

The role of national parliaments in European Union decision-making

Evidence for the House of Lords European Union Committee, 18 December 2013.

Ben Crum (B.J.J.Crum@vu.nl), Senior Lecturer in Political Science, Vrije Universiteit Amsterdam.

John Erik Fossum (j.e.fossum@arena.uio.no), Professor in Political Science, University of Oslo.

The responses below follow the provided format and are based on the findings of a collective volume that was published this summer at the Press of the European Consortium of Political Research, *Practices of inter-parliamentary coordination in international politics. The European Union and beyond* (eds. Crum & Fossum) (http://press.ecpr.eu/book_details.asp?bookTitleID=55). This volume includes contributions from eighteen European political scientists who examine the challenges for parliamentarians who operate in an internationalizing context.

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

- 1.1. National parliaments play an indispensable role in the multilevel configuration of the European Union. Even if decision-making powers are shifted to the EU-level, national parliaments remain the main repository of political allegiance and the focal-point for democratic will-formation.
- 1.2. As is well-captured by Article 8A of the Treaty of Lisbon, representation through the national parliaments is actually one of *two channels of democratic representation* in EU decision-making. The other channel runs through the European Parliament.
- 1.3. Both channels are needed. For normative and practical reasons (sheer scope and density of EU decision-making), a supranational parliament like the EP is required to represent the citizens at EU-level, for transnational political debate, and for holding the EU to account. At the same time, it is clear that the EP cannot shoulder the EU's democracy legitimacy on its own but needs to be complemented by the national parliaments.
- 1.4. National parliaments' primary role in EU decision-making is to *scrutinize* the involvement of their respective national governments in EU affairs. National parliaments have steadily increased their powers in this respect – also exchanging practices with each other and employing different scrutiny templates. But whereas there has been considerable emulation and learning in terms of adopting more arduous scrutiny *models*, parliaments' effective scrutiny varies considerably in actual practice, across parliaments and across policy fields.
- 1.5. In the last two decades a second additional form of national parliamentary involvement in EU affairs has gradually emerged, through inter-parliamentary coordination and direct national parliamentary involvement in EU decision-making. This is increasingly becoming a distinct channel of influence which raises a number of important questions pertaining, among other things, to the executive-legislative relations at the member state level, notably because national parliaments through the Early Warning Mechanism can influence EU-level decision-making at a very early stage.
- 1.6. In this more complex representative configuration (with national parliaments having *two* ways to influence EU decision-making) a great amount of information and knowledge is circulating. In this context, a major challenge with regard to EU scrutiny now would appear to be that of *prioritisation*: given that EU decision-making is logically a secondary concern for national parliaments, how to make sure that time and resources are focused on the EU dossiers that most merit it (among the plethora of EU-issues going around)? Also on this challenge national parliaments are making progress by systematically scanning the EU (legislative) agenda and by developing alert mechanisms between each other.
- 1.7. Operating in the context of *the EU multilevel political system* deeply challenges the established modes of procedure of MPs. Rather than seeing their organisation as the ultimate

and singular site of parliamentary sovereignty, they have to recognize that they operate in a network or ‘field’ of 28 national parliaments plus the European Parliament, none of which can effectively steer or shape European politics on its own. Collectively, however, they can determine the direction of EU politics as they are the ultimate repository of the EU’s democratic legitimacy.

- 1.8. The development of the EU has a systemic impact on national parliaments which thus need to see each other as part of each other’s operating environment and to put that fact to their advantage. The big question is then to determine how parliaments in the EU can effectively collude to (re-)gain power in the EU rather than being played off against each other. They also need to work out what this requires from MPs (in terms of functions, role conceptions and broader democratic orientations).

2. Are the treaty arrangements, particularly the yellow card procedure, working in practice?

- 2.1. It is still early days with regard to evaluating the effects of the Treaty of Lisbon reforms, particularly the yellow card procedure. While we see considerable variations in its use across national parliaments and over time, by now the number of reasoned opinions provoked seems to level off at around 70 per year. Notably, in May 2012, parliaments for the first time reached the required threshold for a ‘yellow card’ on the ‘Monti II’. The Commission subsequently withdrew the proposal – even if it was not obliged to do so. This instance does however demonstrate that the EWM can have decisional effects. If one considers the practical challenges that national parliaments face, like the strict time limits and translation issues, these *results are already more than many sceptical observers had expected*.
- 2.2. The yellow and orange card procedures might lead to national parliaments unduly limiting their scrutiny to narrow readings of subsidiarity and, to a lesser extent, proportionality. Experience so far suggests however that such a fear is likely to be exaggerated. First, the concept of subsidiarity is broad enough to accommodate a wide range of concerns that national parliaments may have. Secondly, subsidiarity (in a broad sense) is indeed an apt issue for national parliaments to focus on.
- 2.3. However, the success of the yellow and orange card procedures is not necessarily best measured by the number of times that it is invoked. If the mechanism were to be activated too often, it would impose a major brake on the EU legislative process. Ultimately, the Early Warning Mechanism requires a ‘*responsible usage*’ that should increase the sensitivity of the Commission and the governments towards parliaments’ concerns about EU legislation, but where parliaments only need to turn to its actual activation as a last resort.
- 2.4. Rather the main effects of the yellow and orange card procedures are likely to be anticipatory in nature: they may *change the attitudes and involvement* both on the side of national parliaments and on the side of the Commission (and to some extent also the other EU-institutions that are activated through the orange card). They may serve as an incentive for national parliaments to become more alert to, and also more directly involved in, EU decision-making. They encourage the European Commission to internalise the principle of subsidiarity and to anticipate the criticism of national parliaments.
- 2.5. For sure, the yellow card procedure has not (yet) woken up *all* national parliaments to EU affairs. Furthermore, experiences so far also highlight that different parliaments may have quite different – and even opposing – concerns about EU legislative proposals. Still, involvement in the yellow card procedure has brought *mutual awareness and interaction* between national parliaments to unprecedented levels. Thus, the procedure has clearly contributed to engaging national parliaments in EU decision-making and indeed demonstrated that they can be of consequence.

3. What is the level and quality of inter-parliamentary coordination and inter-institutional dialogue?

- 3.1. Collective mobilization is key if national parliaments are to be effective in EU decision-making. National parliamentary interaction with the EP will also, on balance, add to that.
- 3.2. For different policy issues, we find that *different platforms and networks* facilitate the collective mobilization of MPs. For some generic EU issues, like the scrutiny of EU affairs and the use of the Early Warning Mechanism, COSAC may be the obvious platform for coordination and collective mobilisation. In practice, however, parliamentarians prefer to coordinate their actions along policy-specific lines. Thus, MPs in fields like defence matters will often coordinate through the NATO Parliamentary Assembly. When it comes to EU legislation, particularly with regard to the single market, the European Parliament may actually fulfil some of these platform functions, especially if it initiates inter-parliamentary meetings.
- 3.3. Importantly, these inter-parliamentary platforms are complemented with a wide range of more bilateral arrangements and, not least, all kinds of *informal contacts* among individual parliamentarians and political parties. In fact, these informal contacts are probably of even greater importance than the official networks. The overarching structure is clearly a facilitator, but informal contacts are by their very nature spontaneous and highly resilient to institutional engineering.
- 3.4. Thus, in general, national parliaments have an interest in fostering *a wide range of (formal and informal) inter-parliamentary networks* that they may call upon if EU initiatives so require. Ideally, these networks would mirror the whole range of fields in which the EU holds substantial competences.
- 3.5. At the same time, inter-parliamentary coordination cannot be premised on the assumption that the interests of parliaments naturally align. Certainly on issues with distributive implications, the interests of national parliaments may well *conflict* and, hence, national parliaments may prefer to operate in coalitions that involve smaller subsets of the parliaments in the system.
- 3.6. Tensions are particularly discernible in the *relation between national parliaments and the European Parliament*, as the latter tends to be more open to supranational solutions and less concerned about subsidiarity. Still, certainly in areas of shared competences, both national parliaments and the European Parliament have a legitimate role to play and there are clear benefits to coordination. In fact, in recent years, and induced by the Treaty of Lisbon, the willingness to coordinate seems to have increased on both sides. Again, there are notable differences from one policy area to another. For instance, when it comes to EU military missions, national parliaments scrutinise their governments' decision to join an EU mission. However, once a mission is under way the EP takes on a more active, monitoring role. Similarly when it comes to EU legislation on the single market, national parliaments' primary task lies in the monitoring of the principle of subsidiarity, an issue that is unlikely to be picked up by the EP. However, when it comes to more ideological concerns, its central and supranational position allows the EP to operate as a particularly useful go-between in the exchange of positions between national parliaments and parties.

4. How effective are national parliaments at engaging with European affairs

- 4.1. Probably the main challenge in fostering effective engagement of national parliaments in EU affairs and the development of inter-parliamentary relations lies in the fact that the *incentives for MPs* to do so are rather small: the investment costs are high and the gains very uncertain. Indeed, for most parliamentarians their primary focus remains their own institution and not

necessarily the EU setting in which it has come to be embedded. This is also the context in which MPs are most likely to find immediate rewards: political influence, media exposure, party political credits.

- 4.2. Still, short of successfully amending EU decisions, there are some incentives that may motivate MPs to engage with other parliaments in the EU. Above all, it may provide them with information that they can use in the national setting. Moreover, depending on the party, international engagement may help to increase one's status in the faction and open up possible new (European) career prospects. Even if such incentives remain relatively small, they seem to have gained in relevance and force in recent years.
- 4.3. Ultimately, successful influence of national parliaments on EU decisions hinges on collaboration and, hence, is a **collective achievement**. There are two conditions that seem particularly important for getting such collaboration off the ground. One is that it is essential that (some of the) stronger parliaments are involved, where strength may reflect both the size of the member state involved and the EU scrutiny powers of the parliament. A second condition is that successful collaboration requires one or more national parliaments to take the lead in seeking to mobilize others. Most naturally, this is the parliament of the country holding the rotating Council presidency. Ideally, of course the two conditions coincide in that the leading parliament is also recognized to be a prominent one.
- 4.4. The **network of national parliament representatives** in Brussels is gaining in relevance and usefulness and it certainly has a valuable role to play in linking national parliaments on EU affairs. By now arrangements in Brussels seem to operate rather well. Still, we have some evidence of the network members being outpaced by events in their home parliament and informal coordination between MPs of national parliaments. Hence, the big challenge seems to lie in the network members remaining fully attuned to and up to speed with everything that is going on in their home parliament.

5. Other possible changes with or without Treaty change

- 5.1. This question cannot be properly addressed without clarifying two important issues. One is to clarify what increased inter-parliamentary coordination and direct national parliamentary involvement in EU decision-making does to representative democracy, both with regard to the notion of self-legislating citizens and with regard to accountability. The other is what the crisis has done to the multilevel parliamentary system in the EU.
- 5.2. Given these uncertainties we would at this point not see the main issue as that of granting **new Treaty powers** to stimulate national parliaments' engagement with EU affairs. In practical terms, the main challenge rather seems to lie in fully exploiting the formal opportunities that are there. Here the main issues requiring attention are the MP-incentive structure and the fostering of formal and informal networks across parliaments.
- 5.3. The broader issue that requires more in-depth examination is to spell out in detail the implications of the different ways in which national parliaments get involved in EU matters. That in turn also requires paying attention to issues of democracy and power relations. With regard to the Early Warning Mechanism, for instance, there is a distinct possibility of co-optation, in the sense that national parliaments will be increasingly made co-responsible for actions taken at the EU-level. Such a development might undermine other representative functions that national parliaments are meant to serve.
- 5.4. Through the crisis, the operating conditions of debtor state parliaments have been severely constrained, to the point of compromising the very idea of representative democracy. There is an urgent need for (treaty) provisions that guarantee the continued respect for, and effective functioning of, national parliaments in countries that are bailed out and find "Memorandums

of Understanding” imposed upon them.

- 5.5. More generally, there is an urgent need to flesh out the role of parliaments in the reorganization of economic and financial policies that has taken place in recent years. Despite appropriate exhortations of the need for adequate parliamentary control (e.g. Art. 13 of the Fiscal Compact), the new arrangements around the ***European Semester*** put parliaments in a marginal and reactive role. What is needed, is a clarification for each decision-phase of the European Semester, in which parliamentary forum (national or European) scrutiny is to take place and the development of effective arrangements for inter-parliamentary coordination, again specified for each phase of the process and each decision to be adopted.