The Nordic Parliaments' Approaches to the EU

Strategic Coordinator, Comprehensive Scrutinizer, Reluctant Cooperator and Outside-Insider

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Abstract

The parliaments of the Nordic EU member states are similar in that they all exercise a particularly robust style of oversight of their respective governments' conduct of EU affairs: compared to other national parliaments in the EU, they exemplify a common "Nordic model" of parliamentary scrutiny. However, important differences emerge when one compares the parliaments of Denmark, Sweden, Finland and Norway (a non-EU-member) in how they engage directly with the EU, through direct interaction with EU-level institutions and with other national parliaments regarding EU affairs. These differences may be illustrated by comparing their actions in response to one controversial EU legislative proposal, the 2012 Monti II Regulation concerning the right to strike, which was widely seen as hurtful to the interests of workers in Nordic countries. The Monti II proposal was the first EU legislative proposal to be withdrawn, under a new "Early Warning Mechanism" procedure, after objections to it were raised by numerous national parliamentary chambers, including those of Denmark, Sweden, and Finland. This process revealed important differences in the approach of the Nordic parliaments to the EU: they may be characterized variously as strategic coordinator (Danish Folketing), comprehensive scrutinizer (Swedish Riksdag), reluctant cooperator (Finnish Eduskunta), and outside-insider (Norwegian Storting).

Keywords

Early Warning Mechanism – EU – Nordic Model – Nordic Parliaments – Parliamentary Democracy

Introduction

When examining the relationship between Nordic states and the European Union (EU), it is appropriate to focus one's attention on the Nordic parliaments. These states are commonly thought of not only as particularly strong parliamentary democracies but also, more specifically, as exemplars of a particularly robust form of the parliamentary scrutiny of EU affairs, sometimes referred to as a distinct "Nordic model." In this, their similarities largely outweigh their differences, especially in comparison to the other member states of the EU. Hence, this is an example of a most-similar-cases comparison. However, if we compare the Nordic parliaments' direct involvement at the EU level, as distinct from their scrutiny of their respective governments, important differences emerge. The contrast becomes most apparent in their varying approaches to the Early Warning Mechanism (EWM), a new procedure under the Treaty of Lisbon which has empowered national parliaments to intervene directly in the EU's legislative process. This paper will compare these parliaments' engagement with the EU, with a particular focus on their response to one controversial EU legislative proposal (the 2012 *Monti II* regulation) which was seen as a threat to the Nordic *social* model of industrial relations; in that case, the early objections of the Danish, Swedish and Finnish parliaments contributed to the proposal's swift demise.

The paper begins with an overview of the many historical similarities among the Nordic parliaments with respect to their scrutiny of EU affairs, before demonstrating the differences between them in their engagement with their new powers under the Treaty of Lisbon, including the EWM. Then, after a brief explanation of the *Monti II* proposal and its fate under the EWM, an analysis comparing the Nordic parliaments' varied responses to it reveals their differing roles and attitudes with respect to interparliamentary cooperation. The Danish *Folketing*, led by its powerful European Affairs Committee (EAC), in this case played the role of *strategic coordinator*, organizing opposition among national parliaments against *Monti II*. The Swedish *Riksdag*, reflecting the fact that its EWM-related tasks are largely devolved to sectoral committees, is a *comprehensive scrutinizer* with the capacity to monitor all EU legislative proposals, but less of a propensity to prioritize among them or engage in interparliamentary cooperation. The Finnish *Eduskunta* is a *reluctant cooperator* due to the prevailing attitude within it that its essential task, delegated to the EAC, is to exercise robust oversight of the government's conduct of EU affairs, but not to engage directly at the EU level or through interparliamentary cooperation. Lastly, the Norwegian *Storting* has the ambiguous role of *outside-insider*, partly included and partly excluded from the various EU interparliamentary forums, reflecting the fact that Norway is

closely associated with, but not a member of, the EU. Finally, there is a brief conclusion.

Comparing the Nordic Parliaments' Approaches to the EU

The parliaments of the three Nordic EU member states (Denmark, Sweden, and Finland) are strikingly similar, in particular when they are compared more broadly with the parliaments of the other member states of the EU.[1] In addition to the many geographical, historical, and cultural commonalities that the three countries share, they are all parliamentary democracies[2] with unicameral chambers elected by proportional representation. Moreover they largely share many of the background conditions that academic observers have found to be commonly correlated with robust parliamentary influence over EU affairs – a strong parliament, frequency of minority governments (with the exception of Finland), low popular support for the EU, and a mainly Protestant (as opposed to Catholic or Orthodox) population (Raunio 2005; Bergman 2000).

Indeed, studies that compare the relative strength of parliaments with respect to their scrutiny of EU affairs consistently rank the Nordic parliaments among the strongest (Bergman 2000; Maurer and Wessels 2001; Raunio 2005; Winzen 2012). These gauge parliamentary influence according to three general measures: access to information, i.e. the extent to which the parliament can obtain in a timely manner all documents relevant to EU-scrutiny, perhaps including an explanatory memorandum setting out the government's position on a specific proposal; the committee system's effectiveness, including the presence of a EAC and the active involvement of sectoral committees in scrutiny of EU activities in their specialized policy areas; and the extent of the parliament's control over the government's position at EU level, such as whether it can impose a binding mandate on the government's vote in the Council. Using such measures, one study ranked the Danish, Finnish and Swedish parliaments as the first, second, and third most influential of the EU-15 parliaments with respect to EU scrutiny (Bergman 2000: 418); two other studies ranked the three Nordic parliaments in the top four of EU-15, along with Austria (Maurer and Wessels 2001; Raunio 2005: 324); and another study

[1] This section directly compares the parliaments of the three Nordic states that are in the EU – those of Denmark, Sweden, and Finland. Discussion of the parliament of Norway – which as a non-member defies direct comparison – is confined to a separate section, below.

[2] Although Finland may be technically a "semi-presidential" system, recent constitutional reforms that increased the power of the parliament at the expense of the president make it essentially a parliamentary democracy (Raunio 2012).

found them among the top four of EU-15 (along with Germany) with respect to parliamentary control and among the top five (along with Germany and Austria) with respect to mandating rights (Winzen 2012: 664).

Direct comparisons between the Nordic parliaments do reveal some differences in their systems of domestic scrutiny with respect to EU affairs. The Finnish parliament may be said to have a stronger system with respect to access to information (Hegeland 2007: 110–111) and the effective involvement of sectoral committees, whereas the Danish parliament is stronger in its power to mandate – politically, not legally – its government's position in Council negotiations (Raunio and Wiberg 2008: 388–389). Yet these minor differences generally prove the basic similarity between the three Nordic parliaments, especially in the context of the much broader range of difference that prevails among EU parliaments generally.

However, the problem with these comparative studies is twofold. First, they mostly pre-date the Treaty of Lisbon and, as a result, do not fully account for the institutional changes made in order to adapt to it. Second, and relatedly, they are mainly concerned with comparing the manner in which each parliament scrutinizes its own government in its handling of EU affairs, rather than comparing how the parliaments involve themselves directly at the EU level, as they are now empowered to do under the Treaty of Lisbon. A look at their recent, direct involvement at the EU-level reveals striking differences among the Nordic parliaments in how they approach their new post-Lisbon role. This becomes most apparent when one compares their use of the EWM, which empowers each national parliamentary chamber to formally issue a "reasoned opinion" (RO) if it believes that an EU legislative proposal violates the principle of subsidiarity – i.e. asserting that the action is unwarranted and the matter should instead be left to the member states. In the first three years of the EWM, from 1 December 2009 (when the Treaty of Lisbon came into force) until the end of 2012, the Nordic parliaments produced the following numbers of ROs: Finland (2), Denmark (6), Sweden (34). To put these numbers in perspective, the 38 parliamentary chambers in EU-27[3] produced a total of 172 ROs during this period, an average of 4.5 reasoned opinions per chamber. They may be sorted into three groups, ranging from least to most prolific, according to the number of reasoned opinions produced over this period:

[3] Although the Spanish and Irish parliaments are bicameral, they have joint scrutiny systems, and so are counted as unicameral for the purpose of this calculation. (This paper covers a period before Croatia, the 28th member state, joined on 1 July 2013.) These figures are calculated from the Commission's annual reports on relations with national parliaments, available at: <http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm>.

1. 19 chambers: 0-2 ROs
2. 12 chambers: 3-7 ROs
3. 7 chambers: 9+ ROs

One Nordic parliament is to be found in each group. The Finnish parliament is among the least prolific, the Danish parliament is in the middle group, and the Swedish parliament is among the seven most prolific chambers in the EU. Even within this latter group, the *Riksdag* is an outlier: its total of 34 reasoned opinions is by far the largest, far outstripping the 13 reasoned opinions produced by the second-place Luxembourg *Chambre des Députés*. Thus it is apparent that despite their many similarities with respect to EU scrutiny, the three Nordic parliaments approach the EWM very differently. Moreover, it is possible for a parliament to wield more influence than these numbers might suggest, as we shall see in the case of the Danish parliament and *Monti II*.

The Proposed *Monti II* Regulation

The full title of *Monti II* is the "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" (COM/2012/0130). Its purpose was to reconcile collective action rights (especially the right to strike) with the economic freedoms of the internal market. It was prompted in particular by two controversial 2007 judgements of the ECJ, *Viking* and *Laval*: in both cases a labour union in a Nordic member state was on the losing side, and together these were largely seen as a direct threat to the Nordic model of industrial relations and an invitation to social dumping. In these judgements the Court recognized the right to strike but placed restrictions on it when it targets a cross-border business exercising the freedom of establishment (as in *Viking*, which involved a Finnish ferry operator that wished to relocate to Estonia) or the freedom to provide services (as in *Laval*, which involved a Latvian construction company that posted workers in Sweden) (see Davies 2008; Blauberger 2012). Instead of guaranteeing the right to strike, the proposed regulation sought to balance it with market freedoms by codifying (in Article 2, the key provision of the legislation) that "the exercise of" each "shall respect" the other, and vice versa:

> The exercise of the freedom of establishment and the freedom to provide services enshrined in the Treaty shall respect the fundamental right to take collective action, including the right or freedom to strike, and conversely, the exercise of the fundamental right to take collective action, including the right or freedom to strike, shall respect these economic freedoms.

This provision was a particular target of criticism from NPs – see the remarks from the Swedish parliament, cited below – who complained that it did not actually clarify the relationship between these competing norms, and therefore failed to achieve the supposed purpose of the legislation.

The *Monti II* regulation provoked greater opposition from national parliaments than any other proposal up to that time. In all, twelve parliamentary chambers passed ROs in response to the proposal in the eight-week period after it was officially transmitted (27 March – 22 May 2012), which triggered the first "yellow card" under the EWM.[4] This forced the Commission to formally review the proposal, after which it had the option to either maintain, amend or withdraw it; in September 2012, the proposal was withdrawn.[5] While it is not possible to thoroughly analyze all the ROs here (see Fabbrini and Granat 2013), it is notable that many national parliaments objected to *Monti II* not only for allegedly violating the principal of subsidiarity; they also questioned its legal basis, proportionality compliance and policy effectiveness. The Nordic parliaments, in their ROs, objected to *Monti II* not only because it limited the right to strike but also, more generally, that it could impose a common European social policy infringing upon existing well-functioning domestic arrangements. Thus in attacking *Monti II* they were, in effect, defending the Nordic social model. But most of the other (non-Nordic) national parliaments and chambers that issued ROs expressed similar broad political concerns about the proposal, with the exception of three chambers – the Latvian parliament, the Polish *Sjem*, and the UK House of Commons – that objected on narrower legal-technical grounds (Iossa 2012: 11). Yet while the three Nordic parliaments all passed ROs in response to *Monti II*, and all three raised similar substantive concerns in doing so, a closer examination of the whole episode shows each of them approaches the EWM – and interparliamentary cooperation more broadly – quite differently.

[4] Reasoned opinions received in the eight weeks following a proposal's adoption count as "votes" under the EWM. Each parliament is allotted two votes – two for a unicameral chamber, one vote for each chamber in bicameral systems – making a total of 54 votes in EU-27. If one third of national parliaments issue reasoned opinions (18 votes in EU-27), this is a "yellow card," requiring the proposing institution (usually the Commission) to review the measure, after which it may decide to maintain, withdraw or amend it. In the case of *Monti II*, seven unicameral parliaments and five single chambers from bicameral parliaments passed ROs, for a total of 19 votes. There is also the possibility of an "orange card": if a simple majority of national parliaments issue ROs (28 votes in EU-27), this triggers an early vote in the Council and the EP, either of which may immediately reject the measure (by a vote of 55 per cent of Council members, or a majority of votes cast in the EP). In the first four years of the EWM, there have been no orange cards and just two yellow cards. The second yellow card was issued in October 2013, in response to the proposal for the establishment of the European Public Prosecutor's Office (COM/2013/0534).

[5] For a complete account of the *Monti II* yellow card, see Cooper 2013c.

The Danish *Folketing*: Strategic Coordinator

The Danish parliament has played a pioneering role, both at the domestic level and at the EU level, of securing parliamentary influence over EU affairs. Soon after Denmark joined the EU in 1973, a conflict arose over EU policy between the minority government and the parliamentary opposition that was only resolved when the government agreed to abide by the instructions of the EAC; this established the "mandate," wherein the minister must present the government's position for the approval of the EAC prior to negotiations in Brussels (Aylott et al. 2013; Nedergaard 2014; Raunio and Wiberg 2008). This Danish model was widely seen as the strongest system of parliamentary scrutiny of EU affairs and proved influential among countries that joined the EU later. Sweden and Finland (as well as Austria) adopted similar mandate-oriented systems when they joined in 1995. More surprisingly, perhaps, seven of the ten countries that joined in 2004 also adopted scrutiny systems largely based on this "Nordic model," in part because the Danish EAC, acting as "institutional entrepreneur," actively promoted it to the accession states' parliaments (Buzogány 2013: 28–29; Jungar 2010).

Besides promoting its own system as a "best practice" model of parliamentary scrutiny, the Danish parliament has also led efforts towards establishing mechanisms of cooperation among national parliaments in order to increase their influence over EU affairs. In 1991, the *Folketing* was the first EU parliament to station a national parliament representative (NPR) in Brussels (Buskjær Christensen 2014); now, virtually all parliaments have them. In 2002, the Danish parliament led efforts to strengthen COSAC – the semiannual meeting of members of national parliaments (from EACs), along with MEPs – which eventually led to decision-making by qualified majority voting and the establishment of a secretariat for the body (Jungar 2010; Knudsen and Carl 2008); in fact, the first permanent member of the COSAC secretariat was an official seconded from the *Folketing*. More recently, the *Folketing* hosted two meetings, in November 2012 and March 2013, of numerous EAC chairs from across the EU in an attempt to develop a common approach to the creation of a new Interparliamentary Conference based on Article 13 of the Fiscal Treaty; the first "Article 13 Conference" took place not long after, in Vilnius in October 2013 (Cooper 2014). But probably the best example of Danish leadership in promoting national parliaments' influence in the EU is its role in the first "yellow card." While in the EWM all national parliaments are formal equals – there is no "leader" – it is nevertheless often the case that one parliamentary chamber will take on a leadership role, being the first to move to adopt a RO and then to encourage others to do so; in the case of *Monti II*, this was the *Folketing*. In doing so, it made use of two available tools of

interparliamentary coordination mentioned above – COSAC, and the network of NPRs in Brussels.

The Danish parliament was able to play a strategic role in coordinating efforts towards a "yellow card" in part because its scrutiny of EU affairs is centralized in a powerful EAC, which in many ways resembles "a parliament in miniature" (Hegeland 2007: 102). Besides having the power to mandate the government with respect to its position in the Council, the EAC can adopt a RO under the EWM that is binding on the whole parliament, without any involvement of the plenary. What this meant in the case of *Monti II* was that the Danish parliament was able to act decisively and rapidly to adopt a RO, with the clear intention of trying to influence other parliaments to adopt them as well. Scrutiny of *Monti II* was initiated on 21 March, the very day of its adoption by the Commission, before it had even been officially transmitted to national parliaments under the EWM. Two days later (23 March) the EAC decided to draft a reasoned opinion. Normally, the EAC would consult the relevant sectoral committee (in this case, the Employment Committee) for its opinion on subsidiarity compliance, but this step was omitted in order to speed up the process. The political decision to adopt a RO was made unanimously on April 20, although it was not formally adopted until 3 May. The impetus for the RO clearly came from the parliament, not the government. In its explanatory memorandum on *Monti II*, the government had indicated that the content of the proposal raised potential political concerns, but it had not found a subsidiarity breach. Rather, it was the EAC that decided that *Monti II* was in breach of subsidiarity, adopting an RO to that effect. Moreover, the push for the RO was led by the EAC chair, who was (as is often the case in the *Folketing*) from a party outside the governing coalition: while Denmark was governed by a centre-left coalition with a Social Democrat prime minister, the push for a reasoned opinion in the EAC was led by the chair, Eva Kjer Hansen, a member of the opposition Liberal (*Venstre*) party. Seeing that opposition to *Monti II* was unanimous across the parties in the Folketing, members of the EAC made a conscious decision to rally opposition among other national parliaments in order to try to achieve a "yellow card."[6]

By happenstance, the Danish parliament had an ideal opportunity to influence other national parliaments when it hosted and chaired a meeting of COSAC in Copenhagen on 22–24 April, 2012, right in the middle of the eight-week scrutiny period for the *Monti II* proposal. Just two days prior to the meeting, on 20 April, the EAC had agreed on a draft text for its RO; this draft was quickly translated into English so it could be circulated to the visiting parliamentary delegations. While *Monti II* did not appear on the public agenda

[6] Interview with Eva Kjer Hansen, chair of the Danish EAC, June 2013.

of the meeting in Copenhagen, it was very much discussed in the corridors. The Danish delegation, and the EAC chair in particular, used the occasion to informally approach members of other parliaments on the margins of the COSAC meeting to inform them that they were going to adopt a RO in opposition to *Monti II*, and to sound them out as to whether they might do the same. Of course, the effect of such efforts is difficult to measure, because in the end the final decision whether to pass a RO belongs to each individual parliament. But it is likely that the fact that the COSAC meeting took place at all, allowing the participants in the EWM to meet on a face-to-face basis, spurred some NPs – the Latvian parliament, for example – to pass reasoned opinions which they would not have otherwise.[7]

The Danish parliament also used the network of NPRs in Brussels to encourage opposition to *Monti II*. The NPRs work in close proximity to one another, meet on a weekly basis at Monday Morning Meetings (MMMs) to discuss common issues including subsidiarity and the EWM, and are continuously in contact with one another through a common email list and sharing documents privately on a common server. In the case of *Monti II*, it was the Danish NPR who notified his colleagues very early, at the MMM on 26 March, 2012, that his parliament would be closely reviewing the proposal for its subsidiarity compliance. Furthermore, as was the common practice within the NPR network, he created a jointly accessible document on their shared private server with an empty box for each national parliament, to encourage the other NPRs to fill in up-to-date information about the status of *Monti II* in their respective parliaments. In this way, the network of NPRs had a comprehensive and up-to-date picture of the overall scrutiny process for *Monti II* as it unfolded, which they relayed back to their home parliaments. As a result, all national parliaments knew that the "vote count" under the EWM was coming close to the yellow card threshold of 18 votes just as the deadline of 22 May was looming; this knowledge may have influenced some parliamentary chambers to pass ROs which otherwise would not have. Half of the ROs were passed in the final week before the deadline, and the final votes that secured the yellow card did not arrive until the final day, mere hours before the deadline at midnight on 22 May 2012.

It should be emphasized that while the Danish parliament played the role of strategic coordinator in this case, it does not always do so. The *Folketing* is not even among the most prolific parliaments within the EWM: it is in the middle group mentioned above, in Section II, with an output of ROs close to the

[7] The Danish EAC Chair discussed the issue on an individual basis with the Latvian EAC Chair at the Copenhagen COSAC meeting. This prompted the issue to be put on the agenda of the Latvian EAC, which subsequently passed a RO, its first (interviews with NP officials; COSAC [2013]: 269).

average among national parliamentary chambers in the EU. In fact, the EAC chair at the time of *Monti II* has expressed deep skepticism that the subsidiarity principle and the EWM are the appropriate tools for enhancing the influence of national parliaments in the EU in the long run.[8] However, when it chooses to do so the Danish EAC has both the ability, with its centralized system of parliamentary scrutiny of the EU, and the willingness to strategically use the system and to coordinate with other parliaments to achieve their goals – in this case, both to defeat *Monti II* as an immediate policy goal and to attain the first yellow card, an institutional milestone that signalled the increased importance of national parliaments in EU politics.

The Swedish *Riksdag*: Comprehensive Scrutinizer

The Swedish system of parliamentary scrutiny was heavily influenced by the Danish system: in particular, the government is expected to act in accordance with the mandate imposed upon it by the EAC, with whom ministers consult prior to Council meetings where decisions will be made. One marked contrast from the Danish system, however, is that more scope is given to the work of sectoral committees. This is most apparent in the EWM. Unlike in the *Folketing*, the Swedish EAC has effectively no role in subsidiarity scrutiny; rather, the scrutiny of EU legislative proposals for their subsidiarity compliance is carried out by sectoral committees, which draft and adopt the ROs that are later formally adopted by the plenary (Hegeland 2015). In the case of *Monti II*, the decision was made in the Labour Market Committee, which decided to draft a reasoned opinion on 26 April, which it adopted unanimously on 3 May, and which was formally adopted in the plenary on 11 May 2012.

This system has allowed the *Riksdag* to become by far the most prolific EU parliament in producing ROs, having produced 34 in the first three years after the Treaty of Lisbon. In fact, the Riksdag produced 20 ROs in 2012 alone, 28 per cent of the total ROs produced by all parliaments in that year. What is notable about the Swedish parliament's system of subsidiarity scrutiny is its comprehensiveness and thoroughness:

> All drafts that the Commission sends to the Riksdag in the EWM-procedure are examined by the relevant sectoral committee. Thus, there is no mechanism for limiting the number of legislative acts that are examined by the sectoral committees.
>
> (Hegeland 2012: 4)

[8] Interview with Eva Kjer Hansen, chair of the Danish EAC, June 2013.

Thus part of the reason that the ROs are so numerous is that the sectoral committees subject *every* proposal to a thorough subsidiarity review without prior vetting by staff. Each proposal is examined twice by the relevant committee. The Swedish government must, within two weeks of a committee requesting it, provide an explanatory memorandum setting out its position on the proposal, including the question of subsidiarity compliance. With this system, the *Riksdag* has in effect become a highly efficient machine for the production of ROs. There is a division of labour between sectoral committees which no doubt makes the job somewhat more manageable (Hegeland 2015).

Another possible advantage of the Swedish system is that each sectoral committee is able to bring its particular expertise to bear on the subsidiarity review, which can make the Swedish ROs particularly incisive. For example, the RO drafted by the Labour Market Committee in opposition to *Monti II* – a simple two-page document – contains a particularly subtle and trenchant critique emphasizing that the proposal may run afoul of subsidiarity because it will not achieve its intended goal. This is related to its legal basis, the "flexibility clause." (Art. 352 TFEU), which may only be employed in cases where EU action "should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers," in which case the EU may adopt "appropriate measures." Arguably, for a proposal to be correctly founded on Article 352 as its legal basis, it must not only be *necessary* (in conformity with subsidiarity), but it must be *effective* from a policy perspective, i.e. actually likely to achieve its given objectives. The Swedish RO argues that Article 2 of *Monti II* – the central provision of the proposal, which was quoted above – manifestly fails in this regard:

> The key provision of the proposal is Article 2 that basically states that the exercise of economic freedoms should be consistent with the exercise of the right to collective action, including the right to strike, and vice versa. The Riksdag has difficulty seeing how the proposal, in its current state, contributes to the clarification of the relationship between liberties and rights that is the proposal's purpose according to the explanatory memorandum. The Riksdag cannot see either that the regulation would create greater legal certainty in this regard. Nor can the Riksdag see how the proposal would be "reducing tensions between the national industrial relation systems and the freedom to provide services" which is stated as essentially the basis of the proposal. It is thus difficult to see how the proposal could help achieve any of the objectives referred to in the Treaty, which is a prerequisite for the flexibility clause to be used.

This opinion abides by the rules of the Treaty of Lisbon in that it frames its objections not in terms of political oppostion to the measure, but on the grounds of subsidiarity (non-) compliance. The RO is not simply stating that the proposed measure is undesirable, though in all likelihood many (if not most) Swedish MPs thought that it was. Rather, the RO is saying that the policy is misconceived and unworkable, and *therefore* it violates the principle of subsidiarity.

Even though the Swedish system succeeds in comprehensively scrutinizing all EU legislative proposals, resulting in a large output of ROs that make ample use of the policy expertise of the sectoral committees, there is still perhaps a drawback. The Swedish parliament has not been as active as the Danish parliament in trying to rally other national parliaments to join in opposition to an objectionable proposal, such as *Monti II*. This is perhaps a reflection that the power to scrutinize EU affairs is dispersed among many committees rather than concentrated in a single EAC that can act decisively and strategically to coordinate opposition with other national parliaments.

The Finnish *Eduskunta*: Reluctant Cooperator

The Finnish system of EU scrutiny was also heavily influence by the Danish example (Raunio 2015), and the two parliaments have quite similar, mandate-oriented systems on the domestic level. The Finnish EAC, like its Danish counterpart, is in many ways a "parliament in miniature" that speaks for the plenary on almost all questions related to EU affairs. However, it differs from both the Danish and the Swedish parliaments in one important respect: the prevailing attitude within the *Eduskunta* shows a marked skepticism towards the idea that the national parliament should be in any way an independent actor at the EU level. Thus even though it exercises strong and active scrutiny of the Finnish government's conduct of EU policy, the *Eduskunta* takes a skeptical view of the EWM, political dialogue with the Commission, and inter-parliamentary cooperation generally, all of which it views basically as a waste of time (Eduskunta 2013; Raunio 2012;). Moreover, it takes the view that under the EWM a national parliament should only pass a RO if there is a genuine subsidiarity breach, and it should not use it as a substitute for an expression of political opposition. As a result, as we saw above, the Finnish parliament is among the group of parliaments that passes the least number of ROs. Yet these scruples about a solely domestic parliamentary role and a strict definition of subsidiarity were put to the test when the *Eduskunta* was confronted with *Monti II*, which threatened the Nordic model of industrial relations that Finland shared with Denmark and Sweden; its decision may well have been influenced by the fact that the Danish and Swedish parliaments had already

passed ROs in opposition to the measure. Near the end of the eight-week review period, on 11 May 2012, on the proposal of the Labour Market Committee the EAC adopted the text of a RO finding *Monti II* in breach of subsidiarity, and forwarded it to the plenary. On 15 May the plenary formally adopted the RO in opposition to *Monti II*; the fact that it did so relatively late – just one week before the deadline – may be taken as an indication of its reluctance to participate in the EWM.

It is difficult to explain exactly why this sceptical attitude prevails in the *Eduskunta*, but it is clearly widespread. Written evidence submitted by the *Eduskunta* to a House of Lords inquiry on the role of national parliaments in the EU stated unequivocally that there is "[…] broad agreement in Finland that the *Eduskunta*'s role in relation to the European Union is primarily national" (Eduskunta 2013: 43). The document then goes on to decry the prevailing trend towards greater involvement of national parliaments at the EU level:

> The Finnish understanding of national parliaments' EU role as an extension of their domestic powers has not been fashionable in Europe in recent years. The emphasis at the European level has been on collective action by national parliaments and on establishing a political dialogue between national parliaments and the EU institutions, particularly the Commission. We believe that the steps taken in this direction have not been effective in lessening the democratic deficit of the EU. While it is good that more national parliaments have taken an active role in EU affairs since the Lisbon treaty, we see no evidence that the inputs of national parliaments have actually affected outcomes at the EU level. We fear that the post-Lisbon arrangements have created the appearance but not the reality of increased parliamentary participation.
>
> (Eduskunta 2013: 43)

It goes on to question the usefulness of interparliamentary meetings, political dialogue with the Commission, and the EWM. This reflects the attitude that while it is the parliament that sets the policy, only the government should represent Finland at the EU level. A small but telling example of this concerns the official title of the Finnish NPR. The *Eduskunta* recently undertook an administrative review of the position of the NPR in Brussels, and decided to downgrade the post from "representative" to "liaison officer"; this change emphasizes that the person is not a political actor, but someone who relays information back to the *Eduskunta* and assists Finnish MPs when they visit Brussels. It underscores that the only legitimate "representative" of Finland to the EU is the government.

Regarding the EWM, the Eduskunta points out that the treaty defines subsidiarity so narrowly – and permitting such a broad field of EU legislative action – that material breaches of the principle will be rare:

> The wording of the treaty puts an unreasonable burden on national parliaments; under article 5 TEU, a proposal is at variance with the subsidiarity principle only if it can be demonstrated that the goals (themselves set at EU level) of the proposed action can be achieved by all of the member states acting separately. This means that any subsidiarity objection can be overcome by referring to the least efficient member state.
>
> (Eduskunta 2013: 44)

However, despite this criticism of the treaty definition, the Eduskunta disapproves of national parliaments bending the rules and smuggling other concerns – such as legal basis, proportionality, or policy effectiveness – into their ROs, which should remain strictly focused on subsidiarity. This point of view is exemplified by remarks made by the speaker of the *Eduskunta* in a speech in October 2012:

> If you read the 156 reasoned opinions submitted by national parliaments and the Commission's replies, it is obvious that the Lisbon system is not working as intended. Very few of national parliaments' reasoned opinions have anything to do with subsidiarity as defined in the treaty.
>
> (Heinäluoma 2012: 7)

There is one additional factor inhibiting Finnish involvement in the EWM. While the Finnish EAC can speak for the plenary in almost all matters regarding the EU, it cannot formally adopt a RO. This is a consequence of the way in which the *Eduskunta* chose to ratify the Treaty of Lisbon. At the time, Finnish constitutional experts decided that the power to issue ROs was not automatically delegated to the EAC as an extension of its EU scrutiny powers, but remained with the plenary; to delegate this power to the EAC would have required a constitutional change that would have raised the ratification threshold from a simple majority to two-thirds. Given the prevailing view that the EWM was of little consequence, the change was deemed not worth the trouble.[9] As a result, the normative biases in favor of a strict interpretation of the subsidiarity principle and against inter-parliamentary cooperation, which both tend to limit the involvement of the *Eduskunta* in the EWM, are compounded by an additional institutional hurdle, in that a RO must be passed not just by the EAC but also by the plenary. This could be an

[9] Interview with Finnish National Parliament official, February 2013.

additional explanation for the small number of ROs produced by the *Eduskunta*, although the prevailing reluctance to cooperate is probably still the most important explanation.

The Norwegian *Storting*: Outside-Insider

Norway is not a member state of the EU; on two separate occasions, in 1972 and 1994, terms of accession that had been negotiated between the EU and Norway were rejected by Norwegian voters in a referendum. Even so, Norway is so closely integrated with the EU that its status is sometimes characterized as a kind of partial or "quasi-membership" (Aylott et al. 2013: 124). Its most important link comes with its taking part (along with Iceland and Liechtenstein) in the European Economic Area (EEA), through which it is integrated into the EU's internal market, except in certain sectors such as agriculture and fisheries. Norway also cooperates extensively in the field of justice and home affairs, most notably through membership in the Schengen framework agreement that enables its participation in the intra-EU border-control-free travel zone. Furthermore, Norway maintains close cooperation with the EU Common Security and Defense Policy (CSDP); under these auspices it has participated in military operations and civilian missions, and it contributes on a permanent basis to one of the EU battle groups, integrated military forces available for crisis management operations (Sjursen 2012). In addition to these major commitments, Norway has other agreements to participate in EU programmes and agencies, to which it contributes financially; moreover, it gives money to reduce economic disparity in the EEA through bilateral grants to 16 EU countries in Central and Southern Europe. Overall, Norway's ambiguous position of association-without-membership is well captured in the title of an official report that was a comprehensive review of Norway–EU relations: *Outside and Inside* (Official Norwegian Report [NOU 2012:2]).

The position of the Norwegian parliament also reflects this outside/inside ambiguity. For example, MPs and officials from the *Storting* do participate in interparliamentary forums within the EU, but only partially and/or in a non-voting observer capacity. The Norwegian parliament regularly sends representatives to the COSAC conference as observers even though, as Norway is neither a member state nor a candidate country of the EU, they have no *a priori* right to attend. Regular attendance began in late 2009 when the Swedish parliament invited parliamentarians from Norway and Iceland, its Nordic neighbors, to attend the Stockholm COSAC as special guests. (Norwegian representatives had attended at least once before, at the invitation of the Finnish parliament in late 2006.) One Norwegian MP in attendance was

future prime minister Erna Solberg, who addressed the group in English for lack of a Norwegian translator. Following this precedent, the Spanish parliament extended the same invitation to Norway and Iceland for the next meeting, in early 2010. However, in late 2010, the Belgian parliament invited representatives from Iceland – by then a candidate country, and so entitled to attend as an observer – but not Norway. Since then, a curious protocol has developed: the Norwegian parliament now routinely sends a letter to the host parliament requesting an invitation, and the request is routinely granted, with the approval of the COSAC secretariat.

By contrast, the Norwegian parliament does have the right to attend the recently created Interparliamentary Conference on CFSP-CSDP, which has met twice a year since late 2012. A provision in the conference's Rules of Procedure allows representatives from any "European member country of NATO" that is not an EU member or a candidate to attend as observers. This provision, which the Norwegian parliament lobbied for, in practice only applies to Norway. The new conference was in part a replacement for the Parliamentary Assembly of the Western European Union (WEU); the WEU was a relic of the Cold War that had latterly functioned as a bridge between the EU and NATO, but was abolished in 2011; Norway had been an associate member of the WEU by virtue of being a European non-EU NATO member. Through the WEU Parliamentary Assembly, national parliamentarians had exercised a modicum of oversight over the EU's foreign and defense policies; Norwegian MPs had been active participants, with one of the highest rates of attendance (Wagner 2013). In the end, the Norwegian parliament prevailed in its desire to be included in the new conference due to the fact that Norway is actively involved in the EU's CSDP, and should therefore also be involved in the body exercising parliamentary oversight over the CSDP.

As for other interparliamentary meetings, the picture is mixed. There were no representatives from the Norwegian parliament in attendance at the first meeting of the "Article 13 Conference" on economic governance, which took place in the Lithuanian parliament in October 2013, but two Norwegian MPs attended the second meeting, which was hosted by the EP in January 2014; the conference has not yet fixed the rules of attendance for observers. In addition to these three major conferences,[10] there are many smaller interparliamentary meetings, which are sometimes attended by Norwegian parliamentarians. For

[10] The Treaty of Lisbon also anticipates the creation of some kind of interparliamentary mechanism in the field of justice and home affairs, specifically for the oversight of the EU agencies for police cooperation (Europol) and judicial cooperation (Eurojust), but no decisions have yet been taken in this regard. As Norway is a participant in both programmes the Norwegian parliament will endeavour to take part in whatever body is devised for parliamentary oversight in this area.

example, of the fifteen Interparliamentary Committee Meetings hosted by the EP in 2013, MPs from Norway attended at least four of them. Norwegian MPs are now invited to such events as a matter of course, due to the fact that Storting has, since the beginning of 2013, its own NPR inside the offices of the EP.

The newly-established position of the Norwegian NPR is ambiguous, and his relationship to the other NPRs is in a way a microcosm of the outside/inside character of the relationship between the *Storting* and the EU parliaments. As noted above, almost all EU parliaments now have representatives in Brussels, who share a suite of offices provided by the EP, and who continually liaise with one another by email and at regular Monday Morning Meetings (MMMs). The Norwegian parliament first appointed an NPR to Brussels in January 2011, but the initial request for an office within the EP was denied, and so he was housed in the Norwegian mission to the EU. However, his fortunes changed in December 2012 when Martin Schulz, president of the EP, was in Oslo to collect the EU's Nobel Peace Prize – a prize awarded by a committee chosen by the Norwegian parliament. During a courtesy visit (along with Commission President Jose Manuel Barroso) to his counterpart, the Speaker of the *Storting*, Schulz surprised his hosts by offering the coveted office space for the Norwegian NPR.[11] As a result, since January 2013 the *Storting* is the only non-EU parliament with an NPR inside the EP offices. Even so, he does not have the same status and level of access as the other NPRs. He does not attend the MMMs, in which NPRs from EU member states discuss internal business, such as matters of subsidiarity control. Similarly, he does not receive the emails that relate to internal business, but he does receive more general emails such as those sent by the EP concerning interparliamentary meetings. Thus his peculiar status finds him partly included and partly excluded from the work of his colleagues.

As for scrutiny of EU affairs, the Norwegian parliament is very weak in comparison to its Nordic neighbors: in particular, it lacks a powerful EAC (Aylott et al. 2013: 125–128; Official Norwegian Report [NOU 2012:2]; Hegeland 2007; Raunio and Wiberg 2008). The Europe Committee (formerly the EEA Consultative Committee) is made up of the 17-member Standing Committee on Foreign Affairs plus the six-member Parliamentary Delegation to the EEA/EFTA[12]; this in itself shows how EU affairs in Norway is still

[11] See the website of the Storting: <http://www.stortinget.no/no/Hva-skjer-pa-Stortinget/Nyhetsarkiv/Hva-skjer-nyheter/2012-2013/EU-topper-til-Stortinget/>.

[12] There are regular meetings between members of four parliaments that constitute the EEA Joint Parliamentary Committee (Norway, Iceland, Liechtenstein and the EP) and, in a different form, the EFTA parliamentary committees (Norway, Iceland, Liechtenstein, and Switzerland).

largely consigned to the realm of "foreign policy." As its previous name indicates, the Europe Committee is formally a consultative body only: it does not hold votes, it does not have a secretariat, and it does not impose a mandate on the government. Unlike the Nordic EACs – which meet practically once a week – it meets only 6-8 times per year, and is thus unable to exercise timely scrutiny of EU legislative proposals.

In the case of the *Monti II* proposal, the Europe Committee actually met on the very day that it was formally proposed – 27 March 2012 – but did not meet again until 5 June 2012, after the eight-week review period had already elapsed. On the latter occasion, the proposal was briefly discussed in the committee with the foreign minister, who drew attention to the widespread opposition to the measure among national parliaments (noting the three Nordic EU parliaments specifically); but at that point it was already clear that the proposal was very unlikely to pass. Thus even if the Europe Committee had had a will to intervene, it would have been too late. But this points to the larger problem that even if the Norwegian parliament had wanted to object to *Monti II*, it could not have done so through the EWM because Norway is not a member of the EU, and thus it was in no position to take advantage of the enhanced role of national parliaments under the Treaty of Lisbon. For the same reason, even if the Norwegian government actively opposed *Monti II* this would have mattered little because Norway does not have a vote in the Council, nor does it elect MEPs to express their views in the EP. Ultimately Norway's non-membership in the EU – and the resultant lack of voting rights in the Council and the EP – is the fundamental structural reason that Norwegian authorities, whether in the legislative or executive branches, have little say over EU legislation.

Conclusion

While the three Nordic EU parliaments have always been viewed as similar, in particular in comparison to the parliaments of the other member states, this perspective must be revised in light of the changes brought by the Treaty of Lisbon. This Treaty has brought new powers for national parliaments to intervene directly in the EU legislative process, and new opportunities for national parliaments to cooperate in order to achieve common goals and assert themselves collectively at the EU level. It has even been claimed that national parliaments should be seen as a collective force, a "virtual third chamber" for the EU alongside the Council and the EP (Cooper 2012; 2013a; 2013b). On a cautionary note, it should be emphasized that domestic scrutiny of the government's conduct of EU affairs is still the primary EU-related task of national parliaments, and any direct role at the EU level is ancillary at best.

Moreover, the EWM is a relatively new procedure, and the *Monti II* yellow card is but a single, and rather unusual, instance of this mechanism in operation, and so we should guard against overinterpreting this episode. This said, it is clear from the forgoing that even a group of parliaments as similar as the Nordic parliaments can differ greatly in their attitudes and approaches to the direct and collective involvement of national parliaments in the EU. Whereas the Swedish *Riksdag* is the most prolific parliament regarding the production of ROs, and the Danish *Folketing* is perhaps the most strategic in trying to organize national parliaments to work together to achieve common goals, the Finnish *Eduskunta* one of the most skeptical parliaments with respect to direct EU involvement, and the Norwegian *Storting* is, of course, handicapped by Norway's non-membership of the EU. From this evidence it may be surmised that a common approach to these questions is still some ways away.

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