Others, such as the Dutch Tweede Kamer, use the Commission’s Annual Work Programmes to identify the key measures for examination over the coming year, whilst also retaining flexibility to respond to emerging proposals.
34. **Even when parliaments do prioritise consideration of the most important policies, it must be recognised that effective scrutiny is resource-intensive, in terms of Member time and staff time.**
35. A vital supporting factor is that Members of national parliaments must be able to see a return on their work. In other words, just as it is vital for Members of national parliaments to engage with European policy debates, **the contributions by national parliaments must have, and must be seen to have, an influence on EU policy development and formulation. It is important that the Commission, Council and European Parliament make effective use of dialogue with national parliaments, and make clear where national parliaments have had an effect on the policymaking process.** Chapters 3 and 4 consider this in more detail.

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<sup>24</sup> Q 38. See also Dr Gavin Barrett; Dr Julie Smith.

## CHAPTER 3: DIALOGUE WITH THE EUROPEAN COMMISSION

### Engagement between national parliaments and the Commission

36. The European Commission has acknowledged for some time that it needs to engage with national parliaments. In 2006, towards the start of José Manuel Barroso's first term as its President, the Commission announced that "national parliaments must be more closely involved with the development and execution of European policy", arguing that "the increased involvement of national parliaments can help make European policies more attuned to diverse circumstances and more effectively implemented". The Commission launched what soon became known as the Barroso initiative, under which it transmitted all new proposals and consultation papers directly to national parliaments, and invited them to respond to them, "so as to improve the process of policy formulation".<sup>25</sup>
37. The Committee welcomes the Commission's commitment to engaging with national parliaments. Vice-President Maroš Šefčovič, the Commissioner for inter-institutional relations and administration, has been a strong advocate of working with national parliaments, and in January 2014 Members of the Committee held a useful meeting with him on the subject in Brussels.<sup>26</sup> The attendance of Commissioners at COSAC and other inter-parliamentary meetings has also been very welcome, demonstrating a commitment to direct engagement with parliamentarians.
38. The aspiration for national parliaments to engage effectively with the Commission is well described in the Contribution agreed by the June 2013 COSAC Conference in Dublin:
- "COSAC considers that national parliaments should be more effectively involved in the legislative process of the European Union not just as the guardians of the subsidiarity principle *but also as active contributors to that process*. This goes beyond the adoption of reasoned opinions on draft legislative acts which may block those acts and would involve a more positive, considered and holistic view under which Parliaments could invite the Commission to develop legislative proposals which they believe to be necessary or to review and adapt existing proposals for specific stated reasons."<sup>27</sup> [italics added]
39. There is clear evidence of the desire of national parliaments to engage in political dialogue with the Commission. From the start of 2010 until the end of 2013 national parliaments submitted around 2000 written contributions under the Barroso initiative.<sup>28</sup> Appendix 6 provides further detail about the numbers of written contributions by national chambers and parliaments over this period, together with information about the numbers of reasoned opinions issued.

<sup>25</sup> COM(2006) 211: A Citizen's Agenda: Delivering Results for Europe, page 9.

<sup>26</sup> QQ 89–99.

<sup>27</sup> Contribution of the XLIX COSAC, Dublin, 23–25 June 2013.

<sup>28</sup> Annual Reports from the Commission on Relations between the Commission and National Parliaments for 2010 (COM(2011) 345 final); 2011 (COM(2012) 375 final); and 2012 (COM(2013) 565 final); and, for 2013, information provided by the European Commission Registry. Chapter 4 will detail that the number of reasoned opinions submitted in the same period was around 260. See paragraphs 48–51.



40. **In this chapter we make suggestions for possible improvements, which national parliaments may wish to take up in discussion with national governments and with the Commission. In summary these possible improvements, which are considered in greater detail below, are:**
- **the increased early involvement of national parliaments in the development of EU legislative proposals and other policies in advance of the Commission making formal communications and proposals for legislation;**
  - **that the Commission should make clear when and how national parliaments have influenced the development of policies, by:**
    - **identifying national parliament contributions in summary reports on consultation exercises and in subsequent communications on the policy, including how the policy has been shaped or modified in response,**
    - **responding promptly to national parliament contributions under the general political dialogue, usually within three months,**
    - **using its annual report on relations with national parliaments to identify the impacts of national parliament engagement;**
  - **that the new Commission should make a commitment that Commissioners and senior officials will meet committees of national parliaments as a core part of their duties;**
  - **that a procedure should be developed to allow a group of national parliaments to make constructive policy or legislative suggestions (a ‘Green Card’).**

### **Early engagement with policy proposals**

41. Several of our witnesses argued that national parliaments should be more active in considering EU policies at an early stage: this is sometimes described as ‘upstream’ engagement and sometimes as ‘pre-legislative scrutiny’.<sup>29</sup> The April 2012 COSAC Conference in Copenhagen concluded that “the opportunity (under the political dialogue) for national parliaments to feed views into the pre-legislative phase of the EU proposals is particularly important”.<sup>30</sup>
42. Vice-President Šefčovič stated that “the Commission strongly supports this dialogue and in particular encourages the early involvement of national Parliaments by their submission of contributions to public consultations on possible new or modified legislation”.<sup>31</sup> Mr Šefčovič accepted that “the national parliaments are not very aware of this”, and that as part of the Commission’s increased flow of information direct to national parliaments,

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<sup>29</sup> For example, Czech Senát; Italian Camera dei Deputati; Dr Adam Cygan, Q 18; Dr Richard Corbett, Q 85; Andrew Duff MEP, Q 107; Miguel Angel Martínez Martínez MEP, Q 127.

<sup>30</sup> Contribution of the XLVII COSAC, Copenhagen, 22–24 April 2012.

<sup>31</sup> Vice-President Maroš Šefčovič.

“we have added ... alerts for when and what kind of public consultations will take place”.<sup>32</sup>

43. **The Committee supports effective early engagement by national parliaments in the development of EU legislative proposals and other policies. In this way, drawing on their diverse experience and expertise, national parliaments can make a distinctive contribution to the development of policy at an early stage, before considerable time and political capital has been invested in a particular idea, and before firm proposals have been drawn up which the Commission may then feel obliged to defend.**
44. The House of Lords has a good track record of early engagement. To take one example, in late 2012 and early 2013 the Committee conducted an inquiry into the early operation of the European External Action Service, and published a report which contributed to the review of the EEAS by the EU institutions.<sup>33</sup>
45. During our inquiry we came across some examples of the effect of national parliament engagement on developing EU policies. For example, Vice-President Šefčovič noted that a number of national parliaments had helped to improve the European Citizens’ Initiative;<sup>34</sup> Dominic Hannigan TD told us that the Irish Oireachtas was examining how social indicators could be integrated into the European Semester;<sup>35</sup> and Andrzej Gałażewski said that national parliament and European Parliament engagement with the Commission on data protection legislation may lead to a decrease in the number of provisions left to delegated acts.<sup>36</sup> Firm evidence of the impact of national parliaments on policy and legislation is often lacking, however, and there is a clear view amongst Members of national parliaments that the Commission is sometimes going through the motions. Eero Heinäluoma, Speaker, and Miapetra Kumpula-Natri, Chair of the Grand Committee, Finnish Eduskunta, said that “we see no evidence that the inputs of national parliaments have actually affected outcomes at the EU level”.<sup>37</sup> Averof Neofytou, Chairman of the Committee on Foreign and European Affairs, House of Representatives of Cyprus, argued that “the Commission has to change its culture ... to consider the opinions of national parliaments as an opportunity for further political debate on issues, rather than creating an atmosphere in which they do not like to see, and reject, different views on issues”.<sup>38</sup>
46. Mr Šefčovič told us that the Commission had invested in a new IT system to improve their management of national parliament contributions and replies to them, and that “I now believe that we are in a position” to achieve “no more than three months for a response”.<sup>39</sup>

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<sup>32</sup> Q 94.

<sup>33</sup> House of Lords European Union Committee, *The European External Action Service* (11th Report, Session 2012–13, HL Paper 147).

<sup>34</sup> Q 91.

<sup>35</sup> Q 73.

<sup>36</sup> Q 53.

<sup>37</sup> Finnish Eduskunta. See also Eva Kjer Hansen, Danish Folketing, Q 49; Saeima of Latvia.

<sup>38</sup> Q 47.

<sup>39</sup> Q 89.

47. The Commission's report for 2012 on relations between the Commission and national parliaments identifies hundreds of interactions in the form of written opinions, visits, and conferences, but provides no information about the impact of this activity on any of the Commission's policies or proposals. Without evidence of impact or influence, the incentives for national parliaments to devote appropriate resources to engaging at this early stage will remain weak, and the EU will continue to be deprived of the improvements to legislation and policies that will accrue from the application of the distinctive experience and expertise of Members of national parliaments.
48. **The Commission must engage fully with the views put forward by national parliaments early on in the policymaking process, and must be seen to engage fully with them by making clear when and how national parliaments have had a significant influence on the early development of policies. We note that if the Commission does not engage constructively and deal with concerns raised by national parliaments under the informal political dialogue, it becomes more likely that national parliaments will be forced to use the reasoned opinion procedure to ensure that their views are addressed in a more formal way. Put another way, the more that the Commission engages positively with the concerns of national parliaments as expressed in the political dialogue, the less likely it is that parliaments will feel compelled to issue reasoned opinions.**
49. **When national parliaments engage upstream, and make contributions to consultations, their views should be identified and specifically addressed in a discrete section of the Commission's summary report on the consultation, including where appropriate how the proposal has been modified in response. National parliament contributions and the responses to them should also be identified in subsequent documentation relating to the proposal including impact assessments and communications accompanying legislative proposals. This will show that the views of national parliaments have been given appropriate consideration; and help national parliaments to continue to pursue key points.**
50. **When national parliaments make contributions to the general political dialogue (not in response to specific consultation exercises), these contributions should receive a response within three months, clearly addressing the points made and, where appropriate, explaining how their views have been taken into account.**
51. **The Commission should use its annual reports on relations with national parliaments to identify policy impacts of engagement by national parliaments, as well as simply outlining the number of interactions with the Commission.**

#### **Direct contact with Commissioners and officials**

52. A proper dialogue is of course about much more than national parliaments making contributions to the early development of policies. It must involve a mutual exchange of information and views. One good way to achieve this is for Commissioners and senior Commission officials to meet Members of national parliaments. Sometimes, when major political issues are at stake, it will be most appropriate for Members of national parliaments to meet a

Commissioner. On other occasions, when the technical details of a policy are to be discussed, a senior official may be more appropriate. Sonia Piedrafita, Centre for European Policy Studies, argued that “it would be very helpful if each member of the College of Commissioners presented the work programme and participated in a question-and-answer session in a national parliament on an annual basis”.<sup>40</sup>

53. By mixing videoconferences with face-to-face meetings; combining such meetings with Commissioners’ other commitments in Member States; and holding some meetings in Brussels, the burden on Commissioners and senior staff can be managed.
54. At present there are many examples of good engagement by Commissioners and their officials, but in our experience certain Commissioners seem to feel at liberty to ‘pick and choose’ the subjects on which they will engage, and with whom. **The Commission which will be appointed in 2014 should make a commitment that its Commissioners and senior officials will be willing to meet committees of national parliaments as a core part of their duties, subject of course to practical limitations and without imposing an impossible burden. This must be a clear and firm commitment which binds the whole College: it is too important to be left to the whim of individual Commissioners.**

#### Making proposals: a Green Card?

55. The next chapter examines in detail the reasoned opinion procedure. This is a negative procedure which gives national parliaments a right, under certain strict conditions, to indicate their view that a legislative proposal should not be proceeded with.
56. Several of our witnesses suggested that there should also be scope for a group of national parliaments working together to make a constructive suggestion for an initiative. For example Simon Sutour, Chair of the European Affairs Committee of the French Sénat, and Danielle Auroi, Chair of the EU Affairs Committee of the French Assemblée Nationale, supported the idea in general terms.<sup>41</sup> René Leegte, Rapporteur on democratic legitimacy for the European Affairs Committee of the Dutch Tweede Kamer, proposed “to allow a certain number of national parliaments to advise the European Commission to table legislative proposals they believe to be necessary”.<sup>42</sup> The Danish Folketing suggested that this might encompass the right for national parliaments to suggest the review of existing legislation.<sup>43</sup> Dr Richard Corbett, Cabinet Member of the President of the European Council with responsibility for relations with national parliaments, said that he thought that it “would carry a certain weight if a proposal for legislation, or indeed a proposal to repeal legislation, came from a national parliament”.<sup>44</sup>
57. There were mixed views about this proposal, with colleagues in the European Parliament raising concerns in particular about intruding on the

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<sup>40</sup> Sonia Piedrafita. See also Charles Grant, Q 11; Gediminas Kirkilas; Eva Kjer Hansen, Danish Folketing, Q 41; Minister Thierry Repentin, Q 141; Finnish Eduskunta.

<sup>41</sup> Q 144, and note of evidence session with Chairs and Members of the Foreign Affairs and EU Affairs Committees, French Assemblée Nationale.

<sup>42</sup> Q 59.

<sup>43</sup> European Affairs Committee, Danish Folketing (January 2014), *op. cit.*

<sup>44</sup> Q 82.

Commission's 'right of initiative'.<sup>45</sup> Ashley Fox MEP was "very sceptical" about giving national parliaments an explicit role in putting forward suggestions for initiatives, arguing that in his view there was already too much European legislation.<sup>46</sup>

58. **In principle, we agree that there should be a way for a group of like-minded national parliaments to make constructive suggestions for EU policy initiatives, which may include reviewing existing legislation, complementing the existing 'Yellow Card' with a 'Green Card'. We note the concerns raised about intruding on the Commission's formal right of initiative, and we would envisage a 'Green Card' as recognising a right for a number of national parliaments working together to make constructive policy or legislative suggestions, including for the review or repeal of existing legislation, not creating a (legally more problematic) formal right for national parliaments to initiate legislation.**
59. **A 'Green Card' agreement would need to include an undertaking by the Commission that it would consider such suggestions carefully, and either bring forward appropriate legislative or other proposals (or consult on them), or explain why it had decided not to take the requested action.**

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<sup>45</sup> Under the EU Treaties, the Commission has a general right of initiative which empowers it to make proposals on the matters contained in the Treaties and under certain limited conditions other EU institutions may also initiate proposals. Sources: Andrew Duff MEP, Q 106; Miguel Angel Martínez Martínez MEP and Carlo Casini MEP, Q 129.

<sup>46</sup> Q 118.

## CHAPTER 4: THE REASONED OPINION PROCEDURE

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### Overview

60. The Lisbon Treaty 2009 gave national parliaments a formal role in the scrutiny of EU legislative proposals, notably through the reasoned opinion procedure. This procedure is explained in Box 1.

### BOX 1

#### The Reasoned Opinion Procedure

- Sometimes known as the ‘Yellow Card’ procedure, though there is no mention of coloured cards in the EU Treaties.
- Draft legislative acts are transmitted by the Commission to national parliaments.
- Within eight weeks, each national parliament, or chamber, may issue a “reasoned opinion” “stating why it considers that the draft in question does not comply with the principle of subsidiarity” (Article 6, Protocol 2).
- Definition of subsidiarity principle: “the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level” (Treaty on European Union (TEU) Article 5).
- A reasoned opinion from one of the 15 unicameral Parliaments counts as two votes; a reasoned opinion from a chamber in one of the 13 bicameral Parliaments counts as a single vote. There are 56 votes available in total.
- If reasoned opinions are submitted comprising more than one third of the total votes (a **Yellow Card**), the Commission must review the proposal and “may decide to maintain, amend or withdraw” it. “Reasons must be given for this decision” (Article 7(2), Protocol 2). For legislative proposals concerning police co-operation or criminal justice, the threshold is one quarter of votes, not one third.
- If reasoned opinions comprising over half of the total votes are submitted (an **Orange Card**), the Commission must review the proposal and, if it nonetheless wishes to proceed, justify why it considers that the proposal complies with the principle of subsidiarity (Article 7(3), Protocol 2). If the Commission does proceed, a majority vote in the European Parliament, or a vote of 55% of the Member States in the European Council, will block the proposal.
- These procedures do not apply in areas where the Union has exclusive competence (customs union; competition rules necessary for the internal market; monetary policy; conservation of marine resources under the Common Fisheries Policy; common commercial policy).
- The procedures do apply to any legislative initiatives from institutions other than the Commission: groups of Member States, the European Parliament, the European Central Bank and the European Investment Bank.
- The Protocol also provides that a national parliament may bring a case before the EU Court of Justice, arguing that an adopted legislative act does not

comply with the principle of subsidiarity. This is known as the **Red Card** procedure.

*Source: Articles 5 and 12, TEU; Protocols 1 and 2 to the EU Treaties*

From the coming into force of the Lisbon Treaty in December 2009 to the end of February 2014, two Yellow Cards had been triggered (see Box 3), no Orange Cards had been triggered, and no Red Cards had been issued.

## BOX 2

### What is the difference between a Reasoned Opinion and a Yellow Card?

A **reasoned opinion** is issued by a national parliament or chamber if it thinks that a draft EU law does not comply with the principle of subsidiarity (it thinks that the matter could better be addressed by Member States individually, not the EU collectively).

A **Yellow Card** is triggered if enough parliaments or chambers issue reasoned opinions on the draft law. A Yellow Card forces the European Commission to conduct a review.

61. Miroslav Krejča, Chairman of the Committee on European Affairs, Czech Senát, described the reasoned opinion procedure as “a stimulating factor that could enhance” the involvement of national parliaments in EU affairs.<sup>47</sup> In other words, the procedure is important as it encourages national parliaments to take an active interest in EU matters, beyond the narrow terms of the procedure itself. This is illustrated by the fact that in 2009, the year before the procedure came into effect, national parliaments sent around 250 written opinions to the Commission on EU policy matters: by 2012 this had risen to 663 written opinions (including 70 reasoned opinions).<sup>48</sup> The European Union Policies Committee of the Italian Camera dei Deputati considered that the new powers conferred on national parliaments “have promoted a dramatic increase in the EU-related activities of most assemblies”.<sup>49</sup>
62. Since the Lisbon Treaty came into force at the end of 2009, until the end of 2013, the Commission introduced around 454 draft legislative acts which were eligible for the reasoned opinion procedure.<sup>50</sup> In each case the Commission was required to explain why it considered that the proposal was consistent with the principle of subsidiarity—and in most cases there has been little serious doubt.
63. The 2012 Annual Report of the European Commission Impact Assessment Board (a quality control body which examines and issues opinions on all Commission impact assessments) noted that the proportion of occasions on which it raised concerns about the handling of subsidiarity decreased from 43% in 2010 to 33% in 2011. The Board remained concerned that

<sup>47</sup> Czech Senát.

<sup>48</sup> Annual Reports from the Commission on Relations between the Commission and National Parliaments for 2009 (COM(2010) 291 final); and 2012 (COM(2013) 565 final).

<sup>49</sup> Italian Camera dei Deputati.

<sup>50</sup> European Parliament Directorate for Relations with National Parliaments (8 January 2014), *State of Play on reasoned opinions and contributions submitted by national Parliaments under Protocol 2 of the Lisbon Treaty*.

misgivings were still expressed in a “significant number of opinions” and recommended that all services “pay particular attention to the justification of proposals on subsidiarity grounds, particularly in view of the new subsidiarity control mechanisms introduced by the Lisbon Treaty”.<sup>51</sup> This suggests that Dr Ben Crum, Vrije Universiteit Amsterdam, and Professor John Erik Fossum, University of Oslo, are correct in their view that the Commission is internalising the principle of subsidiarity, but also underlines the importance of national parliaments remaining vigilant in assessing the compliance of new legislative proposals with that principle.<sup>52</sup>

**TABLE 1**  
**Number of Reasoned Opinions issued 2010–2013**

Year	Reasoned Opinions	Yellow Cards
2010	34	0
2011	64	0
2012	70	1
2013	92	1
<b>TOTAL</b>	<b>260</b>	<b>2</b>

Sources: see Appendix 6

64. Even taking into account that Commission proposals are subject in advance to an internal subsidiarity check, the number of reasoned opinions issued by national parliaments, around 260 over four years, is very low (see Table 1).<sup>53</sup> The number of Yellow Cards triggered, two, is remarkably low. In the first case the Commission decided to withdraw the proposal concerned, but asserted that this was not because of the Yellow Card; and in the second case it decided to maintain the proposal unchanged. Box 3 provides more details.

### **BOX 3**

#### **Yellow Cards**

##### **Right to Strike (‘Monti II’) proposal<sup>54</sup>**

In an attempt to address concerns that, in the single market, economic freedoms would prevail over fundamental freedoms such as the right to strike, the Commission proposed to clarify the relationship between those freedoms. It set out provisions on resolution mechanisms in the case of disputes in circumstances with a cross border character. Several national parliaments were unconvinced either that the proposal was justified or that it would help to clarify the

<sup>51</sup> European Commission Impact Assessment Board Report for 2012.

<sup>52</sup> Dr Ben Crum & Professor John Erik Fossum.

<sup>53</sup> Appendix 6 sets out the numbers of reasoned opinions issued by each national parliament or chamber, together with information about the total number of written opinions (whether reasoned opinions or opinions submitted under the political dialogue).

<sup>54</sup> 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.



relationship between the freedoms. Reasoned opinions amounting to 19 votes were issued, triggering in May 2012 the first Yellow Card.<sup>55</sup> The Commission withdrew the Monti II proposal—but asserted that it was being withdrawn because of political disagreement in the Council, and not because of the Yellow Card played by national parliaments.

#### **European Public Prosecutor’s Office (EPPO) proposal<sup>56</sup>**

The Commission’s proposal would establish an EU level body with the exclusive power to investigate and prosecute criminal offences affecting the financial interests of the Union and closely related offences. Many national parliaments considered that the Commission had failed to demonstrate the desirability of the proposed EU level action and that it would fail to achieve its objectives as it would have damaging effects on existing Member State systems. Reasoned opinions amounting to 18 votes were issued, triggering in October 2013 the second Yellow Card.<sup>57</sup> The Commission quickly decided to maintain the EPPO proposal, and its fate now lies in the hands of the Council and the European Parliament.

65. Some of our witnesses argued that the procedure is not working as intended. The Saeima of Latvia argued that “subsidiarity checks have not added real power to national parliaments”.<sup>58</sup>
66. A January 2014 report by the European Parliament, prepared by the Legal Affairs Committee, welcomed “the closer participation of national parliaments in the framework of the European legislative process”. The report went on to note “with concern that some reasoned opinions from national parliaments highlight the fact that, in a number of the Commission’s legislative proposals, the justification of subsidiarity is insufficient or non-existent”; and to highlight “the need for the European institutions to make it possible for national parliaments to scrutinise legislative proposals by ensuring that the Commission provides detailed and comprehensive grounds for its legislative decisions on subsidiarity and proportionality in accordance with Article 5 of Protocol No 2 to the Treaty on the Functioning of the European Union”.<sup>59</sup>
67. **The reasoned opinion procedure can, and must, be made more effective. It is an important way in which national parliaments can contribute to the making of EU legislation; and can thereby enhance the quality and legitimacy of that legislation.**
68. In the rest of this chapter we set out key problems with the current operation of the reasoned opinion procedure, and suggest a range of ways in which these problems could be addressed.

<sup>55</sup> This took place before Croatia formally acceded to the EU on 1 July 2013, so the threshold for triggering a Yellow Card in this case was one third of 54: 18 votes.

<sup>56</sup> COM(2013) 534 final: Proposal for a Council Regulation on the establishment of the European Public Prosecutor’s Office.

<sup>57</sup> This is a proposal relating to Justice and Home Affairs, so the required threshold was one quarter of 56: 14 votes.

<sup>58</sup> Saeima of Latvia. See also Ashley Fox MEP, Q 115; Richard Corbett, Q 80.

<sup>59</sup> European Parliament Legal Affairs Committee (28 January 2014), *Report on EU Regulatory Fitness and Subsidiarity and Proportionality—19th report on Better Lawmaking covering the year 2011* (2013/2077(INI)).

69. **National parliaments working together may wish to consider which particular changes they would like to see made to the operation of the reasoned opinion procedure.**
70. **The key elements of the procedure, including its scope, the deadlines, and the effect of a Yellow Card being issued, are set out in the EU Treaties and could only formally be changed through a revision to the Treaties. However, it would be possible for the Member States acting together in the Council, in co-operation with the European Commission, to agree a package of improvements. The parliaments, Council and Commission could undertake to operate the reasoned opinion procedure consistently with the agreed changes.**
71. **These are some of the options for inclusion in an inter-institutional agreement to improve the operation of the reasoned opinion procedure:**
- ***scope*: including the proportionality principle within the procedure, and a check that an appropriate legal base is being used;**
  - ***deadline*: extending the time period for reasoned opinions to be submitted, from 8 weeks, to 12 or 16 weeks;**
  - ***Commission engagement*: improving the quality of the Commission’s explanatory memorandums on subsidiarity and its engagement with reasoned opinions;**
  - ***effect*: establishing that if a Yellow Card is triggered the Commission will either withdraw or substantially amend the proposal;**
  - ***threshold*: considering whether the threshold for triggering a Yellow Card should be lowered;**
  - ***timing*: considering whether the reasoned opinion procedure might somehow remain open, or be re-engaged, later in the legislative procedure.**

**The rest of this chapter examines each of these options.**

### **Scope**

72. Many people have noted that there is no clear, detailed and widely accepted definition of what constitutes a breach of the subsidiarity principle. Some of our witnesses argued that there should be such a definition or commonly agreed understanding. Professor Asteris Pliakos, Professor of European Union Law at the Athens University of Economics and Business, suggested that national parliaments, the Commission, the European Parliament and the Committee of the Regions should agree “a commonly accepted definition”.<sup>60</sup> A majority of the Members of national parliaments who commented shared the view of the EU Affairs Committee of the Estonian Riigikogu that “there should be enough freedom to interpret and understand the subsidiarity element at national level”.<sup>61</sup>

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<sup>60</sup> Professor Asteris Pliakos. See also Professor Stelio Mangiameli; Oskar Josef Gstrein & Darren Harvey.

<sup>61</sup> Estonian Riigikogu. See also Edmund Wittbrodt, Polish Senat; Italian Camera dei Deputati. See also Charles Grant, Q 14.

73. It is inevitable that the assessment undertaken by national parliaments may include a ‘political’ as well as a strictly ‘legalistic’ element, and the assessment will be informed by the particular outlook of the national parliament in question. Indeed, the purpose of the procedure is, in part, to ensure respect for the diversity of the Union.
74. **While there may be a useful role for COSAC in sharing practical experience in how to conduct subsidiarity assessments and how to prepare an effective reasoned opinion, we do not think that it would be sensible to attempt a more precise definition of the subsidiarity principle than the definition that is already set out in the EU Treaties.**
75. Witnesses including the French Sénat suggested that the reasoned opinion procedure should be extended to cover proportionality as well as subsidiarity.<sup>62</sup> The principle of proportionality is defined under Article 5 of the Treaty on European Union as requiring that “the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties”. As set out in Box 1, subsidiarity is defined in that Article as requiring that “in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”. In other words, subsidiarity requires that things be done at the lowest sensible tier of government, while proportionality requires that, where the Union takes action, that action must be proportionate to the achievement of the relevant Treaty objective.
76. The Swedish Riksdag has argued that proportionality and subsidiarity are often inter-linked, and indeed the section of the EU Treaties setting out the detail of the reasoned opinion procedure is already entitled the Protocol on the application of the principles of subsidiarity *and proportionality* (italics added).<sup>63</sup>
77. The two concepts are clearly closely related, and explicitly extending the procedure to include proportionality would avoid sterile disputes about whether a particular concern about a proposal fell under one heading or the other. It would make it more clear that, as well as examining the objectives of the proposed action, national parliaments should be examining the precise content and form of that action.
78. EU legislative proposals must specify under which article of the EU Treaties they are being introduced (their ‘legal base’), and the French Sénat argued that the reasoned opinion procedure should encompass consideration of whether the legal base for the proposal adequately supports the action proposed by the Commission.<sup>64</sup> This seems to the Committee a logical modest extension to the reasoned opinion procedure, which would allow national parliaments to confirm that each legislative proposal has an appropriate basis under the EU Treaties. Without such a basis, action should not be taken at EU level.

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<sup>62</sup> French Sénat. See also Minister for Europe, Q 156; Sonia Piedrafita; Charles Grant, Q 7; René Leegte, Q 59.

<sup>63</sup> Swedish Riksdag.

<sup>64</sup> French Sénat.

79. **Witnesses have made a strong case that the reasoned opinion procedure should be extended to include the principle of proportionality. There is also a strong case that the procedure should encompass whether the proposal is brought forward under an appropriate legal base. We support both of these suggestions.**

### Deadline

80. A large number of witnesses argued that the current maximum time period of eight weeks for national parliaments to assess legislative proposals, and prepare and submit reasoned opinions, is too short.<sup>65</sup>
81. In the Committee's experience, eight weeks is usually just about sufficient for an individual chamber to assess a legislative proposal, and issue a reasoned opinion if it wishes. However, this proves challenging for complex proposals, or at certain times of year. For example, the period for the subsidiarity check for the European Public Prosecutor's Office proposal began on 2 September 2013. During the parliamentary recess our Justice and Institutions Sub-Committee carefully considered the proposal and, as is usual, further information and assessment provided by the UK Government. The Sub-Committee then referred the proposal to the main EU Committee, which recommended that the House should issue a reasoned opinion. It was only possible to debate the proposed reasoned opinion on 28 October 2013, the day that the formal eight week period expired. It is also vital that devolved and regional parliaments and assemblies, which have an important role in the reasoned opinion procedure, have sufficient time to comment if they wish.
82. Moreover, eight weeks may well be insufficient to allow national parliaments to share information with each other. Effective communication was crucial in the issuing of the first Yellow Card with certain national parliaments, notably the Danish Folketing, active in spreading awareness of the implications of the Monti II proposal. Even with a conveniently timed COSAC conference in Copenhagen halfway through the eight week period the timings proved tight, with five chambers only passing their reasoned opinions in the final week before the deadline.<sup>66</sup> The Committee on the Constitution of the Swedish Riksdag has commented that a longer period would make it "easier for more parliaments to examine a greater number of proposals and would facilitate inter-parliamentary co-operation"<sup>67</sup> and Dominic Hannigan TD, Chairman of the Irish Oireachtas Joint Committee on European Affairs and a recent former chairman of COSAC, confirmed the importance of effective information exchange between national parliaments.<sup>68</sup> The eight week deadline also makes it highly unlikely that national parliaments will have time to obtain further information from the Commission.
83. There seems to be no significant drawback to a modest extension to the eight week time-limit. Legislative proposals are often preceded by consultation

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<sup>65</sup> For example: Edmund Wittbrodt, Polish Senat; Minister for Europe, Q 156; Charles Grant, Q 2; Averof Neofytou, Parliament of Cyprus, Q 49; Eva Kjer Hansen, Danish Folketing, Q 49; René Leegte, Dutch Tweede Kamer, Q 59. See also European Parliament Legal Affairs Committee (28 January 2014), *op. cit.*, paragraph 27.

<sup>66</sup> Cooper, I. (May 2013) *A Yellow Card for the Striker: How National Parliaments Defeated EU Strikes Regulation*, available at [http://euce.org/eusa/2013/papers/12g\\_cooper.pdf](http://euce.org/eusa/2013/papers/12g_cooper.pdf).

<sup>67</sup> Swedish Riksdag.

<sup>68</sup> Q 71.

documents, can be many years in the gestation, and after publication usually follow a slow path through the EU legislative process. An extra four or eight weeks near the start of that process seems a small price to pay for better law at the end.

84. **We consider that the time limit within which national parliaments can issue a reasoned opinion should be extended, to 12 or 16 weeks.**
85. Under Article 4 of the Protocol on the role of national parliaments in the European Union, legislative proposals cannot be placed on the agenda of the Council within eight weeks of their transmission to national parliaments. This time period must obviously be extended to match any extension of the time period within which national parliaments can issue reasoned opinions.

### Commission engagement

86. The Protocol to the EU Treaties on the application of the principles of subsidiarity and proportionality makes it clear that it is the responsibility of the Commission to provide “a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality”, adding that “the reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators” (Article 5). We note that it is not up to national parliaments to prove beyond doubt that a proposal does not meet the subsidiarity principle: the onus is on the Commission to explain why it does. **It is the responsibility of the Commission to provide a clear explanation of why it considers that a proposal complies with the principles of subsidiarity and proportionality. In the absence of a comprehensive and convincing assessment by the Commission, it is appropriate for a national parliament to come to the conclusion that it has not been proven that a proposal complies with the subsidiarity principle.**
87. Whether or not a Yellow Card is triggered, the Commission replies to reasoned opinions in writing. Several national parliaments complained about the inadequacy of replies to reasoned opinions by the Commission. Edmund Wittbrodt, Chairman of the European Union Affairs Committee, Polish Senat, stated:

“The European Commission does not take into account national parliaments’ opinions or even neglects them. The Commission’s answers are often delayed and sent when negotiations are already advanced, are very general and do not address any specific issues. In principle, the Commission upholds its position, repeating arguments from its original proposal”.<sup>69</sup>

At its October 2013 conference in Vilnius, COSAC called for “better quality and more timely responses to reasoned opinions”.<sup>70</sup>

88. **Every reasoned opinion merits a reasoned response. When a reasoned opinion is issued by a national parliament, whether or not a Yellow Card is triggered, that opinion should be seriously considered by the**

<sup>69</sup> Edmund Wittbrodt, Polish Senat. See also Italian Camera dei Deputati; René Leegte, Dutch Tweede Kamer, Q 59; Sonia Piedrafita; Davor Jancic.

<sup>70</sup> COSAC contribution, Vilnius October 2013, paragraph 4.5.

**Commission, and a response should be prepared which addresses the concerns raised in that reasoned opinion, in a timely manner.**

89. Since COSAC called, in October 2013, for better consideration of reasoned opinions, the Commission has briskly dismissed the Yellow Card on the EPPO proposal. The threshold for the Yellow Card was reached in late October, but only a few days later a Commission official was reported as saying that “the Commission is confident that the next steps towards a strong European Public Prosecutor’s Office will be taken in 2014 under the Greek and Italian [EU] presidency”.<sup>71</sup> In November 2013 the Commission formally decided to maintain the proposal unchanged.<sup>72</sup> The speed with which Commission officials appear to have briefed that the proposal would be maintained, and with which the Commission as a whole decided to maintain the proposal, do not suggest that the Yellow Card prompted a serious review of the complex, important and far-reaching proposal to establish a European Public Prosecutor’s Office. What it suggests, in this case, is a Commission going through the motions to satisfy its treaty obligations.
90. In its response to the Yellow Card against the EPPO proposal,<sup>73</sup> the Commission distinguished certain arguments that it decided were not based on subsidiarity. **The Committee does not consider it appropriate for the Commission to assume the sole responsibility for deciding what arguments do, or do not, come within the ambit of the subsidiarity principle. There should be dialogue between national parliaments and the Commission, to determine appropriate guidelines for the Commission to respond to reasoned opinions, whether or not a Yellow Card has been issued.**
91. In the longer term, the existence of an effective reasoned opinion procedure will help to stimulate dialogue between the Commission and national parliaments. As Dr Julie Smith observed, “if national parliaments make clear that they are not going to accept certain things, particularly if they are likely to breach subsidiarity, then we might expect gradually the Commission to be seeking to talk to national parliaments ... ahead of time, in the way that they will talk with the permanent representations [of the Member States] and the European Parliament, and get a sense of what might be acceptable”.<sup>74</sup>

### Effect

92. Some have argued that a Yellow Card should be treated as being a ‘Red Card’<sup>75</sup> and having the effect of blocking a proposal.<sup>76</sup> The UK Government have advocated such a ‘Red Card’. The Minister for Europe argued, in a

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<sup>71</sup> Reported in [www.euractiv.com](http://www.euractiv.com) (30 October 2013) “Commission to press ahead with European Prosecutor’s Office, without France and Britain”.

<sup>72</sup> Minutes of the 2067th meeting of the Commission, 27 November 2013.

<sup>73</sup> COM(2013) 851: Communication from the Commission on the review of the proposal for a Council Regulation on the establishment of the European Public Prosecutor’s Office with regard to the principle of subsidiarity, in accordance with Protocol No 2 (27 November 2013).

<sup>74</sup> Q 32.

<sup>75</sup> The proposal for a new kind of ‘Red Card’ to allow national parliaments to block legislative proposals must be distinguished from the *existing* ‘Red Card’ which is already in the EU Treaties and which allows a national parliament to bring a case before the Court of Justice, arguing that existing legislation breaches the subsidiarity principle. See Box 1.

<sup>76</sup> For example, Dutch Foreign Minister Frans Timmermans, “Monnet’s Europe needs reform to fit the 21st century”, *Financial Times*, 14 November 2013; Charles Grant, Q 18; Mats Persson, Q 15.

December 2013 article relating to the EPPO proposal, that the Commission ought to treat every Yellow Card as though it were a 'Red Card'.<sup>77</sup>

93. This interest is perhaps unsurprising given the Commission's response to the Yellow Card on the EPPO proposal. As the EU Treaties recognise, national parliaments play a key part in "the good functioning of the Union" (Article 12, TEU). They are uniquely well placed to understand, and to represent, the views of the citizens of the Member States of the Union. Therefore, if a large number of national chambers have concerns about a legislative proposal which are serious enough for them to issue a reasoned opinion, triggering a Yellow Card, this deserves to be taken seriously.
94. As we have already observed in this Chapter, the reasoned opinion procedure currently places the Commission in a difficult position. A Yellow Card invites it to review a proposal which it will already have decided is consistent, from the Commission point of view, with the principle of subsidiarity. Moving the focus of the procedure to what should be altered as a result of the concerns expressed by a large number of national parliaments, and away from whether the concerns are consistent with the Commission's own interpretation of subsidiarity in relation to the proposal, should make the procedure more equitable.
95. **The Committee considers that the Commission should make an undertaking that, when a Yellow Card is issued, it will either drop the proposal in question, or substantially amend it in order to meet the concerns expressed.**

### Threshold

96. The UK Government suggested that the threshold for triggering a Yellow Card should be lowered from the present one-third of available votes. This would presumably increase the number of Yellow Cards triggered, but an extension of the time period and the scope (to include proportionality and legal base) might also have the same effect, while ensuring that they are still only triggered through the involvement of a substantial number of chambers / parliaments. Nonetheless, **the suggestion that the threshold for triggering a Yellow Card should be reviewed deserves further consideration.**

### Timing

97. The UK Government suggested exploring whether Yellow Cards might be issued "at any point during the legislative process and indeed whether they could be exercised in relation to existing legislation". The Dutch Tweede Kamer has similarly proposed that a "late card" procedure might be added to the existing Yellow and Orange Cards.<sup>78</sup>
98. There would be obvious benefits in allowing national parliaments to remain engaged, or to re-engage, with proposals which can undergo significant changes during the legislative process and which can take several years to come to legislative agreement, during which time the context for the proposal can have changed dramatically. It would be a challenge to create a

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<sup>77</sup> David Lidington MP: *It's time for national parliaments to give the EU Commission the red card*, available at <http://www.conservativehome.com/platform/2013/12/from-dlidington-its-time-for-national-parliaments-to-give-the-eu-commission-the-red-card.html>.

<sup>78</sup> Dutch Tweede Kamer (November 2013), *op. cit.*

mechanism which worked effectively from the point of view of national parliaments, and which did not make the already complex EU legislative process more unwieldy. **The suggestion that the reasoned opinion procedure might remain open, or be re-engaged at some later point, deserves further consideration.**

**Another aspect of the legislative procedure: first reading deals**

99. The Commission usually initiates legislative proposals, which are then put to the co-legislators—the Council and the European Parliament—for agreement. In recent years there has been an increase in early agreements, or ‘first reading deals’, between the co-legislators, based on negotiations in informal ‘trilogues’ also involving the Commission. These negotiations are something of a ‘black box’ for those not directly involved in them. Witnesses argued that the speed with which the deals are sometimes concluded “puts pressure on the ability of national parliaments to perform scrutiny in a timely fashion”.<sup>79</sup> In 2009 this Committee noted that the use of informal trilogues “makes it harder for national parliaments to conduct effective scrutiny of EU legislation”.<sup>80</sup>
100. As part of the re-evaluation of the reasoned opinion procedure, consideration should be given to improving the transparency of the later stages of the legislative procedure. The EU legislative procedure is already complicated, and we do not wish to add unnecessary additional layers. However, national parliaments have an important role to play and if that role is confined to the initial Commission proposal it is possible that they will be denied the opportunity to examine important changes brought forward during the negotiations between the Council and the European Parliament.
101. **It is vital that national parliaments should have a recognised opportunity for their voices to be heard during the later stages of legislative negotiations, particularly when those negotiations result in major changes to draft legislation. We suggest that the Council consider making a commitment that, if a legislative proposal is significantly altered during its consideration by the co-legislators, the Council will allow sufficient time, and no less than 12 weeks, for each national parliament to scrutinise the new or significantly altered elements of the proposal. This would be a logical development of the role of national parliaments in EU policymaking and without such a commitment there will remain a fundamental gap in the legislative process.**
102. Overall, appropriate engagement by national parliaments in the development of EU legislation will result in better scrutinised, and better, laws. As we have set out in the preceding two chapters, the EU legislative process should encourage national parliaments to make an early contribution to the development of policies. Through the reasoned opinion procedure, national parliaments should have an effective formal role when legislative proposals are introduced. National parliaments should be kept informed, particularly by their own governments, as negotiations progress. National parliaments should become involved again at the later stages if there have been major changes to a proposal.

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<sup>79</sup> Davor Jancic; see also French Sénat; Eva Kjer Hansen, Danish Folketing, Q 41; Andrew Duff, Q 113.

<sup>80</sup> House of Lords European Union Committee, *Codecision and national parliamentary scrutiny* (17th Report, Session 2008–09, HL Paper 125), Summary.



## CHAPTER 5: INTER-PARLIAMENTARY CO-OPERATION

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### Co-operation with the European Parliament

103. It is no secret that there have on occasion been tensions between the European Parliament and national parliaments. Dr Crum and Professor Fossum explained that “tensions are discernible in the relationship between national parliaments and the European Parliament, as the latter tends to be more open to supranational solutions and less concerned about subsidiarity”.<sup>81</sup> On the other hand, Professor Hix said that he did not accept “the idea that there is the European Parliament on one side and national parliaments on the other side, and there is some sort of battle between the two ... Both are parliamentary institutions”.<sup>82</sup>
104. There are instances of successful co-operation. A July 2013 draft joint report by three European Parliament Committees stated “that the greater role played by national parliaments in the activities of the European Union ... has had a positive impact on the development and functioning of the area of freedom, security and justice”, in part “because the subsidiarity principle is now more likely to be complied with”, and in part “because the broader and closer involvement of the peoples of Europe in the democratic process has made a significant contribution to lawmaking and European policy-making”.<sup>83</sup> Vice-President Miguel Angel Martínez Martínez MEP welcomed the improving relations between the European Parliament and national parliaments, particularly at COSAC, and noted that the Spanish Cortes had recently been effective in conveying its concerns and views during the recent reforms of the common agricultural and fisheries policies.<sup>84</sup> There were, however, mixed views about the effectiveness of national parliament engagement, with Andrew Duff MEP suggesting that the opinions of national parliaments were taken into account by EP Committees, and Ashley Fox MEP arguing that national parliaments were not very influential.<sup>85</sup>
105. After the coming into force of the Lisbon Treaty, the European Parliament produced a set of recommendations which still guide the European Parliament’s inter-parliamentary co-operation.<sup>86</sup> As the 2014 European elections approach, the Parliament’s Constitutional Affairs (AFCO) Committee has been reflecting on post-Lisbon relations between the European Parliament and national parliaments. At the time this report was finalised in March 2014 the Chair of AFCO, Carlo Casini MEP, was preparing a report on this subject. We look forward with interest to the outcome of AFCO’s work on this topic, and to a continuing dialogue with AFCO and the other European Parliament committees.

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<sup>81</sup> Dr Ben Crum & Professor John Erik Fossum. See also Andrew Duff MEP, Q 101.

<sup>82</sup> Q 23.

<sup>83</sup> European Parliament, Committee on Legal Affairs, Committee on Civil Liberties, Justice and Home Affairs, Committee on Constitutional Affairs (July 2013), *Draft report on the mid-term review of the Stockholm Programme (2013/2024(INI))*, paragraph 7.

<sup>84</sup> Q 132.

<sup>85</sup> QQ 104 and 117 respectively.

<sup>86</sup> European Parliament steering group on national parliaments (2010), *Recommendations to the Conference of Presidents*.

106. The House of Lords has a strong track record of engaging with the European Parliament, with Members regularly visiting Brussels to discuss key policies with MEPs, and participating in biannual meetings with UK MEPs and members of the European Scrutiny Committee of the Commons.<sup>87</sup>
107. There are areas where the European Parliament is in a good position to conduct scrutiny; areas where the national parliaments are in the best position; and areas where both must be involved. As this Chapter indicates, there are policy areas which have been under-examined, by either the European Parliament or the national parliaments. It is important that such ‘accountability gaps’ are identified and closed, in the interests of UK and European citizens, and to promote transparency.
108. **National parliaments and the European Parliament have a vital, and complementary, role to play in the European Union. It is not a ‘zero sum’ game: greater involvement for one should not be at the expense of the other.**
109. **There is scope for national parliaments and the European Parliament to engage more effectively with each other, sharing information and debating key policies. Several witnesses to our inquiry made useful suggestions as to how this might be done:**
- **there could be more direct contact between committees of national parliaments and committees of the European Parliament;**<sup>88</sup>
  - **when national parliaments or their committees have a close interest in a particular legislative proposal, they should be encouraged to contact the relevant rapporteur and shadow rapporteur on the responsible committee of the European Parliament;**<sup>89</sup>
  - **national parliaments and the European Parliament could reach agreement that EP rapporteurs could provide informal briefings to Members of national parliaments on the progress of trilogue negotiations;**
  - **videoconferencing could be used to facilitate discussions between committees;**<sup>90</sup>
  - **a brief overview of comments by national parliaments might be included in reports prepared by European Parliament Committees.**<sup>91</sup>
110. **Where it is practical and mutually useful, national parliaments and the European Parliament should enhance their co-operation and**

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<sup>87</sup> Further details are provided in the reports of this Committee, available on [www.parliament.uk/hleu](http://www.parliament.uk/hleu); and in European Parliament, *Report on Interparliamentary relations between the European Parliament and national Parliaments under the Treaty of Lisbon, 2012*, Annex III.

<sup>88</sup> Andrzej Gałazewski, Polish Sejm, Q 56.

<sup>89</sup> Professor Simon Hix, Q 25.

<sup>90</sup> Miguel Angel Martínez Martínez, Q 128.

<sup>91</sup> The Italian Camera dei Deputati noted that in 2011 the then Speaker of the Italian Chamber, Mr Giancarlo Fini, proposed that “a brief overview of the remarks and observations made by national parliaments—pertaining to the substantive aspects of draft legislation and documents, and not only to those pertaining to breaches of the subsidiarity principle—should be included in the reports that the Committees of the European Parliament prepare for consideration in the Plenary”.

**sharing of information, perhaps on the basis of discussions on these ideas and others at the Conference of Parliamentary Committees for EU Affairs (COSAC).**

### Forms of inter-parliamentary co-operation

111. In 2008 the Conference of Speakers of EU Parliaments agreed a set of guidelines for inter-parliamentary co-operation in the European Union. As this Chapter explains, the framework of conferences has changed significantly since 2008, but the guidelines remain helpful in identifying the main objectives of inter-parliamentary co-operation in the European Union as being:
- (a) “To promote the exchange of information and best practices” between parliaments “with a view to reinforcing parliamentary control, influence and scrutiny at all levels”;
  - (b) “To ensure effective exercise of parliamentary competences in EU matters in particular in the area of monitoring the principles of subsidiarity and proportionality”;
  - (c) “To promote cooperation with parliaments from third countries”.<sup>92</sup>
112. There is a large and growing number of forums in which Members of different EU parliaments can meet and discuss aspects of the EU and EU policies. The main forums are listed in Box 4, though there are other regular and ad hoc conferences and meetings.

#### BOX 4

##### Key forms of inter-parliamentary co-operation

- *Conference of Speakers of EU Parliaments*

Composed of Speakers of the national parliaments of the EU Member States and the President of the European Parliament. Meets annually. Its role is “to oversee the coordination of inter-parliamentary EU activities”.

- *Conference of Parliamentary Committees for EU Affairs (COSAC)*

Involves Members of EU committees of national parliaments and Members of the European Parliament. Established in 1989, since 2009 it has a Treaty base, in Article 10 of Protocol 1 to the EU Treaties. According to Article 10, COSAC is intended to “promote the exchange of information and best practice between national Parliaments and the European Parliament”.

Plenary meetings take place biannually, with a Chairpersons meeting prior to each plenary. Meetings usually take place in the country holding the rotating Presidency of the Council, and are chaired by the Presidency Parliament. At plenary meetings each parliament is represented by up to six Members. COSAC can agree conclusions and a contribution, which are non-binding on parliaments. It also produces Biannual Reports on issues relevant to national parliaments and the European Parliament.

The Presidential ‘Troika’ (comprising Members of the current, previous, and next Presidency countries, along with the European Parliament) puts

<sup>92</sup> Conference of Speakers of the European Union Parliaments (June 2008), *Guidelines for inter-parliamentary cooperation in the European Union*.

forward subjects for discussion and considers draft contributions. The COSAC secretariat is composed predominantly of officials from the Troika Parliaments, and a Permanent Member.<sup>93</sup>

- *Conference for Common Foreign and Security Policy and Common Security and Defence Policy*

Established by the Conference of EU Speakers. Replaced meetings of the European Security and Defence Assembly, and meetings of chairs of Foreign Affairs and Defence committees. Met first in September 2012, and now meets biannually. Each national parliament is represented by up to six Members; the European Parliament by up to 16. Provides a framework for the exchange of information, and debates CFSP / CSDP policies. It may adopt non-binding conclusions.

- *Conference on Economic and Financial Governance*

Also established by the Conference of EU Speakers, and foreseen in the 2012 Treaty on Stability Coordination and Governance. Replaced meetings of chairs of Economic Affairs committees. First held in October 2013 and intended to be biannual, with meetings rotating between the parliament of the country holding the Presidency of the Council, and the European Parliament. The composition and size of each delegation is, at present, left to each parliament. Gives parliaments an opportunity to consider their role in ensuring democratic accountability and legitimacy in the EU in the context of a more integrated financial, fiscal and economic policy framework. The arrangements for the conference will be reviewed by the 2015 EU Speakers' Conference.

- *Joint Meetings on topics of common interest, involving the Presidency Parliament and the European Parliament*
- *Inter-parliamentary meetings held by the European Parliament*
- *Meetings of chairs of various sectoral committees, under the aegis of the Parliamentary dimension of the presidency*

113. We heard a range of views on the framework of inter-parliamentary co-operation. Gediminas Kirkilas, Lithuanian Seimas, said that there is “no need for new mechanisms”, and that the priority should be to use the existing mechanisms effectively.<sup>94</sup> The Italian Camera dei Deputati agreed, also arguing that each conference should have a clearly limited agenda; and that duplication of topics between conferences should be avoided.<sup>95</sup> The Slovenian Državni Svet noted that “at the meetings participants do not have enough time to really debate. There is always a time limit around 2 minutes per speaker”.<sup>96</sup>

114. **It is vital that Members of the parliaments of the European Union establish the habit of co-operation on European matters. Communication between Members of national parliaments, and**

<sup>93</sup> *Rules of Procedure of the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union*, as published in the Official Journal of the European Union, 4 August 2011.

<sup>94</sup> Gediminas Kirkilas, Seimas of Lithuania.

<sup>95</sup> Italian Camera dei Deputati.

<sup>96</sup> National Council of Slovenia.

**between Members of national parliaments and the European Parliament, is essential, to share information, to debate policies, and to reach common understandings. However, it must be recognised that parliamentarians have a limited amount of time, and conferences must offer clear ‘added value’ in order for Members to be able to prioritise participation at them. In the view of this Committee, the number of inter-parliamentary conferences must be kept within reasonable limits and where it is appropriate we should be willing to rationalise the conference framework. We must ensure that conferences have clear and well managed agendas; that they have clear intended outcomes; and above all that they encourage wide participation and lively debate as opposed to long set-piece speeches.**

### **COSAC**

115. COSAC is a valuable forum for national parliaments, and the European Parliament, to share experiences on how to scrutinise EU laws and other policies effectively; and to make representations to the European Commission about appropriate engagement between Parliaments and the Commission. COSAC is, and must remain, at the heart of inter-parliamentary co-operation. There was some feeling amongst witnesses that it is not yet achieving its full potential, and that there may be scope to improve its procedures.
116. Andrzej Gałazewski, Polish Sejm, considered that COSAC’s agendas should be more focused.<sup>97</sup> Eva Kjer Hansen, Danish Folketing, suggested that the chair of COSAC should be appointed for 2–3 years, to provide greater continuity, rather than following the rotating Presidency.<sup>98</sup> Ad hoc working groups (working remotely, rather than creating further meetings) might prepare discussion papers, or convene after a COSAC debate to take forward any conclusions. The plenary session of the conference might include a topical debate, with Commission involvement. COSAC could consider whether the President of the European Council should be invited to attend COSAC once per year, to listen to the concerns of Members of national parliaments.
117. René Leegte, Dutch Tweede Kamer, has proposed the creation of a “standing group of political representatives of EU affairs committees of national parliaments”, to “exchange information on a political level in the event of a potential yellow card”, to be “political ambassadors” for the Yellow Card procedure, and to discuss new ideas to improve inter-parliamentary co-operation.<sup>99</sup>
118. There was a sense that unrealistically high expectations should not be invested in COSAC. The Finnish Eduskunta cautioned that COSAC was a useful forum to share information, but that “COSAC cannot and should not claim to represent the views of national parliaments in general”, and the Estonian Riigikogu argued that “COSAC works well, there is no need to change it”.<sup>100</sup>

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<sup>97</sup> Q 55.

<sup>98</sup> Q 37.

<sup>99</sup> René Leegte to Ioannis Tragakis, Chair of the Committee on European Affairs, Hellenic Parliament, 23 January 2014.

<sup>100</sup> Finnish Eduskunta; Estonian Riigikogu.

119. It would be for COSAC as a whole to consider whether it wished to alter any of its procedures or practices. The organisation of each COSAC conference is, of course, for the Presidency Parliament and the Presidential Troika. **Ideas which might be considered for changes to COSAC's procedures include:**
- **a reduction in the number and length of general reports from the Presidency and the Commission, allowing plenty of scope for contributions from delegates;**
  - **agendas which feature well focused and specific topics for debate, perhaps including a topical debate;**
  - **appointing a longer-term chair of COSAC (following the example of the European Council);**
  - **ad hoc working groups (working remotely) to prepare discussion papers, or to take forward agreed conclusions;**
  - **a standing group of representatives of EU affairs committees;**
  - **the President of the European Council attending COSAC once per year.**
120. **The issue of resources for COSAC may also need to be considered and the small COSAC secretariat increased, particularly if its procedures are to be changed in some way, as suggested in the previous paragraph.**
121. **COSAC can disseminate good practices and procedures that might be useful for other parliaments. COSAC's biannual reports and informal presentations by Members of national parliaments are two existing ways in which this dissemination of good practice can be achieved. COSAC might wish to consider whether an informal panel of experienced Members of COSAC from a range of different Member States and scrutiny systems might be willing to offer advice to national parliaments on their scrutiny of EU matters. The staff of European affairs committees of national parliaments can also share practical experience and information about their procedures, to help them support effective European scrutiny work by their committees.**

#### **Inter-parliamentary conference on CFSP/CSDP**

122. The recently established Inter-parliamentary Conference on Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP) set a good example in avoiding the proliferation of international conferences. The conference replaced existing conferences, including the now defunct European Security and Defence Assembly, rather than being created in addition to them.
123. In the light of the experience of our Members at these early CFSP/CSDP conferences we suggest that, to ensure the conferences are of maximum value, agenda items are suitably focused, and break-out sessions or working groups could be useful to allow smaller groups of parliamentarians to interact with each other on an informal basis.

### Inter-parliamentary conference on economic and financial governance

124. The Inter-parliamentary conference on economic and financial governance only began to meet in October 2013 and is still evolving, so it would be unwise to draw any immediate conclusions about it. There is, however, one important point of principle. There has been some discussion about whether the increasing integration of the euro area states should be accompanied by the creation of parliamentary structures which are restricted to the parliaments, or parliamentarians, of the euro area states.
125. The Committee considers that, while these suggestions are understandable, this fragmentation must be avoided for two reasons. First and most importantly, what happens in the euro area is of vital importance to the Member States outside the area. It is essential that the opportunities for debate and discussion about major matters of economic and financial policy between parliamentarians of all Member States are increased, not reduced. Second, there are many policy areas where certain Member States are highly engaged, and others are less involved or altogether absent. Foreign policy and the Schengen area are two obvious examples. A ‘variable geometry’ of inter-parliamentary co-operation would be impossible to achieve; and would inhibit valuable debate. **Inter-parliamentary co-operation on all matters, including on economic and financial matters, must continue to involve all 28 Member States.**
126. This point is considered further in Chapter 6, on EU economic and financial governance.

### Parliamentary scrutiny of Europol

127. Article 53 of the draft new Europol Regulation proposes a role for national parliaments, along with the European Parliament, in parliamentary scrutiny of the European Police Office (Europol).<sup>101</sup> We supported this provision in our Report *The UK opt-in to the Europol Regulation*.<sup>102</sup> When procedures for the joint scrutiny of Europol’s activities by the European Parliament and national parliaments were first set out by the Commission in a 2010 Communication,<sup>103</sup> we wrote to the President of the European Parliament to support the establishment of such an arrangement.<sup>104</sup>
128. The Civil Liberties, Justice and Home Affairs (LIBE) Committee of the European Parliament has proposed amending the draft Regulation to establish a Joint Parliamentary Scrutiny Group, comprising Members of that Committee and representative members of relevant national parliament committees. Our Sub-Committee on Home Affairs, Health and Education has made representations, both in writing and through attendance at a joint meeting between the LIBE Committee and Chairpersons of EU Justice and Home Affairs Committees, for ‘light touch’ parliamentary scrutiny of Europol, preferably building on the current arrangements for joint working

<sup>101</sup> COM(2013) 173: Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA (18 April 2013).

<sup>102</sup> House of Lords European Union Committee, *The UK opt-in to the Europol Regulation* (2nd Report, Session 2013–14, HL Paper 16).

<sup>103</sup> COM(2010) 776: Commission Communication on the procedures for the scrutiny of Europol’s activities by the European Parliament, together with national parliaments (17 December 2010).

<sup>104</sup> Letter available on our website: [www.parliament.uk/hleuf](http://www.parliament.uk/hleuf)

between the two groups.<sup>105</sup> Various other national parliaments have written expressing similar views.<sup>106</sup> This potential formal scrutiny role is both a positive example of the increasing role of national parliaments working at EU level (with the European Parliament), and national parliaments being involved in the shaping of EU legislation.

### Parliamentary scrutiny of Eurojust

129. As required by the Lisbon Treaty, the proposed Regulation reforming Eurojust brought forward by the Commission in July 2013 includes provisions governing parliamentary oversight of Eurojust's work.<sup>107</sup> The proposal obliges Eurojust to transmit its annual report to the European Parliament and national parliaments, and obliges the President of Eurojust to appear before the European Parliament at their request.
130. In October 2013 we published a report which acknowledged the validity of the Government's concerns with the proposed Eurojust Regulation but, in light of the important work undertaken by the agency on behalf of the Member States, argued strongly that the Government should opt-in to its negotiation.<sup>108</sup> On 21 October the Government told the Committee that they did not intend to opt in. The Government have promised to review their position once an agreed text emerges.
131. We understand that discussion of the Eurojust proposal in the Council has been overshadowed by the associated proposed Regulation to establish a European Public Prosecutor's Office.<sup>109</sup> As a consequence the negotiation of the Eurojust Regulation has been slow and national and European Parliamentary scrutiny remains at the early stages. However, at an Inter-Parliamentary meeting in June 2013 the Chairman of our Justice, Institutions and Consumer Protection Sub-Committee, Baroness Corston, expressed the concern that Parliamentary oversight should not extend to Eurojust's "operational" matters.<sup>110</sup>

### Informal 'clusters of interest' conferences

132. As national parliaments increasingly engage with key EU policies, it is likely that there will be informal conferences to discuss major policy issues.
133. It may be appropriate for an expanded COSAC secretariat to give a measure of logistical support to these informal conferences, subject to some simple baselines set down by COSAC.
134. One important principle might be that (unless the meeting is for a specific geographical grouping) invitations should be extended to all parliaments

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<sup>105</sup> Namely, Joint Committee Meetings or Meetings of Chairpersons of Committees on Justice and Home Affairs.

<sup>106</sup> Including the relevant Committees in the Irish Oireachtas, French Assemblée Nationale and Lithuanian Seimas.

<sup>107</sup> COM(2013) 535 final: Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust), at Article 55.

<sup>108</sup> House of Lords European Union Committee, *The Eurojust Regulation: Should the UK Opt-In?* (4th Report, Session 2013–14, HL Paper 66).

<sup>109</sup> COM(2013) 534 final: Regulation on the establishment of the European Public Prosecutor's Office.

<sup>110</sup> European Parliament Inter-Parliamentary meeting considering the Stockholm Programme: the State of Play regarding Police and Judicial Cooperation in Civil and Criminal Matters, 20 June 2013.



equally. In 2013, the Danish Folketing organised a valuable meeting in Copenhagen to discuss the free movement of workers. Although not all national parliaments decided to send a Member to the meeting, the invitation was extended to all national parliaments.

### Direct contact between parliamentarians

135. **It is important that Members of national parliaments forge their own contacts with Members of other parliaments, including of course the European Parliament.** Political parties can be valuable channels by which contacts can be made and common understandings can be developed. In the view of the Committee, there remains value in face-to-face meetings to establish strong working relationships. **Particularly once good working relationships have been established, teleconferencing, videoconferencing and electronic communications should be used to full advantage, for quick exchanges of information and opinion.**

### Network of representatives of national parliaments

136. The great majority of national parliaments now appoint staff to represent the national parliament at EU level. This is a fairly new and developing network. When the House of Lords first appointed a representative in 2005 only a minority of other chambers had a similar post. Now, in 2014, all except one of the national parliaments is represented in some way. Although the remits of these national parliamentary officials differ significantly, there are some common features. These staff are usually based in Brussels. They keep national chambers informed about developments in the EU institutions, including negotiations on legislative proposals; help to ensure that the views of their parliaments are communicated effectively to the EU institutions; facilitate visits for Members of their parliaments to Brussels and support delegations at interparliamentary conferences such as COSAC; and share information between national parliaments. The House of Lords representative is also invaluable in liaising with UKRep, the UK Government's representation in Brussels.
137. Several witnesses commented on the utility of this informal network.<sup>111</sup> To take one specific example, Dr Ian Cooper, University of Oslo, noted that the network had supported consideration by national parliaments of the right to strike ('Monti II') proposal which, as explained in Chapter 4, led in 2012 to the issuing of the first Yellow Card:

“The National Parliament Representatives in Brussels played an indispensable role by sharing with one another real-time information about the state of play regarding the scrutiny of Monti II in their respective parliaments. Only with this network of representatives in place was it possible to compile an accurate and up-to-date picture of the likelihood of a reasoned opinion from each chamber, and thus a rough “vote count” as the process unfolded and thus the knowledge that a yellow card was within reach. The representatives shared this information with their home parliaments”.<sup>112</sup>

<sup>111</sup> For example, Finnish Eduskunta; Hellenic Parliament; Italian Camera dei Deputati; Polish Senat; Dr Anna-Lena Hogenauer & Professor Christine Neuhold; Dr Ben Crum & Professor John Erik Fossum.

<sup>112</sup> Dr Ian Cooper.

As Dr Cooper expresses, the informal network of national parliamentary officials, most of them co-located in Brussels, provides significant added value.

138. The UK Government suggested that “Parliament might consider the scale of its current representation in Brussels”,<sup>113</sup> citing the large representation from the German Parliament, but without indicating how the necessary additional resources would be found.<sup>114</sup> The informal network of national parliamentary representatives plays an essential role in keeping national parliaments informed about activity at EU level; communicating the views of national parliaments to the EU institutions; and sharing information between parliaments. The size of the UK representation is in line with the great majority of national chambers and parliaments, most of whom are represented by one or two staff. However we note that the UK will next take the Presidency in the second half of 2017, and in the lead up to and during the Presidency there may well be a need for a modest increase in staffing in order to support the Parliamentary dimension of the UK Presidency.

### **IPEX (Inter-Parliamentary EU Information Exchange website)**

139. IPEX is the website for EU Parliaments to exchange information.<sup>115</sup> It is a valuable source of information about the EU work of national parliaments, including the state-of-play of their EU scrutiny work, as well as the texts of their reasoned opinions and political dialogue contributions, as highlighted by many of our witnesses.<sup>116</sup>
140. However, other witnesses did identify current problems with IPEX. Dr Ian Cooper highlighted a lack of up-to-date information, which meant that IPEX could not be used as a “conduit of information” during a Yellow Card procedure.<sup>117</sup> This problem was also highlighted by Katarzyna Granat of the European University Institute, Italy, and several others.<sup>118</sup> Morten Messerschmidt MEP, a Vice-Chair of the European Parliament’s Constitutional Affairs Committee (AFCO), has also expressed concern about a lack of translations, which can render parliamentary documents inaccessible even when they are uploaded promptly.<sup>119</sup>
141. **It is important that the IPEX platform is easy to use, and that national parliaments upload information consistently and promptly. We note the potential burden that translating all parliamentary documents uploaded onto IPEX might place on national parliaments, and we suggest that the IPEX Board consider whether a technological solution, such as automated translations, might be implemented in the future.**

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<sup>113</sup> The Rt. Hon. David Lidington MP, Minister for Europe.

<sup>114</sup> The delegation from the German Parliament consists of seven officials from the Bundestag, one from the Bundesrat, and a number of political group staff sent by the parties.

<sup>115</sup> Available at [www.ipex.eu](http://www.ipex.eu).

<sup>116</sup> Estonian Riigikogu; Dr Patricia Conlan; Heleen Jalvingh; Gediminas Kirkilas.

<sup>117</sup> Dr Ian Cooper.

<sup>118</sup> Katarzyna Granat. See also Dr Anna-Lena Hogenauer & Professor Christine Neuhold; Italian Camera dei Deputati; Edmund Wittbrodt, Polish Senat.

<sup>119</sup> AFCO Committee meeting, 10 February 2014. See also Italian Camera dei Deputati; Asteris Pliakos; and the UK Government.

## CHAPTER 6: ECONOMIC AND FINANCIAL GOVERNANCE

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### ‘Genuine Economic and Monetary Union’

142. Growing tensions regarding the democratic legitimacy of the EU are particularly apparent in relation to economic and financial affairs. The drive towards greater integration in the wake of the eurozone crisis has placed the EU’s democratic processes under immense strain.
143. The EU institutions acknowledged as much in their 2012 proposals for ‘Genuine Economic and Monetary Union’, their vision for a strong and sustainable single currency.<sup>120</sup> The proposals have four pillars:
- an integrated financial framework;
  - an integrated budgetary framework;
  - an integrated economic policy framework;
  - democratic legitimacy and accountability.
144. On 14 February 2014, we published our report into ‘Genuine Economic and Monetary Union’ and the implications for the UK.<sup>121</sup> This report considered the first three of these pillars. The fourth pillar, described as “ensuring the necessary democratic legitimacy and accountability of decision-making within the EMU, based on the joint exercise of sovereignty for common policies and solidarity”, is of direct relevance to this inquiry.
145. The Commission’s 2012 ‘Blueprint for a Deep and Genuine Economic and Monetary Union’<sup>122</sup> emphasised that any work on democratic legitimacy as a cornerstone of Genuine Economic and Monetary Union needed to be based on two basic principles:
- that in ‘multilevel’ governance systems, accountability should be at the level where the executive decision is taken, whilst taking due account of the level where the decision has an impact;
  - that in developing EMU as in European integration generally, the level of democratic legitimacy always needs to remain commensurate with the degree of transfer of sovereignty from Member States to the European level. This holds true for new powers on budgetary surveillance and economic policy as much as for new EU rules on solidarity between Member States. Briefly put, further financial mutualisation requires commensurate political integration.
146. The Commission argued that the first principle meant that it is the European Parliament that primarily needs to ensure democratic accountability for any decisions taken at EU level, in particular by the Commission. A strengthened

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<sup>120</sup> Van Rompuy, H., President of the European Council (5 December 2012), *Towards a Genuine Economic and Monetary Union*. The report was prepared by President Van Rompuy in close collaboration with the Presidents of the European Commission, the Eurogroup and the European Central Bank, colloquially known as the ‘Four Presidents’.

<sup>121</sup> House of Lords European Union Committee, *‘Genuine Economic and Monetary Union’ and the implications for the UK* (8th report, Session 2013–14, HL Paper 134). This inquiry was undertaken by the Sub-Committee on Economic and Financial Affairs.

<sup>122</sup> COM(2012) 777 final: A Blueprint for a Deep and Genuine Economic and Monetary Union: Launching a European Debate.

role for EU institutions would therefore have to be accompanied by a strengthened role for the European Parliament.

147. As with the other pillars of ‘Genuine Economic and Monetary Union’, the Commission made a distinction between short-term and long-term steps. In the short term, it foresaw enhanced involvement of the European Parliament in the European Semester,<sup>123</sup> for instance through parliamentary debates before the European Council discusses the Commission’s Annual Growth Survey and before the adoption by the Council of the country-specific recommendations (CSRs). The Commission and the Council could be present at inter-parliamentary meetings to be held between representatives of the European Parliament and of national parliaments during the European Semester. Members of the Commission could also attend debates within national parliaments on the EU’s CSRs. The Blueprint suggested that the European Parliament could set up a special committee on euro matters. It also cited the proposed nomination by political parties of candidates for the office of Commission President, as is taking place in the context of the May 2014 European Parliament elections.
148. Under the heading of “issues for discussion in the case of treaty amendment”, the Commission also set out a number of longer-term proposals. These far-reaching proposals included a new power to require a revision of a national budget in line with European commitments, by legislative act agreed by co-decision; granting special decision-making powers to a European Parliament ‘euro committee’; strengthening the Eurogroup<sup>124</sup> to make it responsible for decisions concerning the euro area and its Member States; strengthening the scrutiny role of the European Parliament in relation to the European Central Bank and the European Stability Mechanism; and, in the event of a full fiscal and economic union with a substantial central budget, giving the European Parliament reinforced powers to co-legislate on autonomous taxation and provide the necessary democratic scrutiny for all decisions taken by the EU’s executive.
149. The Commission acknowledged that the role of national parliaments would always remain crucial, partly in ensuring legitimacy of Member States’ actions in the Council, but especially in terms of the conduct of national budgetary and economic policies, even if these were more closely coordinated by the EU. The Commission also stressed that co-operation between the European Parliament and national parliaments was valuable in providing for mutual understanding and common ownership for EMU in a ‘multilevel’ governance system. However, inter-parliamentary co-operation

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<sup>123</sup> The European Semester is the EU-level framework for co-ordinating and assessing Member States’ structural reforms and fiscal policy, and for monitoring and addressing macroeconomic imbalances. It begins with the publication of the Annual Growth Survey, in which the Commission sets out the key economic policy priorities for the year to come. EU leaders consider the report in March and agree on a common direction for fiscal and structural policies as well as financial sector issues. In April, Member States report to the Commission on the specific policies they are implementing and intend to adopt in order to boost growth and jobs, prevent or correct macroeconomic imbalances, and the concrete measures they plan to ensure compliance with the EU’s fiscal rules. The Commission then assesses the plans of the Member States and makes a series of country-specific recommendations to each of them. These policy recommendations are discussed between Member States’ Ministers in June, endorsed by EU leaders in July, and incorporated by governments into their national budgets and other reform plans during the National Semester. See [http://ec.europa.eu/economy\\_finance/economic\\_governance/the\\_european\\_semester/index\\_en.htm](http://ec.europa.eu/economy_finance/economic_governance/the_european_semester/index_en.htm).

<sup>124</sup> The Eurogroup is an informal body that brings together the finance ministers of countries whose currency is the euro.

did not ensure democratic legitimacy for EU decisions. That, according to the Commission, would require a parliamentary assembly representatively composed in which votes can be taken. It emphasised that the European Parliament, and only the European Parliament, is that assembly for the EU and hence for the euro.

### **A democratic deficit?**

150. Several of the witnesses to our ‘Genuine Economic and Monetary Union’ inquiry warned of a growing democratic deficit in the wake of the financial crisis,<sup>125</sup> and suggested that this deficit manifested itself in two specific ways.
151. The first was a lack of democratic consent for the so-called ‘austerity agenda’ being implemented across much of the EU periphery, and a lack of support in creditor states such as Germany for some of the solutions put forward, such as debt mutualisation. The political instability seen in many Member States in recent years is a testament to such tensions. Nigel Farage MEP, leader of the UK Independence Party (UKIP), questioned whether democracy could survive the policy of internal devaluation being imposed on the likes of Spain and Greece.<sup>126</sup> Professor Otmar Issing, Centre for Financial Studies, Goethe University, warned that any steps towards debt mutualisation without commensurate democratic legitimacy risked undermining the principle of “no taxation without representation”.<sup>127</sup>
152. Such tensions were particularly apparent in the context of new tools for EU economic surveillance, notably the European Semester. Sharon Bowles MEP, Chair of the European Parliament Economic and Monetary Affairs (ECON) Committee, acknowledged that the European Semester was a sensitive issue, noting that the Commission often examined national budgets before national parliaments, leading to a sense of disempowerment.<sup>128</sup>
153. Dr Daniela Schwarzer, Senior Associate, German Institute for International and Security Affairs (SWP), warned that the current economic surveillance framework was too technocratic, lacked legitimacy, and made “a very left policy impossible for a member state”. She concluded that “the attempt to depoliticise economic policymaking is not compatible with the way national democracies should work”.<sup>129</sup>
154. The second problem was the asymmetry between the growing power of supranational institutions such as the ECB, the Commission, the Eurogroup and the ‘Troika’<sup>130</sup>, and their lack of democratic accountability. Nigel Farage MEP argued that the roles of eurozone national parliaments in deciding and approving national budgets were being eroded by Genuine Economic and

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<sup>125</sup> Evidence to the Genuine Economic and Monetary Union inquiry. See Professor Rosa Lastra; Elisa Ferreira MEP, Q 159. All references to written and oral evidence in Chapter 6 of this report are to the evidence collected for the Genuine Economic and Monetary Union inquiry. This evidence is available at the webpage of the Sub-Committee on Economic and Financial Affairs, [www.parliament.uk/hleua](http://www.parliament.uk/hleua).

<sup>126</sup> Nigel Farage MEP.

<sup>127</sup> Q 299.

<sup>128</sup> Q 210.

<sup>129</sup> Q 240.

<sup>130</sup> In this context the ‘Troika’ comprises the Commission, ECB and IMF. Collectively they have been responsible for negotiations with indebted Member States on policies that are needed to put their economies back on the path of sustainable economic growth and job creation. Note that a very different ‘Troika’ is cited in relation to COSAC in Chapter 5 of this report (Box 4 and paragraph 119).

Monetary Union, “with control being drawn to EU institutions which are further removed from the citizen and have accordingly less democratic legitimacy”.<sup>131</sup>

155. Professor Willem Buiter, Chief Economist, Citigroup, told us that he had “a major problem with the growing role of institutions such as the European Commission and the European Central Bank, which basically are run by unelected technocrats without political legitimacy”, adding that “there has been, and there promises to be in the next few years, a major increase in the power of these institutions without any commensurate increase in their accountability to the electorate”.<sup>132</sup> The European Parliament’s ECON Committee has been engaged in a major piece of work examining the role of the ‘Troika’, noting that many citizens of the EU sense a lack of accountability and transparency in its working methods.<sup>133</sup>
156. Our witnesses were sceptical as to whether the ‘Genuine Economic and Monetary Union’ proposals, at least those envisaged in the short-term, could provide a solution. Katinka Barysch, Deputy Director, Centre for European Reform, cautioned against the idea that the EU’s democratic deficit could be closed through a “quick institutional fix” to what is a “very, very deep political problem”. She did not think that “the people in Europe will start loving Europe again if the European Parliament has a debate on the Commission’s annual growth survey ahead of the European semester”.<sup>134</sup>

### **Providing democratic consent: the role of national parliaments**

157. Several of our witnesses stressed that the role of national parliaments needed to be enhanced if democratic legitimacy was to be restored. Sir Nigel Wicks cited the Commission Blueprint’s acknowledgement of the role of national parliaments, but said that “when you read the rest of the document you see that it forgets that statement. It is a centralising document ... I am not criticising the European Parliament, which in many ways is a very effective scrutiniser of legislation. ... But this issue of consent comes from national parliaments rather than the European Parliament”.<sup>135</sup>
158. Mats Persson, Director, Open Europe, agreed that “national parliaments simply have to be involved to a much greater extent ... prior to decisions being made”. This would prevent a repeat of the “ridiculous situation” in recent years, “where EU leaders agree to something during a panic-stricken weekend and then they spend months, or even years ... to try to figure out what they actually agreed, because their national parliaments have uncomfortable questions”.<sup>136</sup>
159. In a speech to the Vilnius COSAC in October 2013 Eva Kjer Hansen, Danish Folketing, stated that, while “both the European Parliament and national parliaments must play a leading role”, it was essential for national

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<sup>131</sup> Nigel Farage MEP.

<sup>132</sup> Q 57.

<sup>133</sup> See [www.europarl.europa.eu/committees/en/econ/subject-files.html?pid=20140114CDT77303#menuzone](http://www.europarl.europa.eu/committees/en/econ/subject-files.html?pid=20140114CDT77303#menuzone)

<sup>134</sup> Q 15.

<sup>135</sup> Q 186

<sup>136</sup> Q 15.

parliaments to be fully involved in the EU's democratic framework for economic governance.<sup>137</sup>

160. On the other hand, Graham Bishop argued that “the starting point has to be the European Parliament ... we have a parliament that works. ... It needs to work better and be seen by the citizens, the voters, as more relevant.” He said that the only practical way in which the ECB could be accountable was for the ECB President to go to Brussels and appear before the ECON Committee. The idea that he could go around 28 different countries was not realistic. National Parliaments had a key role to play, but in terms of holding their own executive to account.<sup>138</sup>
161. Sharon Bowles MEP stressed that the European Parliament was seeking to keep national Parliaments as involved as possible in the evolving system of economic governance. On the Blueprint's proposal for a European Parliament euro committee, Mrs Bowles said that it was not easy to detach “eurozone only” issues from broader EU concerns. In addition, she pointed out that many non-eurozone Member States possessed considerable expertise.<sup>139</sup> Syed Kamall MEP predicted that there would be an attempt to appoint such a Committee in the new parliamentary term. He was concerned that this would set an unhelpful precedent.<sup>140</sup> Of course, any such move would have significant consequences for non-eurozone Member States such as the UK.
162. In early February 2014 it was reported that the European Parliament was considering options for enhancing euro area governance after the 2014 elections, including increasing the resources available to the ECON Committee, or forming a Sub-Committee to scrutinise EMU matters. For the Sub-Committee option, it was reported that it would be left to the political groups whether or not to restrict membership to MEPs from euro area Member States.<sup>141</sup>

### Conclusions

163. **The political and economic reforms required in the wake of the eurozone crisis have challenged the EU's democratic framework. The Commission asserts that “accountability should be ensured at that level where the respective executive decision is taken, whilst taking due account of the level where the decision has an impact”.<sup>142</sup> Given the dramatic consequences of the crisis on the lives of ordinary citizens across the EU, this is over-simplistic and unrealistic.**
164. **An asymmetry has developed between the growing powers of key institutions such as the Commission, the ECB, the Eurogroup and the ‘Troika’, and the ability of citizens to hold them to account for their actions. As political tensions across the EU testify, a serious**

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<sup>137</sup> Speech by Eva Kjer Hansen, COSAC Conference held in Vilnius, 29 October 2013. Transcript available from [www.cosac.eu](http://www.cosac.eu).

<sup>138</sup> Q 33. See also Roger Helmer, Q 210.

<sup>139</sup> Q 210.

<sup>140</sup> Q 212.

<sup>141</sup> [www.euractiv.com](http://www.euractiv.com) (5 February 2014), “UK Conservatives balk at plans for Eurozone parliament”.

<sup>142</sup> COM(2012) 777 final: A Blueprint for a Deep and Genuine Economic and Monetary Union: Launching a European Debate.

**democratic deficit now exists. The European Parliament has a vital role to play in holding EU institutions to account.**

165. **The proposal for a euro area Sub-Committee of the European Parliament would have significant negative consequences. First, it could undermine the unified structure of the European Parliament. Second, it risks losing the perspective and expertise of parliamentarians from outside the eurozone. Third, it risks exacerbating divisions between eurozone and non-eurozone Member States, with the concomitant danger that those in one group propose policies that are not in the interests of those in the other. This is of particular concern for the UK.**
166. **While the European Parliament does have a key role to play, the principle of democratic accountability can only be upheld if national parliaments also have an enhanced role. We are therefore extremely concerned at how little emphasis is placed on the role of national parliaments in the EU institutions' proposals for 'Genuine Economic and Monetary Union'.**
167. **While we welcome moves towards greater inter-parliamentary co-operation between the European Parliament and national parliaments, they are not enough. National parliaments must have more effective purchase on the steps towards enhanced economic surveillance, as encapsulated in the European Semester. This is an essential element of the key role of national parliaments in scrutinising the economic and financial policies of their national governments. Means must be found to ensure that EU institutions are accountable not only to the European Parliament but also to national parliaments, in particular when such significant decisions about their future are being taken. Further steps towards greater eurozone integration are likely to follow in the years to come. Unless steps are taken to strengthen national parliaments' role in oversight of such developments, the democratic foundations of the EU could be undermined.**



## CHAPTER 7: SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

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### Chapter 1: Introduction

168. This report is intended as a contribution to an important and ongoing debate. Because of this, in several places we put forward a range of practical options which could improve the involvement of national parliaments in the scrutiny, formulation and implementation of EU policies, for further consideration by national parliaments and others, rather than presenting a definitive blueprint for change. We look forward to continuing this debate with Members of other parliaments, representatives of the EU institutions, and others. (Paragraph 15)
169. In the context of our own chamber we consider that this report raises important questions about the effective scrutiny of EU matters, and so we make this report to the House for debate. (Paragraph 16)
170. Treaty change is not necessary to enhance the role of national parliaments in the EU: substantial improvements can, and should, be achieved without treaty change. To a significant degree it is a matter for the will of parliamentarians to insist on securing substantial and lasting changes, and of their governments to give effect to that will. Important improvements could be achieved through the autonomous action of national parliaments, and through actions collectively agreed between the national parliaments, the Commission, the Council and the European Parliament where relevant. This report sets out options for reforms which could be pursued in such agreements. (Paragraph 19)
171. Even in these difficult economic circumstances it is important that national parliaments, including that of the UK, ensure that sufficient resources are devoted not only to effective scrutiny but also to other aspects of their involvement with the European institutions and each other. Expenditure on improving EU legislation through scrutiny is seldom wasted. (Paragraph 20)

### Chapter 2: National scrutiny

#### *Effective national scrutiny*

172. Effective scrutiny by national parliaments of the activities of their own governments in the European Union is essential. It is fundamental to ensuring that there is accountability, and legitimacy, for the actions of the Union. It should be recognised as core business for every parliament. (Paragraph 21)
173. National scrutiny systems will inevitably vary according to the national context. Whatever system suits the national context, it is vital that national parliaments carefully scrutinise the EU activities of their national governments, in order to ensure that the positions of national Ministers are effectively examined, and that the Ministers who constitute the Council are held to account for their decisions. (Paragraph 23)
174. While each national parliamentary chamber is unique, we can nonetheless learn from each other. COSAC can be a very good forum for this learning. We cite two examples relating to our work in the House of Lords. First, we

have taken a cue from the Dutch Tweede Kamer, amongst others, and begun to use the Commission's annual work programmes more explicitly in examining the year ahead and publicly highlighting areas of particular interest. Second, this Committee also intends to follow practice in other parliaments and experiment with holding sessions with the UK Minister for Europe before European Councils, to feed into Government preparations, rather than holding them afterwards to discuss the conclusions reached. (Paragraph 24)

175. In addition, we continue to seek to improve our engagement with the Members of the House of Lords who are not currently serving on the EU committees. In this context, we observe that it is important that the whole House continues to scrutinise the EU activities of the UK Government, through debate, questioning and the scrutiny of legislation. As we have said, this is core business, not the preserve of a group of specialists. (Paragraph 25)
176. We are always willing to consider, with the Government and our colleagues in the Commons, improvements to the scrutiny process. In our day-to-day work scrutinising EU policies and the EU activities of the UK Government, it is essential that the Government consistently provide high quality and timely written information, in the form of explanatory memorandums on EU documents and correspondence, and that Ministers meet committees regularly. A good flow of information by government officials, including the UK Representation in Brussels (UKRep), is also crucial. The UK Government usually does this well and the current Minister for Europe, the Rt. Hon. David Lidington MP, has been an effective advocate for national parliamentary scrutiny. However, there are unacceptable variations in performance including in the quality of explanatory memorandums, particularly between departments, and we urge the Government to continue to focus on consistently supporting and engaging effectively with national parliamentary scrutiny of EU matters. (Paragraph 27)

#### *Different systems*

177. In our view, effective EU scrutiny systems are most likely to include elements of both examination of documents and direct discussions with Ministers (and other interested parties). Scrutiny of documents enables parliaments to engage early on with Commission consultations, and to propose precise changes to legislative proposals. Contact with Ministers allows direct exchanges of views, and allows Members to influence or control the government's position, or to challenge the government to explain and defend their view. (Paragraph 28)
178. It is important to involve a wide range of Members, and committees where possible, in the examination of European policies. Such policy expertise needs to be combined effectively with knowledge and understanding of EU policymaking processes and EU institutions. (Paragraph 30)

#### *Practicalities of scrutiny work*

179. It is often helpful if there is effective prioritisation, so that each national chamber and its committees concentrate on the policies which matter the most to it. (Paragraph 33)

180. Even when parliaments do prioritise consideration of the most important policies, it must be recognised that effective scrutiny is resource-intensive, in terms of Member time and staff time. (Paragraph 34)
181. Contributions by national parliaments must have, and must be seen to have, an influence on EU policy development and formulation. It is important that the Commission, Council and European Parliament make effective use of dialogue with national parliaments, and make clear where national parliaments have had an effect on the policymaking process. (Paragraph 35)

### Chapter 3: Dialogue with the European Commission

#### *Engagement between national parliaments and the Commission*

182. In this chapter we make suggestions for possible improvements, which national parliaments may wish to take up in discussion with national governments and with the Commission. In summary these possible improvements, which are considered in greater detail below, are:
- the increased early involvement of national parliaments in the development of EU legislative proposals and other policies in advance of the Commission making formal communications and proposals for legislation;
  - that the Commission should make clear when and how national parliaments have influenced the development of policies, by:
    - identifying national parliament contributions in summary reports on consultation exercises and in subsequent communications on the policy, including how the policy has been shaped or modified in response,
    - responding promptly to national parliament contributions under the general political dialogue, usually within three months,
    - using its annual report on relations with national parliaments to identify the impacts of national parliament engagement;
  - that the new Commission should make a commitment that Commissioners and senior officials will meet committees of national parliaments as a core part of their duties;
  - that a procedure should be developed to allow a group of national parliaments to make constructive policy or legislative suggestions (a ‘Green Card’). (Paragraph 40)

#### *Early engagement with policy proposals*

183. The Committee supports effective early engagement by national parliaments in the development of EU legislative proposals and other policies. In this way, drawing on their diverse experience and expertise, national parliaments can make a distinctive contribution to the development of policy at an early stage, before considerable time and political capital has been invested in a particular idea, and before firm proposals have been drawn up which the Commission may then feel obliged to defend. (Paragraph 43)
184. The Commission must engage fully with the views put forward by national parliaments early on in the policymaking process, and must be seen to

engage fully with them by making clear when and how national parliaments have had a significant influence on the early development of policies. We note that if the Commission does not engage constructively and deal with concerns raised by national parliaments under the informal political dialogue, it becomes more likely that national parliaments will be forced to use the reasoned opinion procedure to ensure that their views are addressed in a more formal way. Put another way, the more that the Commission engages positively with the concerns of national parliaments as expressed in the political dialogue, the less likely it is that parliaments will feel compelled to issue reasoned opinions. (Paragraph 48)

185. When national parliaments engage upstream, and make contributions to consultations, their views should be identified and specifically addressed in a discrete section of the Commission's summary report on the consultation, including where appropriate how the proposal has been modified in response. National parliament contributions and the responses to them should also be identified in subsequent documentation relating to the proposal including impact assessments and communications accompanying legislative proposals. This will show that the views of national parliaments have been given appropriate consideration; and help national parliaments to continue to pursue key points. (Paragraph 49)
186. When national parliaments make contributions to the general political dialogue (not in response to specific consultation exercises), these contributions should receive a response within three months, clearly addressing the points made and, where appropriate, explaining how their views have been taken into account. (Paragraph 50)
187. The Commission should use its annual reports on relations with national parliaments to identify policy impacts of engagement by national parliaments, as well as simply outlining the number of interactions with the Commission. (Paragraph 51)

#### *Direct contact with Commissioners and officials*

188. The Commission which will be appointed in 2014 should make a commitment that its Commissioners and senior officials will be willing to meet committees of national parliaments as a core part of their duties, subject of course to practical limitations and without imposing an impossible burden. This must be a clear and firm commitment which binds the whole College: it is too important to be left to the whim of individual Commissioners. (Paragraph 54)

#### *Making proposals: a Green Card?*

189. In principle, we agree that there should be a way for a group of like-minded national parliaments to make constructive suggestions for EU policy initiatives, which may include reviewing existing legislation, complementing the existing 'Yellow Card' with a 'Green Card'. We note the concerns raised about intruding on the Commission's formal right of initiative, and we would envisage a 'Green Card' as recognising a right for a number of national parliaments working together to make constructive policy or legislative suggestions, including for the review or repeal of existing legislation, not creating a (legally more problematic) formal right for national parliaments to initiate legislation. (Paragraph 58)

190. A ‘Green Card’ agreement would need to include an undertaking by the Commission that it would consider such suggestions carefully, and either bring forward appropriate legislative or other proposals (or consult on them), or explain why it had decided not to take the requested action. (Paragraph 59)

#### Chapter 4: The Reasoned Opinion procedure

##### *Overview*

191. The reasoned opinion procedure can, and must, be made more effective. It is an important way in which national parliaments can contribute to the making of EU legislation; and can thereby enhance the quality and legitimacy of that legislation. (Paragraph 67)
192. National parliaments working together may wish to consider which particular changes they would like to see made to the operation of the reasoned opinion procedure. (Paragraph 69)
193. The key elements of the procedure, including its scope, the deadlines, and the effect of a Yellow Card being issued, are set out in the EU Treaties and could only formally be changed through a revision to the Treaties. However, it would be possible for the Member States acting together in the Council, in co-operation with the European Commission, to agree a package of improvements. The parliaments, Council and Commission could undertake to operate the reasoned opinion procedure consistently with the agreed changes. (Paragraph 70)
194. These are some of the options for inclusion in an inter-institutional agreement to improve the operation of the reasoned opinion procedure:
- *scope*: including the proportionality principle within the procedure, and a check that an appropriate legal base is being used;
  - *deadline*: extending the time period for reasoned opinions to be submitted, from 8 weeks, to 12 or 16 weeks;
  - *Commission engagement*: improving the quality of the Commission’s explanatory memorandums on subsidiarity and its engagement with reasoned opinions;
  - *effect*: establishing that if a Yellow Card is triggered the Commission will either withdraw or substantially amend the proposal;
  - *threshold*: considering whether the threshold for triggering a Yellow Card should be lowered;
  - *timing*: considering whether the reasoned opinion procedure might somehow remain open, or be re-engaged, later in the legislative procedure. (Paragraph 71)

##### *Scope*

195. While there may be a useful role for COSAC in sharing practical experience in how to conduct subsidiarity assessments and how to prepare an effective reasoned opinion, we do not think that it would be sensible to attempt a more precise definition of the subsidiarity principle than the definition that is already set out in the EU Treaties. (Paragraph 74)

196. Witnesses have made a strong case that the reasoned opinion procedure should be extended to include the principle of proportionality. There is also a strong case that the procedure should encompass whether the proposal is brought forward under an appropriate legal base. We support both of these suggestions. (Paragraph 79)

#### *Deadline*

197. We consider that the time limit within which national parliaments can issue a reasoned opinion should be extended, to 12 or 16 weeks. (Paragraph 84)

#### *Commission engagement*

198. It is the responsibility of the Commission to provide a clear explanation of why it considers that a proposal complies with the principles of subsidiarity and proportionality. In the absence of a comprehensive and convincing assessment by the Commission, it is appropriate for a national parliament to come to the conclusion that it has not been proven that a proposal complies with the subsidiarity principle. (Paragraph 86)
199. Every reasoned opinion merits a reasoned response. When a reasoned opinion is issued by a national parliament, whether or not a Yellow Card is triggered, that opinion should be seriously considered by the Commission, and a response should be prepared which addresses the concerns raised in that reasoned opinion, in a timely manner. (Paragraph 88)
200. The Committee does not consider it appropriate for the Commission to assume the sole responsibility for deciding what arguments do, or do not, come within the ambit of the subsidiarity principle. There should be dialogue between national parliaments and the Commission, to determine appropriate guidelines for the Commission to respond to reasoned opinions, whether or not a Yellow Card has been issued. (Paragraph 90)

#### *Effect*

201. The Committee considers that the Commission should make an undertaking that, when a Yellow Card is issued, it will either drop the proposal in question, or substantially amend it in order to meet the concerns expressed. (Paragraph 95)

#### *Threshold*

202. The suggestion that the threshold for triggering a Yellow Card should be reviewed deserves further consideration. (Paragraph 96)

#### *Timing*

203. The suggestion that the reasoned opinion procedure might remain open, or be re-engaged at some later point, deserves further consideration. (Paragraph 98)

#### *Another aspect of the legislative procedure: first reading deals*

204. It is vital that national parliaments should have a recognised opportunity for their voices to be heard during the later stages of legislative negotiations, particularly when those negotiations result in major changes to draft legislation. We suggest that the Council consider making a commitment that, if a legislative proposal is significantly altered during its consideration by the

co-legislators, the Council will allow sufficient time, and no less than 12 weeks, for each national parliament to scrutinise the new or significantly altered elements of the proposal. This would be a logical development of the role of national parliaments in EU policymaking and without such a commitment there will remain a fundamental gap in the legislative process. (Paragraph 101)

## Chapter 5: Inter-parliamentary co-operation

### *Co-operation with the European Parliament*

205. National parliaments and the European Parliament have a vital, and complementary, role to play in the European Union. It is not a 'zero sum' game: greater involvement for one should not be at the expense of the other. (Paragraph 108)

206. There is scope for national parliaments and the European Parliament to engage more effectively with each other, sharing information and debating key policies. Several witnesses to our inquiry made useful suggestions as to how this might be done:

- there could be more direct contact between committees of national parliaments and committees of the European Parliament;
- when national parliaments or their committees have a close interest in a particular legislative proposal, they should be encouraged to contact the relevant rapporteur and shadow rapporteur on the responsible committee of the European Parliament;
- national parliaments and the European Parliament could reach agreement that EP rapporteurs could provide informal briefings to Members of national parliaments on the progress of trilogue negotiations;
- videoconferencing could be used to facilitate discussions between committees;
- a brief overview of comments by national parliaments might be included in reports prepared by European Parliament Committees. (Paragraph 109)

207. Where it is practical and mutually useful, national parliaments and the European Parliament should enhance their co-operation and sharing of information, perhaps on the basis of discussions on these ideas and others at the Conference of Parliamentary Committees for EU Affairs (COSAC). (Paragraph 110)

### *Forms of inter-parliamentary co-operation*

208. It is vital that Members of the parliaments of the European Union establish the habit of co-operation on European matters. Communication between Members of national parliaments, and between Members of national parliaments and the European Parliament, is essential, to share information, to debate policies, and to reach common understandings. However, it must be recognised that parliamentarians have a limited amount of time, and conferences must offer clear 'added value' in order for Members to be able to prioritise participation at them. In the view of this Committee, the number of

inter-parliamentary conferences must be kept within reasonable limits and where it is appropriate we should be willing to rationalise the conference framework. We must ensure that conferences have clear and well managed agendas; that they have clear intended outcomes; and above all that they encourage wide participation and lively debate as opposed to long set-piece speeches. (Paragraph 114)

### *COSAC*

209. Ideas which might be considered for changes to COSAC's procedures include:

- a reduction in the number and length of general reports from the Presidency and the Commission, allowing plenty of scope for contributions from delegates;
- agendas which feature well focused and specific topics for debate, perhaps including a topical debate;
- appointing a longer-term chair of COSAC (following the example of the European Council);
- ad hoc working groups (working remotely) to prepare discussion papers, or to take forward agreed conclusions;
- a standing group of representatives of EU affairs committees;
- the President of the European Council attending COSAC once per year. (Paragraph 119)

210. The issue of resources for COSAC may also need to be considered and the small COSAC secretariat increased, particularly if its procedures are to be changed in some way, as suggested in the previous paragraph. (Paragraph 120)

211. COSAC can disseminate good practices and procedures that might be useful for other parliaments. COSAC's biannual reports and informal presentations by Members of national parliaments are two existing ways in which this dissemination of good practice can be achieved. COSAC might wish to consider whether an informal panel of experienced Members of COSAC from a range of different Member States and scrutiny systems might be willing to offer advice to national parliaments on their scrutiny of EU matters. The staff of European affairs committees of national parliaments can also share practical experience and information about their procedures, to help them support effective European scrutiny work by their committees. (Paragraph 121)

### *Inter-parliamentary conference on economic and financial governance*

212. Inter-parliamentary co-operation on all matters, including on economic and financial matters, must continue to involve all 28 Member States. (Paragraph 125)

### *Direct contact between parliamentarians*

213. It is important that Members of national parliaments forge their own contacts with Members of other parliaments, including of course the European Parliament. Particularly once good working relationships have



been established, teleconferencing, videoconferencing and electronic communications should be used to full advantage, for quick exchanges of information and opinion. (Paragraph 135)

*IPEX (Inter-parliamentary EU Information Exchange website)*

214. It is important that the IPEX platform is easy to use, and that national parliaments upload information consistently and promptly. We note the potential burden that translating all parliamentary documents uploaded onto IPEX might place on national parliaments, and we suggest that the IPEX Board consider whether a technological solution, such as automated translations, might be implemented in the future. (Paragraph 141)

**Chapter 6: Economic and financial governance**

215. The political and economic reforms required in the wake of the eurozone crisis have challenged the EU's democratic framework. The Commission asserts that "accountability should be ensured at that level where the respective executive decision is taken, whilst taking due account of the level where the decision has an impact". Given the dramatic consequences of the crisis on the lives of ordinary citizens across the EU, this is over-simplistic and unrealistic. (Paragraph 163)
216. An asymmetry has developed between the growing powers of key institutions such as the Commission, the ECB, the Eurogroup and the 'Troika', and the ability of citizens to hold them to account for their actions. As political tensions across the EU testify, a serious democratic deficit now exists. The European Parliament has a vital role to play in holding EU institutions to account. (Paragraph 164)
217. The proposal for a euro area Sub-Committee of the European Parliament would have significant negative consequences. First, it could undermine the unified structure of the European Parliament. Second, it risks losing the perspective and expertise of parliamentarians from outside the eurozone. Third, it risks exacerbating divisions between eurozone and non-eurozone Member States, with the concomitant danger that those in one group propose policies that are not in the interests of those in the other. This is of particular concern for the UK. (Paragraph 165)
218. While the European Parliament does have a key role to play, the principle of democratic accountability can only be upheld if national parliaments also have an enhanced role. We are therefore extremely concerned at how little emphasis is placed on the role of national parliaments in the EU institutions' proposals for 'Genuine Economic and Monetary Union'. (Paragraph 166)
219. While we welcome moves towards greater inter-parliamentary co-operation between the European Parliament and national parliaments, they are not enough. National parliaments must have more effective purchase on the steps towards enhanced economic surveillance, as encapsulated in the European Semester. This is an essential element of the key role of national parliaments in scrutinising the economic and financial policies of their national governments. Means must be found to ensure that EU institutions are accountable not only to the European Parliament but also to national parliaments, in particular when such significant decisions about their future are being taken. Further steps towards greater eurozone integration are likely to follow in the years to come. Unless steps are taken to strengthen national

parliaments' role in oversight of such developments, the democratic foundations of the EU could be undermined. (Paragraph 167)

## APPENDIX 1: LIST OF MEMBERS AND DECLARATION OF INTERESTS

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The Members of the Committee who conducted this inquiry were:

Lord Boswell of Aynho (Chairman)  
 Lord Bowness  
 Lord Cameron of Dillington  
 Lord Carter of Coles†  
 Baroness Corston  
 Lord Dear  
 Baroness Eccles of Moulton  
 Lord Foulkes of Cumnock  
 Lord Hannay of Chiswick  
 Lord Harrison  
 Lord Maclennan of Rogart  
 Lord Marlesford  
 Baroness O’Cathain  
 Baroness Parminter  
 Baroness Quin†  
 The Earl of Sandwich  
 Baroness Scott of Needham Market  
 Lord Tomlinson  
 Lord Tugendhat  
 Baroness Young of Hornsey\*  
 Lord Wilson of Tillyorn\*

† Lord Carter of Coles left the Committee in December 2013 and Baroness Quin joined the Committee.

\* Baroness Young of Hornsey left the Committee in October 2013 and Lord Wilson of Tillyorn joined the Committee.

### Declaration of Interests

Lord Boswell of Aynho (Chairman)  
*Salaried Officer of the House of Lords (details in Register)*  
*Income is received as a Partner (with wife) from land and family farming business trading as EN & TE Boswell at Lower Aynho grounds, Banbury, with separate rentals from cottages and grazing*

Lord Bowness  
*None relevant*

Lord Cameron of Dillington  
*Farmer in receipt of the single farm payment*

Baroness Corston  
*None relevant*

Lord Dear  
*None relevant*

Baroness Eccles of Moulton  
*None relevant*

Lord Foulkes of Cumnock  
*None relevant*

Lord Hannay of Chiswick

*Member, Advisory Board, Centre for European Reform*

*Member, British Influence's Forum for the Future of Europe*

Lord Harrison

*None relevant*

Lord Maclennan of Rogart

*None relevant*

Lord Marlesford

*Farmer in receipt of monies from the Common Agricultural Policy*

Baroness O'Cathain

*None relevant*

Baroness Parminter

*None relevant*

Baroness Quin

*Vice-President of the European Movement (unpaid, honorary position)*

The Earl of Sandwich

*None relevant*

Baroness Scott of Needham Market

*None relevant*

Lord Tomlinson

*None relevant*

Lord Tugendhat

*None relevant*

Lord Wilson of Tillyorn

*None relevant*

A full list of registered interests of Members of the House of Lords can be found at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

## APPENDIX 2: LIST OF WITNESSES

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Evidence is published online at <http://www.parliament.uk/hleu> and available for inspection at the Parliamentary Archives (020 7219 5314).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with \* gave both oral evidence and written evidence. Those marked with \*\* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### Oral evidence in chronological order

**	QQ 1–16	Charles Grant, Director, Centre for European Reform
**		Mats Persson, Director, Open Europe
*	QQ 18–33	Professor Adam Cygan, University of Leicester
**		Professor Simon Hix, London School of Economics and Political Science
*		Dr Julie Smith, Senior Lecturer, University of Cambridge
**	QQ 34–50	Eva Kjer Hansen, Chair, European Affairs Committee, Folketing, Denmark
**		Averof Neofytou, Chairman, Committee on Foreign and European Affairs, House of Representatives, Cyprus
**	QQ 51–58	Andrzej Gałażewski, Vice Chairman of European Union Affairs Committee, Sejm, Poland
**	QQ 59–75	René Leegte, Deputy Chair of the European Affairs Committee, Tweede Kamer de Staten-Generaal (The Dutch House of Representatives), The Netherlands
**	QQ 68–75	Dominic Hannigan TD, Chairman, Committee on European Union Affairs, Houses of the Oireachtas (Irish Parliament), Ireland
*	QQ 76–88	Dr Richard Corbett, Member of the Cabinet of the President, European Council
*	QQ 89–99	Maroš Šefčovič, Vice-President of the European Commission
**	QQ 100–114	Andrew Duff MEP
**	QQ 115–124	Ashley Fox MEP
**	QQ 125–136	Miguel Angel Martínez Martínez MEP, Vice-President, European Parliament
**		Carlo Casini MEP, Chair of the Constitutional Affairs Committee, European Parliament
**	QQ 137–141	Thierry Repentin, Minister for European Affairs, French Government

- \* QQ 142–146 Simon Sutour, President of the European Affairs Committee, André Gattolin, Richard Yung, Éric Bocquet, Catherine Tasca, Joëlle Garriaud-Maylam, and Collette Mélot, Members of the European Affairs Committee, French Sénat, France
- \* QQ 147–157 Rt. Hon. David Lidington MP, Minister of State for Europe at the Foreign and Commonwealth Office

### Alphabetical list of all witnesses

- Dr Gavin Barrett, University College Dublin
- Professor Dr iur Hermann-Josef Blanke, University of Erfurt, Germany
- Mladen Cherveniakov, Chairman of the Committee on European Affairs and Oversight of the European Funds, National Assembly of Bulgaria
- \*\* Carlo Casini MEP, Chair of the Constitutional Affairs Committee, European Parliament (QQ 125–136)
- Sonia Piedrafita, Centre for European Policy Studies (CEPS)
- \*\* Charles Grant, Director, Centre for European Reform (QQ 1–17)
- Dr iur Patricia Conlan, Member, Institute for the Study of Knowledge in Society, University of Limerick, Ireland
- Dr Ian Cooper, University of Oslo
- \* Dr Richard Corbett, Member of the Cabinet of the President, European Council (QQ 76–88)
- Ben Crum, Vrije Universiteit Amsterdam and John Erik Fossum, University of Oslo
- \* Professor Adam Cygan, University of Leicester
- \*\* Averof Neofytou, Chairman, Committee on Foreign and European Affairs, House of Representatives, Cyprus (QQ 34–50)
- Miroslav Krejča, Chairman of the Committee on European Affairs, The Senáte, Parliament of Czech Republic
- \*\* Eva Kjer Hansen, Chair, European Affairs Committee, Folketing, Denmark (QQ 34–50)
- \*\* Andrew Duff MEP (QQ 100–114)
- Arto Aas, Chair, European Union Affairs Committee, Riigikogu, Estonia
- Eduskunta, Parliament of Finland
- Foreign Affairs Committee and European Affairs Committee Chairs and Members, Assemblée Nationale of France
- \* Simon Sutour, President of the European Affairs Committee, André Gattolin, Richard Yung, Éric Bocquet, Catherine Tasca, Joëlle Garriaud-Maylam and Collette Mélot, Members of the European Affairs Committee, Sénat, France (QQ 142–146)
- \*\* Ashley Fox MEP (QQ 115–124)

- Katarzyna Granat, European University Institute (EUI), Italy  
 Professor Norbert Lammert, President of the Bundestag, Germany  
 Committee on European Affairs, Hellenic Parliament, Greece  
 Oskar Josef Gstrein and Darren Harvey  
 Claudia Heffler, University of Cologne, Valentin Kreilinger, Jacques Delors Institute, Olivier Rozenberg, Centre d'études européennes, Sciences Po (Paris), and Wolfgang Wessels, University of Cologne
- \*\* Professor Simon Hix, London School of Economics and Political Science (QQ 18–33)  
 Dr Anna-Lena Högenauer, Maastricht University and Professor Christine Neuhold, on behalf of the OPAL research team Maastricht University  
 Julian M. Hörner, London School of Economics and Political Science  
 Dr Ariella Huff, University of Cambridge  
 Dr Joanne Hunt, Cardiff University
- \*\* Dominic Hannigan TD, Chairman, Committee on European Union Affairs, Houses of the Oireachtas (Irish Parliament), Ireland (QQ 68–75)  
 Camera dei Deputati, Italy  
 Heleen Jalvingh, UCL, School for Public Policy  
 Davor Jancic, London School of Economics and Political Science  
 Valentin Kreilinger, Jacques Delors Institute and Olivier Rozenberg, Centre d'études européennes, Sciences Po (Paris)  
 Saeima, Latvia
- \* The Rt. Hon. David Lidington MP, Minister for Europe, Foreign and Commonwealth Office (QQ 147–157)  
 Gediminas Kirkilas, Chair of the EU Affairs Committee, Seimas, Lithuania  
 Professor Stelio Mangiameli, University of Teramo
- \*\* Miguel Angel Martínez Martínez MEP, Vice-President, European Parliament (QQ 125–136)
- \*\* René Leegte, Deputy Chair of the European Affairs Committee, Tweede Kamer de Staten-Generaal (The Dutch House of Representatives), The Netherlands (QQ 59–75)
- \*\* Mats Persson, Director, Open Europe (QQ 1–17)  
 Dr Eleni Panagiotarea  
 Asteris Pliakos
- \*\* Mr Andrzej Gałazewski, Vice Chairman of European Union Affairs Committee, Sejm, Poland (QQ 51–58)  
 Mr Edmund Wittbrodt, Chairman of the European Affairs Committee, Senat, Poland

- ★★ Thierry Repentin, Minister for European Affairs, French Government (QQ 137–141)
- ★ Maroš Šefčovič, Vice President of the European Commission (QQ 89–99)  
National Council of Slovenia
- ★ Dr Julie Smith, Senior Lecturer, Cambridge University (QQ 18–33)  
Thomas Larue, Committee Secretary, Committee on the Constitution, Riksdag, Sweden



### APPENDIX 3: CALL FOR EVIDENCE

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The House of Lords European Union Committee, under the Chairmanship of Lord Boswell, is conducting an inquiry into the current and possible future role of national parliaments in the EU framework. The Committee seeks evidence from anyone with an interest.

#### Background

The 2009 Lisbon Treaty sets out a formal role for national parliaments in the scrutiny of EU legislative proposals in relation to the concepts of subsidiarity and proportionality. Furthermore, national parliaments engage in the general development and scrutiny of EU legislation and policies, and hold their governments to account in various ways for their actions at EU level. These individual and interparliamentary efforts are aimed to enable national parliaments to “contribute actively to the good functioning of the Union”.<sup>143</sup>

Over the past few years there has been a great deal of interest in the role of national parliaments in the EU, not least in the context of proposals for closer economic and monetary union. It has also been suggested that there is a “democratic deficit” in the EU that national parliaments could help to fill. This inquiry seeks to explore these issues further.

Written evidence is sought by **27 September 2013**. Public hearings will be held in the Autumn. The Committee aims to report, with recommendations, in 2014. The report will receive a response from the Government, and may be debated in the House.

The Committee seeks evidence on any aspect of this topic, and particularly on the following questions:

#### National parliaments in the EU framework

- (1) Why should national parliaments have a role in the EU framework? What role should national parliaments play in a) shaping, and b) scrutinising, EU decision making? In answering this question you may wish to consider:
  - (a) Is there widespread agreement on what this role should be?
  - (b) Do national parliaments have access to sufficient information and the requisite influence at an EU level to play the role that you suggest? Whose responsibility is it to ensure that they have the information they need?

#### Formal role of national parliaments

- (2) How is the formal role of national parliaments under the Treaties working in practice? In answering this question you may wish to consider:
  - (a) What impact have the Maastricht, Amsterdam and Lisbon Treaties had on interactions between national parliaments and EU institutions?

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<sup>143</sup> Article 12, Treaty on European Union.

- (b) What is your assessment of the existing yellow and orange card procedures? Are national parliaments making good use of these?
- (c) Is there a well-developed, common understanding of subsidiarity. If not, is there a need to develop one?
- (d) How effectively is proportionality scrutinised by national parliaments?
- (e) Should national parliaments have a greater, or different, role in the development and scrutiny of EU legislation?

### Dialogue and scrutiny of EU policies

- (3) What is your assessment of the level and quality of engagement between EU institutions and national parliaments, and between national parliaments? We invite you to offer specific examples. In answering this question you may wish to consider:
  - (a) What assessment do you make of the adequacy of the level of dialogue between the Commission and national parliaments regarding legislative proposals? What influence, if any, do national parliament opinions have on the legislative process?
  - (b) How effective is engagement between national parliaments and the European Parliament? Could it be improved?
  - (c) What effect are procedural trends, such as increased agreement on legislation at first reading, having on the ability of national parliaments to scrutinise EU decision making?
  - (d) What should be the role of COSAC (the Conference of Parliamentary Committees for Union Affairs)? Does it require any changes to make it more effective?
  - (e) What is your assessment of other mechanisms (such as Joint Parliamentary Meetings, Joint Committee Meetings and IPEX) for co-operation between national parliaments and EU institutions; and should any other mechanisms be established?

### Capacity of national parliaments

- (4) How effective are national parliaments at engaging with European affairs? In answering this question you may wish to consider:
  - (a) Are national parliamentarians sufficiently engaged with detailed European issues? Are national parliaments as effective at political dialogue with EU institutions as they are at holding their own governments to account?
  - (b) Can you give specific examples of Member States that are good at building co-operation and co-ordination between national parliaments? What do they do well? Should other countries learn lessons from this good practice?
  - (c) Is there political will, and resource, for increased interparliamentary co-operation?
  - (d) What role does the network of national parliament representatives in Brussels play? Should the network be further developed?

**Other possible changes**

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

*Issued on 22 July 2013*

## APPENDIX 4: EVOLUTION OF THE ROLE OF NATIONAL PARLIAMENTS

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1. Recognition of the role of national parliaments in the European Union has evolved slowly in the treaties of the European Union, beginning with the Maastricht Treaty in 1992. It was only recently, with the Lisbon Treaty in 2009, that national parliaments were given specific functions affecting the governance of the European Union.
2. At the time of signature of the Maastricht Treaty (also known as the Treaty on European Union, TEU, in force since November 1993), the Member States made a declaration on the role of national parliaments. The declaration stated that “it is important to encourage greater involvement of national Parliaments in the activities of the European Union”. It committed the Member States to ensuring that Commission proposals would be received by national parliaments with sufficient time to conduct scrutiny, and looked forward to an increase in contact between national parliaments and the European Parliament and for members of national parliaments to meet regularly to discuss issues of shared interest.
3. Also accompanying the Maastricht Treaty was a declaration on a Conference of Parliaments which required the President of the European Council and the President of the Commission to report on the state of the Union to each meeting of the Conference of Parliaments.
4. With the Amsterdam Treaty (which came in to force in May 1999) a protocol on the role of national parliaments was added to the EU Treaties. This imposed an obligation on the Commission to provide consultation documents and proposals for legislation to national parliaments and gave national parliaments a six week period within which to review proposals, before they were put on the agenda for discussion at Council meetings.
5. The second element of the protocol referred to the Conference of Parliamentary Committees for EU Affairs (COSAC), enabling it to make any contribution it thought fit for the attention of the EU Institutions and to examine any legislative proposal in the area of freedom, security and justice that may have direct bearing on the rights and freedoms of individuals and report its findings to the EU institutions. It enabled COSAC to make contributions to legislative activities being undertaken by the EU institutions based on the application of the subsidiarity principle, fundamental rights and in the area of freedom, security and justice.
6. The Lisbon Treaty (in force since December 2009) recognised the contribution of national parliaments to the good functioning of the European Union and gave them specific functions in the governance of the Union. The Treaty confirmed their right to information, and provided for their role in monitoring the application of the principle of subsidiarity and in evaluating EU policies in the area of freedom, security and justice policy. National parliaments were also given a role in the process for amending the Treaties and in the enlargement process.
7. National parliaments can now uphold the principle of subsidiarity, under Protocol 1 to the TEU, by submitting a reasoned opinion to the EU institution which instigated the proposal, if they believe that the proposal breaches the principle. If a third or more Member States’ chambers submit a reasoned opinion (a threshold which falls to a quarter of chambers for

legislation in the field of co-operation in criminal matters) the proposal must be reviewed, and a decision taken if the proposal will be maintained, amended or withdrawn. This has become known as the 'reasoned opinion' or 'Yellow Card' procedure.

8. If over half of legislative chambers submit reasoned opinions on a proposal and the proposal is maintained by the Commission, either the Council (on a vote of 55% of Member States) or the European Parliament (by majority vote) can force it to be withdrawn.

## APPENDIX 5: NOTE OF INFORMAL SESSION, VILNIUS COSAC, OCTOBER 2013

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Members participating: Lord Boswell of Aynho (Chairman), Baroness Corston, and Lord Hannay of Chiswick.

In attendance: Jake Vaughan (Clerk to the Committee) and Dominique Gracia (House of Lords Representative to the EU).

In the margins of the L COSAC Plenary meeting, hosted by the Lithuanian Seimas, on 27–29 October, an informal ‘round-table’ was held. The session was open to all delegates attending the L COSAC. The aim of the ‘round-table’ was for delegates to exchange views about and share experiences of the role national parliaments play in shaping and scrutinising EU decision-making.

**Mr Petras Auštrevičius**, Deputy Speaker of the Lithuanian Seimas and Deputy Chair of the Committee on European Affairs, opened the meeting.

**Lord Boswell of Aynho** gave a short summary of the House of Lords EU Committee’s inquiry to-date, thanking those around the table who had submitted written contributions and inviting anyone with an interest to consider doing so. He informed the delegates that all the contributions and evidence taken would be made available online. He said that his Committee was seeking to contribute to the ongoing debate about democratic legitimacy, not to conclude it.

**Mr René Leegte**, Vice-Chair of the EU Affairs Committee of the Dutch Tweede Kamer, welcomed this second informal session in the margins of COSAC, following the first one held in Dublin in June 2013. He raised the question of what meaning the yellow card mechanism had for the European Parliament (EP), and what influence the mechanism had over the EP’s work. How were Reasoned Opinions (ROs) taken into account?

**Mr Miguel Angel Martínez Martínez**, Vice-President of the EP, said that, in his view, interparliamentary cooperation was not currently working as well as it could. There had been unnecessary and unproductive tensions, and practically no progress in establishing complementary mechanisms. He pointed to the role of national parliaments (NPs) in controlling and holding to account their own national governments in their activity as members of the European Council. As an example, he raised a section of the COSAC Contribution that welcomed the political-level agreement on the multiannual financial framework (MFF). He asked why there was no recognition there that the Council was responsible for delays in taking forward this agreement, and pointed out that the EP had no mechanism to ask NPs to scrutinise national governments for such actions. In his view, the current role of NPs in controlling national governments and scrutinising their actions in Council was extremely limited and insufficient, and he lamented that the EP had failed in setting out a routine mechanism for learning about what NPs were doing nationally to scrutinise governments’ EU-level actions.

**Ms Eva Kjer Hansen**, Chair of the European Affairs Committee of the Danish Folketing, said that the yellow card mechanism clearly worked, as it had been triggered that very day (regarding the European Public Prosecutor’s Office proposal).<sup>144</sup> This was a good sign, showing that NPs were using the mechanisms

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<sup>144</sup> COM(2013) 534: *Proposal for a Council Regulation on the establishment of the European Public Prosecutor’s Office*. The Reasoned Opinions issued can be viewed at <http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20130534.do>.

available, which was an important first step. She recalled a lengthy discussion with Vice-President Maroš Šefčovič regarding the right to ask inquiries of the Commission, and whilst NPs do have this right, they make little to no use of it. It was important that NPs used all the tools at their disposal, and also that they reflected on how they wanted these tools to develop in the future.

**Mr Christopher Fearne**, Chairman of the Standing Committee on Foreign and European Affairs in the Maltese House of Representatives, remarked that NPs were of primary importance to citizens. In his view, there were a number of issues to address regarding EU power structures and decision-making, and interparliamentary groups should be leading the way. Unless parliaments were proactive, the vacuum would be filled by some other structure. He also remarked on the usefulness of the ‘cluster’ meeting held in Copenhagen, Denmark, on the free movement of workers.<sup>145</sup>

**Lord Boswell of Aynho** asked whether a small group of parliaments could collaborate in preparing a study on a specific policy area of shared interest. For example, in the COSAC plenary, Mr Herman De Croo had suggested a topic for a future COSAC debate; could parliaments prepare a joint paper to be tabled before COSAC in order to inform that work? **Mr Herman De Croo**, Member of the House of Representatives of Belgium, welcomed this suggestion.

**Mr Paulo Mota Pinto**, Chairman of the European Affairs Committee in the Assembly of the Republic of Portugal, called for greater distinctions between the mechanisms available for influence. Controlling governments was one mechanism, but there were many others. He called for more detailed responses to ROs. He agreed with Ms Kjer Hansen that NPs were not yet using all possible mechanisms to their full extent, highlighting the importance of a steady and prompt flow of information between parliaments, for example, regarding ROs.

**Ms Tineke Strik**, Chair of the Standing Committee for European Affairs in the Dutch Eerste Kamer, agreed that information sharing was crucial, referring to the Dutch Parliament’s efforts to gain access to the Council’s extranet database.<sup>146</sup> When negotiating with the Dutch government, responses to a COSAC questionnaire<sup>147</sup> indicating the types of information received by other NPs, was influential. She pointed to the need for NPs to be discriminating in the way they prioritise the information they already received, in order to make best use of it. She also remarked on the possible difficulties for NPs in taking a line contrary to their national government, given that many national governments have parliamentary majorities. However, there was scope for NPs to cooperate along party lines, politicising scrutiny of national governments. Ms Strik also commented on the dialogue between the NPs and the European Commission, asking Vice-President Šefčovič for his view on the importance or relevance of Commission responses to opinions, given that once proposals are published they are on the negotiating table and primarily in the hands of the co-legislators.

**Mr De Croo** commented on the relative power of institutions and how this could be measured. Whilst this was difficult, the number of lobbyists surrounding the EP indicated that there was a lot of power there. He remarked that, for NPs, there was

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<sup>145</sup> This meeting on free movement and national welfare systems was held in Copenhagen on 21 October 2013.

<sup>146</sup> This database, run by the Council of the European Union, contains papers relating to Council meetings, including *limité* documents.

<sup>147</sup> This questionnaire fed into the 17th Bi-annual Report, available at <http://www.cosac.eu/documents/bi-annual-reports-of-cosac/>.

an element of hypocrisy in claiming to have power and control, even when it may not be strictly true, in order to encourage citizens to vote in national elections.

**Vice-President Šefčovič**, Commissioner for Inter-Institutional Relations and Administration, responded to some of the points that had been raised. He noted that the Commission often receives conflicting contributions from different parliaments, even from those with parliamentary majorities of the same political family. This makes it challenging to know how to proceed in response to NPs' contributions as a whole. Thanks to changes to internal systems, the Commission should be able to make higher quality responses to contributions in future, and to do so within three months.

He responded to Ms Strik's question, saying it was important for the Commission to have information about NPs' views. This information formed an important part of the briefing for Commissioners going into negotiations in Council and Parliament, and ultimately in trilogues. He also advocated NPs submitting responses to public consultations run by the Commission, as NPs' opinions carried a great deal of weight. In the future, the Commission would inform NPs directly about public consultations and hearings, and in response to NPs' request, would send directly all the documents that were being sent to the Council.

**Ms Maipetra Kumpula-Natri**, Chair of the EU Affairs Committee in the Finnish Eduskunta, said that while the most important channel for the NPs to contribute to the legislative processes was through national ministers, it was also important for NPs to know about how EU proposals were being developed and where the ideas were coming from. It would be important to have those Commissioners and Commission civil servants who were responsible for a certain policy field to visit and speak to NPs—or to conduct video conferences—about policies being developed in their field.

**Mr Edmund Wittbrodt**, Chairman of the European Union Affairs Committee of the Polish Senate, highlighted the distinction between decisions taken by the executive and those taken by the legislature in terms of democratic legitimacy, and said a discussion was needed about whether decisions should be taken by the former or the latter.

**Mr Michael Connarty**, member of the European Scrutiny Committee of the UK House of Commons, argued that the yellow card mechanism had only had a minor impact, and was in fact a sop to NPs to persuade them to agree to the Lisbon Treaty. Post-Lisbon, the mechanisms of restructuring Europe had changed, and major changes were now being dictated by the response to the euro area crisis, giving the Commission greater power over euro 'ins'.

**Lord Hannay of Chiswick**, member of the EU Select Committee of the UK House of Lords and Chairman of the EU Sub-Committee on Home Affairs, Health and Education, disagreed with Mr Connarty, saying that the yellow card mechanism had had a slow start, but was now becoming stronger. He contrasted the eight weeks given to NPs to issue ROs with the unlimited time the Council had in which to negotiate a proposal. He also noted that the yellow card was only a negative power, setting NPs against the Commission and possibly also the EP, which often had a different view on subsidiarity to NPs. In order to have a more positive dialogue, there had to be more debate between national MPs and MEPs, as Mr Martínez Martínez had suggested. He noted that almost every inquiry conducted by the Lords EU Committee took evidence from MEPs. Lord Hannay also agreed with the suggestion from Vice-President Šefčovič that earlier engagement with policy formation was crucial.



**Ms Kjer Hansen** remarked on the outcome of the ‘cluster’ meeting held on free movement, which would be a letter to Commissioner László Andar. She said that the Commission’s openness to direct contact from NPs was very welcome. She thanked Lord Boswell and the Lithuanian Presidency for organising the session and expressed the hope that there would be more such meetings in the future.

**Mr Leegte** commented briefly on the Tweede Kamer’s experience in hearing Commissioners, using the example of discussing trade with China. He also referred to the Tweede Kamer’s position paper, circulated earlier that day,<sup>148</sup> which called for the Commission to make a political commitment to give greater time for ROs to be submitted, and a lower threshold for triggering a ‘yellow card’ review. This would not require treaty change if the Commission would give a political commitment and act accordingly.

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<sup>148</sup> This paper is available online on the Tweede Kamer website at [http://www.tweedekamer.nl/images/Brochure\\_Democratic\\_Legitimacy\\_in\\_the\\_EU\\_181-237266.pdf](http://www.tweedekamer.nl/images/Brochure_Democratic_Legitimacy_in_the_EU_181-237266.pdf).

## APPENDIX 6: WRITTEN CONTRIBUTIONS AND REASONED OPINIONS BY NATIONAL PARLIAMENTS

This table shows:

- (a) the total number of written opinions submitted by national parliaments and chambers in each of 2010, 2011 and 2012. These totals include written contributions under the Barroso initiative, and reasoned opinions submitted under Protocol 2. At the time of publication figures were not available for the total number of written opinions submitted in 2013.
- (b) the number of reasoned opinions submitted by national parliaments and chambers in each of 2010, 2011, 2012 and 2013. These figures should be taken as an approximate guide only. Different documents can give different figures, for example depending on whether a reasoned opinion relating to two proposals counts as one or two opinions.

	2010 <sup>149</sup>			2011 <sup>150</sup>			2012 <sup>151</sup>			2013 <sup>152</sup>	
	(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	
Austria	13	2	3	1	12	3	6				
	12	1	7	0	3	1	0				
Belgium	1	0	4	1	9	3	1				
	0	0	2	1	0	0	1				
Bulgaria	0	0	19	2	13	0	0				

<sup>149</sup> Figures taken from Annual Report 2010 on relations between the European Commission and National Parliaments (COM(2011) 345 final)

<sup>150</sup> Figures taken from Annual Report 2011 on relations between the European Commission and National Parliaments (COM(2012) 375 final)

<sup>151</sup> Figures taken from Annual Report 2012 on relations between the European Commission and National Parliaments (COM(2013) 565 final)

<sup>152</sup> Figures taken from the Written report on the work of IPEX in 2013, available on [www.ipex.eu](http://www.ipex.eu).

		2010 <sup>149</sup>		2011 <sup>150</sup>		2012 <sup>151</sup>		2013 <sup>152</sup>	
		(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions
Croatia <sup>153</sup>	Croatian Parliament	—	—	—	—	—	—	—	0
Cyprus	Vouli ton Antiproponon	1	0	1	1	2	1	2	1
Czech Republic	Poslanecká sněmovna	3	1	5	0	10	0	10	0
	Senát	29	1	43	0	46	0	46	2
Germany	Bundesrat	23	1	33	1	59	5	59	3
	Bundestag	6	1	6	1	2	1	2	0
Denmark	Folketing	11	2	14	1	8	3	8	1
Spain	Cortes Generales (both Chambers)	4	0	2	2	7	2	7	5
Estonia	Riigikogu	0	0	0	0	2	0	2	1
France	Assemblée Nationale	0	0	2	1	0	0	0	1
	Sénat	3	3	4	1	19	7	19	4

<sup>153</sup> Croatia formally joined the EU on 1 July 2013.

	2010 <sup>149</sup>		2011 <sup>150</sup>		2012 <sup>151</sup>		2013 <sup>152</sup>	
	(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions
Greece	4	0	4	0	6	0	2	2
Hungary	0	0	0	0	0	0	1	1
Ireland	0	0	1	1	0	0	0	0
	3	0	0	0	7	0	3	3
Italy	25	0	28	2	15	0	1	1
	71	1	76	3	96	1	1	1
Lithuania	4	2	4	0	1	1	6	6
Luxembourg	7	3	14	7	6	3	3	3
Latvia	1	0	1	0	1	1	1	1
Malta	0	0	2	2	2	1	5	5
Netherlands	1	0	1	1	3	3	6	6
	3	0	6	0	7	2	4	4
	2	2	3	2	1	1	0	0

	2010 <sup>149</sup>		2011 <sup>150</sup>		2012 <sup>151</sup>		2013 <sup>152</sup>	
	(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions
Poland	2	2	5	5	3	3	3	2
	5	4	4	4	11	1	1	1
Portugal	106	0	184	1	227	1	1	1
Romania	0	0	40	2	26	0	0	3
	9	0	33	2	2	0	0	3
	2	0	1	1	0	0	0	0
Suomi Finland	1	0	2	1	1	1	1	1
Slovakia	0	0	2	2	1	1	1	0
Slovenia	0	0	0	0	0	0	0	1
	0	0	0	0	0	0	0	0
Sweden	20	3	42	11	33	20	14	14
United Kingdom	3	3	8	3	6	3	4	4
	12	2	16	1	16	1	3	3
<b>TOTAL</b>	<b>387</b>	<b>34</b>	<b>622</b>	<b>64</b>	<b>663</b>	<b>70</b>	<b>92</b>	<b>92</b>

## APPENDIX 7: GLOSSARY AND LIST OF ACRONYMS

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AFCO Committee	Constitutional Affairs Committee of the European Parliament.
CFSP	The European Union's Common Foreign and Security Policy.
COSAC	Conference of Parliamentary Committees for EU Affairs. Box 4 provides further information.
CSDP	The European Union's Common Security and Defence Policy: a key component of the CFSP.
CSR	Country Specific Recommendation. (Part of the European Semester: recommendations to guide the policies of each Member State, proposed by the Commission and adopted by the Council each year.)
ECON Committee	Economic and Monetary Affairs Committee of the European Parliament.
Eurojust	An agency of the European Union dealing with judicial co-operation in criminal matters.
European Semester	The EU level-framework for co-ordinating and assessing Member States' structural reforms and fiscal policy, and for monitoring and addressing macroeconomic imbalances. See footnote 123.
Europol	An agency of the European Union supporting co-operation in law enforcement.
IPEX	Inter-parliamentary EU Information Exchange website. A platform for national parliaments and the European Parliament to share information concerning issues related to the European Union.
LIBE Committee	Civil Liberties, Justice and Home Affairs Committee of the European Parliament.
Orange Card	Under Protocol 2 to the EU Treaties, if reasoned opinions comprising over half of the available votes are issued, the Commission must review the proposal and, if it wishes to proceed, justify why it considers that the proposal complies with the principle of subsidiarity. If the Commission does proceed, a majority vote in the European Parliament, or a vote of 55% of the Member States in the European Council, will block the proposal. This is known as an Orange Card. See Box 1.
Proportionality	Principle defined in Article 5 of the Treaty on European Union as requiring that "the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties". See paragraph 75.
Reasoned Opinion	Under Protocol 2 to the EU Treaties, a reasoned opinion may be issued by a national parliament or chamber if it thinks that a draft EU law does not comply with the principle of subsidiarity. See Boxes 1 and 2.

Red Card	Under Protocol 2 to the EU Treaties, a national parliament may bring a case before the EU Court of Justice, arguing that an adopted legislative act does not comply with the principle of subsidiarity. This is known as a Red Card. See Box 1. See also paragraph 92 for another meaning of 'Red Card'.
Subsidiarity	Principle defined in Article 5 of the Treaty on European Union as: "the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level". See Box 1.
TEU	Treaty on European Union.
Yellow Card	Under Protocol 2 to the EU Treaties, if sufficient national parliaments or chambers issue reasoned opinions on a draft law, the Commission must review the draft law. This is known as a Yellow Card. See Boxes 1 and 2.

# Agenda Item 4

The  
Electoral  
Commission

## Inquiry into Disqualification of Membership from the National Assembly for Wales

## Evidence of the Electoral Commission



## Introduction

1.1 The Electoral Commission is an independent body which reports directly to the UK Parliament. We regulate political party and election finance and set standards for well-run elections. We put voters first by working to support a healthy democracy, where elections and referendums are based on our principles of trust, participation, and no undue influence.

1.2 We welcome the opportunity to give evidence to the Committee's Inquiry. Relevant to the Inquiry is that:

- We have recently completed a UK-wide consultation on many aspects of standing for election, including candidate disqualifications. We will publish our report in June 2014.
- We publish guidance to candidates on standing for election. Our suite of guidance for candidates standing for election to the National Assembly for Wales is available on our website :<http://www.electoralcommission.org.uk/i-am-a/candidate-or-agent/national-assembly-for-wales-elections>

1.3 It is widely accepted that electoral law has many problems. It is voluminous, fragmented and inconsistent across different elections. It is also in many places unnecessarily complex and in need of modernisation. The different pieces of electoral law need simplifying, updating and consolidating.

1.4 The three UK Law Commissions (England and Wales, Scotland, Northern Ireland) are currently reviewing the law governing electoral administration in the UK. The Law Commissions expect to publish a consultation paper late in 2014, which will set out recommendations and options for reform. The Law Commissions plan to finalise their recommendations in summer 2015 before publishing a final report and Bill in early 2017. The intention is for changes in law to be enacted and in force in time for the UK Parliamentary general election in 2020. The Law Commissions' review includes the legislation on standing for election in the UK, including in elections to the National Assembly for Wales.

1.5 In our view, the rules on standing for election should aim to promote the following principles:

- The rules should as far as possible facilitate participation in the electoral process. There should be no unnecessary barriers for candidates participating in elections.
- The rules should be clear, straightforward and unambiguous so that candidates, agents, political parties and those administering the electoral process understand the rules and can see that they are being followed;

- Fair treatment should be ensured as far as possible between candidates standing for election, save where differences are genuinely justified;
- The rules should be as consistent as possible across different types of elections in the interests of promoting participation.
- The rules should be up to date, reflecting current technology and expectations of candidates, agents, political parties and those administering elections.

## Principles underpinning disqualifications

1.6 Disqualifications, imposed for whatever reason, act as a limit on the freedom of individuals to participate in elections, therefore the rationale for any disqualification criteria should be justified and proportionate. They should also be clearly specified and explained and – as far as possible, reflecting the devolution of policy responsibility for different elections within the UK – apply consistently, so that people can understand easily whether or not they can stand for any election in the UK.

1.7 Justified and proportionate disqualification criteria should allow the widest possible choice of candidates for electors to choose from, striking a balance between preventing candidacy in limited, specified circumstances, while not unreasonably discouraging participation.

1.8 The disqualification criteria for elections to the National Assembly for Wales are currently applied by the relevant election rules both at the time of nomination and at the point of election: they do not distinguish between employment or office holders who would be disqualified from *standing as candidates* in elections and those who would be disqualified from *holding office* if elected. Drawing a clearer distinction between the two sets of disqualification criteria, and setting out the rationale for each set, could help ensure that the overall approach is justified and proportionate and based on sound principles.

1.9 We consider that there are at least two key principles that should underpin legislation on disqualifications:

- First, the Assembly may decide that there are certain officeholders or employees whose involvement as candidates in an election could compromise or undermine the integrity or impartiality of the election process.
- Second, the Assembly may decide that there are certain offices or employed positions which are incompatible with membership of the Assembly, because the effective or impartial discharge of either function

could be compromised or undermined by the appearance of a conflict of interest.

1.10 While it should continue to be for the Assembly and the Secretary of State to determine which positions should be specified in each category, the Committee should consider how best to ensure that the Order and relevant election rules make clear the distinction between the two categories.

### **Practical considerations on when disqualifications take effect**

1.11 In determining which positions should be specified in each category, there are important practical issues to consider. Differentiation between times when disqualifications take effect could create confusion for candidates standing for election, whereas the rules should be clear, straightforward and unambiguous.

1.12 If certain disqualifications were to apply at the time of election and not at nomination, there remains the issue of notice periods. A conflict of interest would continue to apply while there was a contract of employment in place and a notice period being served. To address this issue, an elected candidate could be required to resign from the relevant post or office the first working day after the election in order to take up membership of the Assembly. (That is the position for the disqualification for officers and employees of the local authority in local government elections in Scotland and it may be worth considering how this operates<sup>1</sup>.)

1.13 Because of the issue of notice periods, applying certain disqualifications at the time of election and not at nomination might be workable only where notice can be given with immediate effect. That might mean in practice disqualification on election might not be workable for employees. As mentioned below, it would be advisable to consult organisations proposed to be listed in the Order about the workability of any such proposals, including how organisations would confirm in principle that immediate notice could be given, and that it was given when required in the case of a particular individual affected.

### **Core set of disqualifications**

1.14 When considering the issue of when disqualifications take effect, it should be recalled that some people who hold specified offices are currently disqualified from being a member of the National Assembly for Wales, in a similar way as they would be in respect of the UK Parliament, the Scottish Parliament, Northern Ireland Assembly and European Parliament<sup>2</sup>. In all of these cases, the disqualifications will continue to apply at the time of nomination and election. Where resignation from employment or office is necessary, candidates must have given and served their period of notice by the time of nomination.

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<sup>1</sup> Section 31A Local Government (Scotland) Act 1973.

<sup>2</sup> Section 16 Government of Wales Act 2006

1.15 The list includes people who are: a judge; a civil servant; a member of the armed forces; a member of a police force; a member of a legislature of any country or territory outside the Commonwealth (other than Ireland); or are the subject of a bankruptcy restrictions order. A person would also be incapable of being elected or holding elective office if they have been convicted or reported guilty by an election court of a corrupt or illegal practice.

## List of bodies in the Disqualification Order

1.16 The list of bodies in the Assembly's Disqualification Orders, like legislation that applies to other legislatures, is amended for each election to include offices from newly-established or re-named bodies and to delete bodies that no longer exist. The fact that the list regularly changes presents challenges for candidates and political parties.

1.17 Our published and revised advice to candidates<sup>3</sup> tells them that the full range of disqualifications is complex and if they are in any doubt about whether they are disqualified, to do everything they can to check that they are not disqualified before submitting their nomination papers. We advise candidates that they must be sure that they are not disqualified as they must state in their consent to nomination that to the best of their knowledge and belief they are not disqualified for membership of the Assembly. It is a criminal offence to make a false statement on nomination papers as to qualification for being elected, so we advise candidates that if they are in any doubt, they should contact their employer, consult the legislation or, if necessary, take their own independent legal advice. Election Returning Officers are not able to confirm whether or not candidates are disqualified.

1.18 We do not have sufficient knowledge about the specific bodies listed in the Assembly's Disqualification Order to reach views about which particular disqualifying posts and employments should be included. However, **in our view the two principles we set out above should be applied to decide whether any disqualification is justified and proportionate, either at the point of nomination or on taking up the office of Assembly member.** Inclusion in the list must be clearly justifiable since it is a restriction on participation in elections.

1.19 It may be appropriate to consult the bodies proposed to be listed before the Assembly makes a new order, if that is not already done, so that they could give their views on matters that affect their employees' or representatives' ability to stand for election. The bodies concerned might have a useful contribution to make as to whether there could be any conflict of interest. In other cases it may be that the Welsh Government or the Assembly considers it inappropriate for someone

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<sup>3</sup> Recently updated example for local elections in Wales and England  
[http://www.electoralcommission.org.uk/data/assets/pdf\\_file/0007/141784/Part-1-Can-you-stand-for-election-LGEW.pdf](http://www.electoralcommission.org.uk/data/assets/pdf_file/0007/141784/Part-1-Can-you-stand-for-election-LGEW.pdf)

employed by a certain body to be an Assembly member because, for example, they make the appointments or fund the body. In such cases consultation may not be necessary.

## Other matters: timescale for making the Disqualification Order

1.20 The Commission always recommends that governments ensure that legislation on the conduct of elections is in place at least six months before the election is held. However, in our view, the Disqualifications Order should be in force at least six months before nominations open. The reasons for this are below.

1.21 The timescale for making the Disqualifications Order is particularly important because, as explained earlier, candidates standing for election may need to resign their employment and to have completed their notice period to avoid being disqualified from standing for election. Making the Order in good time should also ensure that political parties have enough time properly to check their candidates' eligibility to stand for election well before nominations open.

1.22 It is also important for the Assembly to inform those who need to know that the Order has been made and what changes it contains. The changes in the Order need to be communicated to political parties; to the bodies who are listed in the Order so that they can inform their employees or representatives and to the Electoral Commission so that we can incorporate any new provisions on disqualification in our published guidance for candidates standing for election

1.23 Our published guidance is disseminated to candidates through political parties and by Returning Officers in candidates' information packs and pre-election briefings, as well as being available on our website. We routinely publish our guidance for candidates on standing in December ahead of an election being held the following May.

1.24 We recommend that the Assembly's Disqualification Order is made at least six months before nominations open and the contents of the Order clearly communicated to bodies listed in the Order, political parties, and the Electoral Commission.

## The Electoral Commission

April 2014

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