



Working with national parliaments on EU affairs

European
Implementation
Assessment

STUDY

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European Implementation Assessment

On 3 May 2016, the Committee on Constitutional Affairs (AFCO) of the European Parliament requested an implementation report on implementation of the Treaty provisions concerning national parliaments (rapporteur: Paolo Rangel (EPP, Portugal)). This proposal was approved by the Conference of Committee Chairs at its meeting of 7 June 2016. Implementation reports are routinely accompanied by European implementation assessments.

This European implementation assessment has been drawn up by the Ex-Post Evaluation Unit of the Directorate for Impact Assessment and European Added Value, within the European Parliament's Directorate-General for Parliamentary Research Services. It aims at improving understanding of the subject while providing an overview and analysis of publicly available material on the implementation, application and effectiveness of the Treaty provisions on national parliaments to date.

The European implementation assessment contains an analysis (chapters 2-6.) drawing on input from research carried out by, and positions of, the EU institutions and bodies, as well as some external organisations.

Although it draws various conclusions (chapter 7), this assessment does not, however, provide any specific recommendations.

The study is supplemented by the results of an anonymous survey carried out among the representatives of national parliaments to the European Parliament. The survey's results are published in a separate briefing. While this study provides an empirical overview of the existing situation, the survey concentrates on practical and administrative aspects and the possibilities for the European Parliament to move forward based on its institutional prerogatives.

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Abstract

For decades the European Treaties neither regulated nor envisaged any formal relations between national parliaments and the European Community/European Union (EU) institutions. The role of national parliaments in European affairs was therefore to a large extent overlooked. The situation began to change slowly with the adoption of the Treaty of Maastricht (1992). However, the real change in national parliaments' status is connected with the adoption of the Treaty of Lisbon (2007), which has enabled national parliaments' active involvement in EU affairs, and enhanced the dialogue between national parliaments and the EU institutions.

Since the adoption of the Treaty of Lisbon, national parliaments can actively participate in scrutinising subsidiarity in draft EU legislative acts. They can engage in a political dialogue with the European Commission, and they are involved in interparliamentary cooperation with the European Parliament. Increasingly, national parliaments strive to become an active player at EU level and thus bridge the gap between EU citizens and EU affairs.

Against this background, this European implementation assessment provides an analysis of publicly available material published by the European institutions with regard to the position of national parliaments within the constitutional framework of the EU.

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List of abbreviations and acronyms

AFCO	European Parliament Committee on Constitutional Affairs
COSAC	Conference of Parliamentary Committees for Union Affairs and National Parliaments
CWP	European Commission annual work programme
DRNP	European Parliament Directorate for Relations with National Parliaments
DG EPRS	European Parliament Directorate-General for Parliamentary Research Services
DG IPOL	European Parliament Directorate-General for Internal Policies of the Union
EU	European Union
EC	European Communities
EMW	Early warning mechanism
EP	European Parliament
JURI	European Parliament Committee on Legal Affairs
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union

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Executive summary

National parliaments possess certain democratic qualities and responsibilities, including maintaining popular legitimacy, and scrutiny of executive power. However, for decades the European Treaties neither regulated nor envisaged any substantive relations between national parliaments and the European Community/European Union institutions. The role of national parliaments in EU affairs was hitherto therefore rather marginal or overlooked. This situation changed significantly with the adoption of the Treaty of Lisbon (2007) that enabled the active involvement of national parliaments in EU affairs, and strengthened and enhanced dialogue between national parliaments and the EU institutions.

Presently, the Treaty provisions allow for national parliaments' participation in EU affairs in several areas. The most substantial prerogative for national parliaments brought about by the Treaty of Lisbon was their ability to scrutinise compliance with the principle of subsidiarity in the early stages of EU legislative procedures. National parliaments' involvement in this 'early warning mechanism' can lead to a review of draft EU legislation to ensure respect of the subsidiarity principle, and theoretically also to a rejection of this legislative draft by the co-legislators.

Furthermore, various national parliaments' rights were acknowledged by the Treaty of Lisbon, including the right to receive information, the right to participate in various EU procedures, and to participate in Treaty revisions. The Treaty also acknowledges interparliamentary cooperation between the European Parliament and national parliaments, whether through the standing bodies such as the Conference of Parliamentary Committees for Union Affairs (COSAC), or various ad hoc meetings.

However, the impact of national parliaments on the EU legislative procedure remains rather limited. Their participation in the early warning mechanism is not absolute, as national parliaments can formally only assess the compliance of draft legislation with the subsidiarity principle. Procedures such as the 'yellow' or 'orange' card procedures have not been used extensively. Additionally, national parliaments have to submit their reasoned opinions within an eight week period, a timescale which is insufficient in many cases. Nonetheless, the application of national parliaments' powers does not prolong or halt EU legislative processes, and their influence is generally considered as very positive. In addition, an informal procedure intending to strengthen and broaden national parliaments' prerogatives – a 'green' card procedure – is emerging.

Political dialogue with national parliaments and interparliamentary cooperation has considerably evolved during the last decade. There is a clear development towards specialised, where possible, committee-based meetings. Nevertheless, interparliamentary cooperation must remain manageable and worthwhile for national parliaments. Organisation and management of such meetings must not lead to 'interparliamentary cooperation fatigue'.

Methodology

This study provides an analysis of publicly available documents adopted by the European Commission, the European Parliament and the Council of the European Union in which these European institutions evaluate their relations with the national parliaments of the EU Member States. In this regard, the study concentrates on the annual reports of the European Commission on relations with the national parliaments and on the annual reports of the European Parliament's Directorate for Relations with National Parliaments. The analysis of these documents intends to provide an overview of the working methods employed by the European institutions, mainly the European Parliament and the European Commission, in their relations with the national parliaments. As such, the study does not provide a specific analysis or overview of the vast existing academic research, although it takes it into account.

Furthermore, the study provides an overview of the main European Parliament resolutions dealing with the subject of national parliaments, and analyses the body of research either requested by the European Parliament's Committee on Constitutional Affairs, or carried out by the European Parliamentary Research Services on their own initiative. It also analyses the conclusions of the Conference of Parliamentary Committees for Union Affairs and national parliaments and the Conference of Speakers of EU national parliaments.

The study is based on desk research of the abovementioned documents and was peer-reviewed in-house.

1. Introduction

For many years, the European Treaties neither regulated nor planned for any substantive relations between the national parliaments in European Union Member States and the European institutions. The role of national parliaments in European affairs was marginal or overlooked. The situation began to change with the adoption of the Treaty of Maastricht (1992),¹ and the adoption of the Treaty of Amsterdam (1997).² A more significant change to the national parliaments' position came with the adoption of the Treaty of Lisbon (2007). The Treaty of Lisbon has allowed national parliaments to become more actively involved in EU affairs, especially with regard to the EU legislative process, and has strengthened and enhanced an already developing dialogue between national parliaments and the EU institutions.

The Treaty of Lisbon recognised the democratic significance of national parliaments and their link with citizens, and formally provided them with various rights, including rights to information; to participate in various EU procedures; to scrutinise draft legislation in the field of freedom, security and justice; and the right to scrutinise compliance in draft EU legislation with the subsidiarity principle (**early warning mechanism**). In addition, the Treaty of Lisbon acknowledged national parliaments' right to cooperate among themselves and with the European Parliament.

Today, the position of EU Member State national parliaments³ is delimited by Article 12 of the Treaty on the European Union (TEU) and two protocols annexed to the Treaty on the Functioning of the European Union (TFEU): Protocol No 1 on the role of national parliaments in the European Union; and Protocol No 2 on the application of the principles of subsidiarity and proportionality; which create a legal framework for the work of the national parliaments within the EU system.⁴

¹ Two declarations related to national parliaments were attached to the Maastricht Treaty: the Declaration on the role of national Parliaments in the European Union and the Declaration on the Conference of the Parliaments ([\[1992\] OJ C191/1](#)).

² Two protocols related to national parliaments were annexed to the Amsterdam Treaty: the Protocol on the role of national Parliaments in the European Union and the Protocol on the application of the principles of subsidiarity and proportionality ([97/C 340/01](#)).

³ There are currently 41 chambers in the EU national parliaments. National parliaments in 15 Member States have only one chamber (unicameral system: Bulgaria, Denmark, Estonia, Greece, Croatia, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Portugal, Slovakia, Finland and Sweden), while the national parliaments of the remaining 13 Member States have two chambers (bicameral system: Belgium, Czech Republic, Germany, Ireland, Spain, France, Italy, the Netherlands, Austria, Poland, Romania, Slovenia, and the United Kingdom).

⁴ Other provisions also directly refer to national parliaments and/or their competences, such as Articles 5(3), 48 and 49 TEU and Articles 69-71, 81, 85, 88 and 352 TFEU. These provisions specify national parliaments' rights included in Article 12 TEU. According to several authors, these multiple references to national parliaments in the treaties 'legitimise' the direct participation of national parliaments in the EU decision-making processes. See, for example, Fasone, C. and Lupo, C., 'Conclusion. Interparliamentary Cooperation in the Framework of a Euro-national Parliamentary System', in Fasone, C., and Lupo, C., (eds.), *Interparliamentary Cooperation in the Composite European Constitution*, Hart Publishing, 2016, pp. 345-360.

Pursuant to Article 12 TEU, national parliaments **actively contribute to the good functioning of the Union**. Based on this provision, national parliaments:

- receive information and forwarded copies of draft EU legislative acts from the EU institutions,
- scrutinise compliance with the principle of subsidiarity,
- take part in the evaluation mechanisms for implementation of Union policies,
- take part in revision of the Treaties pursuant to Article 48 TEU,
- receive notification of applications for accession to the Union pursuant to Article 49 TEU, and
- take part in interparliamentary cooperation between national parliaments and the European Parliament.

The provisions included in the two protocols partially specify the rights of national parliaments enumerated in Article 12 TEU, namely: (1) the right to be informed and to receive information; (2) the right to scrutinise draft legislation for compliance with the principle of subsidiarity; and (3) the right to take part in interparliamentary cooperation.

1.1 The right to be informed and to receive information

The right of national parliaments to be informed by and receive information from the European institutions stems from Article 12(a) TEU, as specified by Protocol No 1. Among other things, national parliaments should receive:

- the Commission's consultation documents (green and white papers and communications), upon publication;
- the Commission's annual legislative programme and instruments of legislative planning or policy, at the same time as the European Parliament and the Council;
- draft legislative acts and their amended drafts, at the same time as the European Parliament and the Council;⁵ and
- legislative resolutions of the European Parliament and positions of the Council.⁶

Furthermore, national parliaments should receive:

- the agendas for and the outcome of meetings of the Council, including the minutes of meetings where the Council deliberates on draft legislative acts;
- initiatives of the European Council pursuant Article 48(7) TEU; and
- Annual reports of the Court of Auditors.⁷

The European Commission considers the exchange of information and opinions on policy issues with national parliaments as part of the political dialogue. Based on its [website](#), the Commission systematically sends the necessary documents to national parliaments. The exchange of information between the European Parliament and national parliaments often takes place with the help of various tools, such as a platform for electronic exchange of

⁵ Articles 1 and 2, Protocol No 1.

⁶ Article 4, Protocol No 2.

⁷ Articles 5-7, Protocol No 1.

information, the **Interparliamentary EU Information Exchange (IPEX)**, but also through the European Centre for Parliamentary Research and Documentation (**ECPRD**).

1.2 The right to scrutinise draft legislation for compliance with the principle of subsidiarity – early warning mechanism

The Treaty of Lisbon introduced a mechanism allowing national parliaments to scrutinise the compliance of draft EU legislation with the principle of subsidiarity, the **early warning mechanism (EWM)**. This mechanism is considered to be the main substantive change introduced by the Treaty of Lisbon with regard to the position of national parliaments.⁸ National parliaments have the possibility to scrutinise every draft legislative act.⁹ Should they consider that the draft legislative act in question does not comply with the principle of subsidiarity, they can send a reasoned opinion to the respective EU institutions. The following scheme shows the main characteristics of the reasoned opinion submitted by national parliaments.

Reasoned opinion issued by a national parliament

- reacts to a draft EU legislative act,
- can be submitted by any chamber of a Member State national parliament;
- can be submitted within eight weeks starting from the date of transmission of a draft legislative act to a national parliament;
- can be submitted in any official language of the Union;
- must state an opinion as to why the national parliament considers that the draft EU legislative act does not comply with the principle of subsidiarity;
- can be sent to the presidents of the European Parliament, the Council, and the Commission.

The early warning mechanism can have several consequences for a draft legislative act. These consequences are described in Table 1. According to Protocol No 2, each national parliament possesses two votes.¹⁰ In bicameral parliamentary systems, each chamber of a national parliament has one vote. These votes are important to the ability of national parliaments to request a review of the draft legislation based on their collective action. One can distinguish several methods of collective action: the 'yellow card', 'orange card', 'green card' and 'red card' procedures. While the first two collective measures ('yellow' and 'orange' card) are presumed in Protocol No 2, the latter two are either used in practice ('green' card), or still only under discussion ('red' card).

Protocol No 2 (Article 6) also acknowledges that national parliaments may, where appropriate, consult regional parliaments with legislative powers. The votes mentioned

⁸ See, for example, [The Role of National Parliaments in the EU after Lisbon: Potentialities and Challenges](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, March 2017, p. 16.

⁹ Article 3, Protocol No 1 and Article 6, Protocol No 2.

¹⁰ Article 7, Protocol No 2. Together, there are 56 votes (2 per Member State).

above do not apply to regional parliaments. Furthermore, no prolongation of the eight week period is possible.¹¹ Therefore, the role of regional parliaments is dependent on the national arrangements and very often remains advisory.

a) 'Yellow card'

This collective action on the part of national parliaments leads to **review of a draft legislative act**. If at least one third (or one fourth)¹² of all the votes allocated to national parliaments send a reasoned opinion with regard to a particular piece of draft legislation, this draft legislation must be reviewed by the Commission. At present, as in all other cases, this review is **limited to the question of subsidiarity** and not to substantive issues. Following this review, the Commission¹³ may decide to maintain, amend, or withdraw the draft in a reasoned decision.

Since adoption of the Treaty of Lisbon, this procedure has only been used three times:¹⁴ in 2012, with regards to the right to take collective action;¹⁵ in 2013, with regards to establishing a European Public Prosecutor's Office;¹⁶ and in 2016, regarding the revision of the Posting of Workers Directive.¹⁷ In the first case, the Commission decided to withdraw its proposal, while denying any breach of the principle of subsidiarity.¹⁸ In the second case, the Commission maintained its proposal unchanged.¹⁹ Similarly, in the third case the Commission maintained its proposal unchanged while the legislative process is still ongoing.²⁰ In both latter cases, the Commission argued that the proposals complied with the principle of subsidiarity.

¹¹ There are currently 75 regional parliaments in 8 Member States: Austria, Belgium, Finland, Germany, Italy, Portugal, Spain, and the United Kingdom.

¹² This is the case for draft legislative acts submitted on the basis of Article 76 TFEU in the area of freedom, security and justice.

¹³ Or the group of Member States, the European Parliament, the Court of Justice, the European Central Bank, or the European Investment Bank if that is where the draft legislative act originates (Article 7(2), Protocol No 2).

¹⁴ Some authors consider that this low number 'is not itself a sign of failure' ([The Role of National Parliaments in the EU after Lisbon: Potentialities and Challenges](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, March 2017, p. 28).

¹⁵ European Commission, Annual Report 2012 on subsidiarity and proportionality, ([COM\(2013\) 566 final](#)), p. 7.

¹⁶ European Commission, Annual Report 2013 on subsidiarity and proportionality, ([COM\(2014\) 506 final](#)), p. 8.

¹⁷ European Commission, Annual Report 2016 on subsidiarity and proportionality, ([COM\(2017\) 600 final](#)), p. 13.

¹⁸ See European Commission decision to withdraw 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 ([2013/C 109/04](#)). See also, [letter from Commission Vice-President Šefčovič to the presidents of national parliaments](#), 12 September 2012.

¹⁹ European Commission, communication 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 ([COM\(2013\) 851 final](#)). See also a proposal for a Council regulation implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office, from June 2017 ([9941/2017](#)).

²⁰ European Commission, communication on the review of the proposal for a directive amending the Posting of Workers Directive, with regard to the principle of subsidiarity, in accordance with Protocol No 2 ([COM\(2016\) 505 final](#)).

The fact that the 'yellow card' procedure was used only three times between 2007 and 2017, does not prove that this procedure is a failure, or conversely that it is a success. The conditions set by the Treaty provisions, the time given to national parliaments to provide a reasoned opinion and the need for national parliaments to mutually coordinate in order to obtain a threshold of votes, make this procedure fairly challenging. Nonetheless, a slow growth in the use of this procedure can be detected since 2012, and as noted by the European Commission the use of the 'yellow card' is 'a clear expression of the willingness of national parliaments to make their voices heard in their relations with the Commission on a particular piece of legislation'.²¹

b) '**Orange card**'

Another collective action available to national parliaments pursuant to Article 7, Protocol No 2 **can lead to the refusal of a draft legislative act** by the co-legislators under the ordinary legislative procedure. If a simple majority of all the votes allocated to national parliaments (29 votes) send a reasoned opinion with regard to a particular piece of draft legislation, this draft legislation must be reviewed by the European Commission. Additionally, these national parliament reasoned opinions are **limited to compliance with the subsidiarity principle** and not to substantive issues. Following its review, the Commission may decide to maintain, amend or withdraw this draft. However, the Commission has to prepare an opinion in which it justifies the draft legislative act's compliance with the principle of subsidiarity. The Commission's opinion and the reasoned opinions of national parliaments are subsequently submitted to the co-legislators, who then consider whether the legislative proposal complies with the principle. If a majority of 55 % of the members of the Council, or a majority of the votes cast in the European Parliament, state that the proposal is incompatible with the principle, the proposal will not be given further consideration.

This procedure has not yet been used.

Although this procedure has not yet been used it provides national parliaments with an additional control mechanism regarding the subsidiarity principle. It is however questionable, whether the draft European legislation will ever be crafted so blatantly in a breach of this principle that a majority of national parliaments will express their concerns regarding the subsidiarity.

c) '**Green card**'

National parliaments do not have formal competence to table a draft EU legislative proposal. Neither can they formally invite the European Commission to table a legislative proposal, or propose amendments to existing legislation. Nevertheless, since 2015, national parliaments have on at least three occasions addressed the Commission with an initiative that can be described as a 'green card'.²²

²¹ European Commission, Annual Report 2013 on relations with national parliaments, ([COM\(2014\) 507 final](#)), p. 2.

²² A 'green card' is often considered to be an enhanced form of political dialogue.

The first 'green card' initiative came in 2015 from the United Kingdom House of Lords on a strategic approach to the reduction of food waste, and was co-signed by 16 parliamentary chambers.²³ It was subsequently supported by two other national parliaments and one chamber.²⁴ The second 'green card' initiative sent by the French *Assemblée Nationale* on 11 July 2016 was co-signed by eight parliamentary chambers.²⁵ It invited the Commission to table a legislative proposal dealing with corporate social responsibility principles at European level. A ninth parliamentary chamber later joined the initiative.²⁶

In both cases, the Commission thanked the chambers for their suggestions, which were viewed as 'a clear demonstration of their readiness to contribute in a proactive and constructive manner to the policy debate at European level',²⁷ and provided an explanation. In the first case, the Commission acknowledged that some of the suggestions on food donations, data collection and monitoring were already 'reflected in the Circular Economy package adopted in December [2015]'.²⁸ In the second case, the Commission informed the national chambers that many of their proposals were already included in the existing European legislation and in general policy documents and voluntary guidance and consultation initiatives.²⁹ Apart from these two initiatives, a third 'green card' initiative was launched in November 2015 with regard to the revision of the Audiovisual Media Services Directive 2010/2013 by the Latvian *Saeima*.³⁰ This initiative has not been addressed by the Commission at the time of writing.³¹

Despite their anecdotal character, these examples show that national parliaments are interested in making active contributions to EU affairs. Even though some authors claim that the 'green card' procedure 'might face difficulties to be implemented' as the latter two initiatives had insufficient national parliament support,³² it cannot be denied that giving national parliaments this opportunity might increase their interest in becoming a more invested player at the EU level, and enable them to apply their 'national' knowledge more profoundly.

²³ See [Statement by the UK House of Lords](#) (July 2015) and the Commission's November 2015 reply ([C\(2015\) 7982 final](#)).

²⁴ COM(2016) 471 final, p. 10.

²⁵ See [Statement from the French Assemblée Nationale](#) (July 2016) and the Commission's December 2016 reply ([C\(2016\) 9597 final](#)).

²⁶ COM(2017) 601 final, p. 10.

²⁷ *ibid.*, p. 10 - 11.

²⁸ *ibid.*, p. 11.

²⁹ COM(2017) 601 final, p.10.

³⁰ The European Commission published its ex-post evaluation of the Audiovisual Media Services Directive in 2016 ([SWD\(2016\)170 final](#)). It is unclear to what extent, and whether at all, the Latvian 'green card' influenced the Commission's decision.

³¹ Neither the Commission's 2016 annual report on relations between the European Commission and national parliaments (COM(2017)601 final), nor the other Commission annual reports recognise this initiative as a 'green card'. Similarly, the Commission's database of national parliament opinions and replies does not include any submission from the Latvian *Saeima* concerning the Audiovisual Media Services Directive. Nonetheless, see the [letter from the Latvian Saeima](#) to national parliaments concerning this 'green card' (November 2015).

³² [The Role of National Parliaments in the EU after Lisbon: Potentialities and Challenges](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, March 2017, p. 38.

d) 'Red card' procedure, legislative amendments and trilogue participation

Today, the Treaties (or the Protocols) are silent regarding a procedure that would allow national parliaments, whether individually or together, to bar the European Commission from submitting a proposal, or limit the power of the co-legislators from adopting a European legislation based on such a proposal.

Nevertheless, the introduction of a 'red card' procedure was considered in the February 2016 draft decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union.³³ Section C(3) of this draft decision required that if reasoned opinions by national parliaments on the non-compliance of a draft legislative act represent more than 55 % of all the votes allocated to them, this will be placed as an item on the Council's agenda, and the consequences drawn therefrom. Subsequently, the Council was supposed to discontinue the consideration of this draft legislative act unless it was amended. Some authors correctly argue that this draft decision has become obsolete following the results of the British referendum of 23 June 2016.³⁴ However, the 'red card' initiative has not completely disappeared from the national parliaments' agenda.³⁵

The Treaties are also silent on national parliaments' competence to submit amendments to proposed European legislation that is discussed by the co-legislators. Similarly, national parliaments do not in any way participate in trilogue procedures.

A 'red card' procedure as noted above might strengthen the position of national parliaments with regard to crafting European legislation. However, the introduction of this instrument might have an impact on the division of powers inside the EU and might raise questions concerning the inclusion of 'national' parliaments in 'extra-national', in this case European, issues that could potentially fall into the area of exclusive EU competences. Another concern is the legality of the introduction of this procedure without Treaty change.

Table 1 gives an overview of actual and presumed collective mechanisms of national parliaments linked to adoption of EU legislation.

³³ [EUCO 4/16](#).

³⁴ [The Role of National Parliaments in the EU after Lisbon: Potentialities and Challenges](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, March 2017, p. 35.

³⁵ See for example [Discussion note - Session 2](#), VI COSAC, Bratislava, 13-15 November 2016.

Table 1 – Early warning mechanism and 'cards'

	Legal basis	Threshold	Consequence	Procedure
Green card	None	None ³⁶	Initiate EU legislative procedure	None, but the 'green card' has been used three times.
Yellow card	Article 7(2) Protocol No 2	1/3 of votes of national parliaments (19 of 56 votes)	The draft legislative act must be reviewed.	The Commission may decide to maintain, amend or withdraw the draft. Its decision must be reasoned.
		1/4 of votes of national parliaments (14 of 56 votes) for a proposal in the area of freedom, security and justice.		
Orange card	Article 7(3) Protocol No 2	Simple majority of votes (29 of 56 votes)	The draft legislative act must be reviewed. The draft legislative act can be pronounced incompatible with the principle of subsidiarity.	The Commission may decide to maintain, amend or withdraw the draft. It must reason its opinion. The co-legislators assess this reasoned opinion and decide whether the proposal is compatible with the subsidiarity principle.
Red card	None	None ³⁷	Block the Commission's legislative initiative	None
Legislative amendments	None	None	Submit legislative amendments to the co-legislators	None

1.3 The right to participate in Treaty revision

National parliaments now officially and directly participate in the revision of the EU Treaties.³⁸ Firstly, according to the TEU, national parliaments play their role during the ordinary revision procedure of the Treaties. Any proposals for the amendment of the Treaties should also be notified to national parliaments. Furthermore, if these proposals are adopted by the European Council, national parliaments take part at the Convention

³⁶ This issue was discussed on several occasions, see for example COSAC's [25th biannual report](#), 2016.

³⁷ The draft decision ([EUCO 4/16](#)) required 55 % of all the votes allocated to national parliaments.

³⁸ Article 12(b), TEU.

that examines the proposals and adopts a recommendation for a draft treaty text for an intergovernmental conference.

Secondly, national parliaments are also active with regard to a simplified revision procedure under the general '*passerelle* clause' included in Article 48(7) TEU. Pursuant to this provision, the European Council can: (1) authorise the Council to act by a qualified majority instead of unanimity; and/or (2) turn a special legislative procedure into an ordinary legislative procedure. In both cases, national parliaments have to be notified of this European Council initiative and any of the national parliaments can object and prevent this clause from being activated.

National parliaments have not yet had a chance to use this constitutional prerogative.

1.4 The right to take part in interparliamentary cooperation

Interparliamentary cooperation among national parliaments and between national parliaments and the European Parliament is formally acknowledged by Article 12(f) TEU and by Protocol No 1. According to TEU, by taking part in interparliamentary cooperation, national parliaments contribute actively to the good functioning of the Union. The Protocol's Article 9 requires the European Parliament and national parliaments to determine the organisation and promotion of effective and regular interparliamentary cooperation together. In this context, Protocol No 1 also mentions a conference of Parliamentary Committees for the Affairs of the Union (COSAC), which should promote the exchange of information and best practices between the European Parliament and national parliaments (Article 10).

Since the adoption of the Treaty of Lisbon, and even before that, several interparliamentary conferences and other forums for the exchange of information have been created. Interparliamentary cooperation happens vertically, between the European Parliament and national parliaments, and horizontally, among national parliaments. Table 2 provides an overview of the main forums for the exchange of information and interparliamentary cooperation, including their role and type and the frequency of meetings.

Table 2 – The main forums for interparliamentary cooperation

	Role	Type	Meeting frequency
EU Speakers' Conference	- exchange of information and experiences related to the role of parliaments and the organisation of parliamentary functions - promote research activities and common actions - oversee the coordination of interparliamentary EU activities	- standing body	- annually
Conference of Parliamentary Committees for Union Affairs (COSAC)	- exchange of information and best practices between European affairs committees - networking forum	- standing body	- biannually
Interparliamentary Conference on CFSP and CSDP	- exchange of information and best practices on the EU foreign, security and defence policy	- standing body	- biannually
Interparliamentary Conference on Stability, Economic Coordination and Governance	- exchange of information and best practices in implementing the provisions of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union	- standing body	- annually
Joint Parliamentary Scrutiny Group for Europol	- monitor the activities of Europol in fulfilling its mission, including the impact of these activities on the fundamental rights and freedoms		Constituent meeting in October 2017
Joint Committee Meetings	- exchange of thematically focused information and experiences between respective specific committees	- ad hoc	- ad hoc basis
Joint Parliamentary Meetings	- exchange of thematically focused information and experiences that are of concern to more than one committee	- ad hoc	- ad hoc basis
Interparliamentary Committee meetings	- exchange of thematically focused information and experiences that are of concern to more than one committee	- ad hoc	- 14 meetings in 2016 ³⁹

Apart from the conferences and discussion forums, there are also various bilateral visits between the European Parliament and national parliaments. At the same time, national parliaments have their own representatives in the European Parliament.⁴⁰

³⁹ Mid-term report 2016, p. 16. Some of these meetings take place on annual basis, such as the European Parliamentary Week or a meeting of the EP's Committee on Women's Rights and Gender Equality, marking International Women's Day.

⁴⁰ See, chapter 5.

In addition to the interparliamentary cooperation between parliaments, the European Commission takes part in a 'political dialogue' with national parliaments. While the dialogue does not have any standing bodies that would enhance it, there are however various visits and bilateral contacts at political or administrative level between the Commission and national parliaments. Furthermore, the Commission attends several of the abovementioned interparliamentary meetings and conferences.⁴¹ The Commission considers the exchange of information with national parliaments and opinions of national parliaments to be a part of the political dialogue.⁴²

National parliaments also make active use of 'informal political dialogue' with relation to the European Parliament, and send Parliament various legislative and non-legislative documents.⁴³

The Treaty of Lisbon introduced or acknowledged several rights and prerogatives for national parliaments in European affairs. It seems that national parliaments are prepared to use these rights and apply them in practice. Nonetheless, the most outstanding right given to national parliaments is their ability to influence the EU legislative process by raising the issue of non-compliance of draft EU legislation with the principle of subsidiarity. However, it may be argued that a fixation on subsidiarity overly restricts national parliaments, and that their knowledge of and link with citizens could be further explored if they also tackled more substantive issues.

⁴¹ For example, during the COSAC meetings the Commission has observer status.

⁴² See, chapter 2.

⁴³ The 2016 Mid-term report of the EP's Directorate for Relations with National Parliaments, p. 19.

2. The European Commission and national parliaments

Two main areas in which the European Commission cooperates with national parliaments are with regard to national parliaments' power to scrutinise compliance with the principle of subsidiarity in draft legislative acts and at the level of political dialogue.

At the first level, the European Commission receives reasoned opinions of national parliaments to draft EU legislative acts. In this regard, the Commission is obliged to react to these reasoned opinions and in the cases described in Chapter 1, to act and provide its own reasoned opinion explaining its action. The level of political dialogue, as perceived by the Commission, includes (1) the exchange of information between the Commission and national parliaments, including alerts about public consultations started by the Commission, and (2) submission of opinions of national parliaments to the Commission on policy issues, legislative and non-legislative EU initiatives.⁴⁴ A closer relation between the European Commission and national parliaments began to form already in 2006, when the Commission launched an initiative under which it recommended that all new proposals and consultation papers be transmitted directly to national parliaments and acknowledged that national parliaments must be more closely involved with the development and execution of European policy.⁴⁵

The opinions of national parliaments, including the reasoned opinions, and the European Commission replies are accessible in the Commission's database of [national parliaments' opinions and its replies](#).

Relations between the European Commission and national parliaments are described and assessed on an annual basis in the Commission's annual reports on relations between the European Commission and national parliaments. The Commission also produces annual reports on the application of the principles of subsidiarity and proportionality, where it also touches upon the subject of national parliaments. The annual reports on the application of the principles of subsidiarity and proportionality are seen as complementary to the annual reports on relations with national parliaments.

2.1 Annual reports on relations between the European Commission and national parliaments

The annual reports of the European Commission focus on the Commission's political dialogue with national parliaments.⁴⁶ This dialogue was initiated in 2006 with the aim of

⁴⁴ According to the European Commission [website](#), 'the Commission aims to reply to such opinions within 3 months'.

⁴⁵ See, European Commission communication: A Citizens' Agenda: Delivering Results for Europe ([COM\(2016\) 211 final](#)).

⁴⁶ Annual report 2016 on relations between the European Commission and national parliaments ([COM\(2017\) 601 final](#)), p. 2.

'promoting the involvement of national parliaments in the shaping and implementation of EU policy'.⁴⁷ The annual reports, among other things, discuss the issue of opinions from national parliaments, including their development, scope, key topics and the outcomes of the political dialogue. They also often discuss issues such as policy developments or the role of regional parliaments. In addition, the annual reports inform the parties about bilateral contacts and visits between the Commission and national parliaments and meetings and conferences attended by the Commission. The annual reports on relations between the European Commission and national parliaments can be found on the [website](#) of the European Commission.

The annual reports provide several statistics with regard to the number of written opinions received from national parliaments. The Commission here uses the term 'opinion' as a generic term for any submission from national parliaments. The term 'reasoned opinion' is used for those opinions in which national parliaments address the issue of subsidiarity of draft legislative act according to Protocol No 2.

The following table and graph describe the number of submissions of national parliaments to the European Commission between the years 2010 and 2016 and their development. The schemes reflect the information provided in the Commission's annual reports on relations with national parliaments.

Table 3 – Submissions of national parliaments to the European Commission (2010-2016)

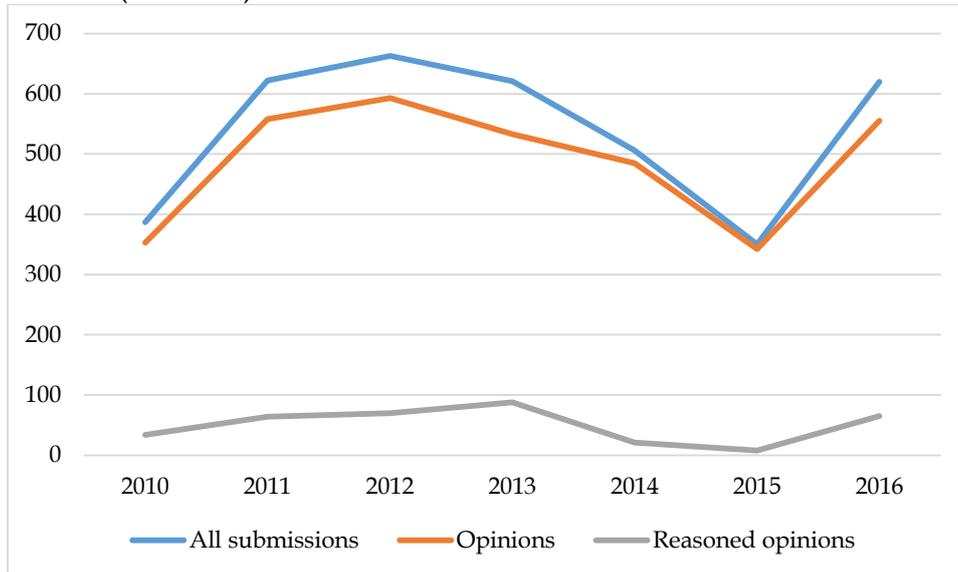
Year	All submissions	Opinions	Reasoned opinions	Percentage of reasoned opinions
2016	620	555	65	10.5 %
2015	350	342	8	2.3 %
2014	506	485	21	4.1 %
2013	621	533	88	14.2 %
2012	663	593	70	10.5 %
2011	622	558	64	10.3 %
2010	387	353	34	8.8 %

Source: Annual reports of the European Commission on relations with national parliaments, 2010-2016

Table 3 and the following graph 1 show that until 2015 there was a gradual growth of submissions from national parliaments.⁴⁸ In 2015, the number of all submissions from national parliaments decreased substantially. In comparison to 2014, this decrease is approximately 44 %. The submissions of national parliaments again increased in 2016, by 77 % compared to 2015. Without making any conclusive statements, one might assume that this decrease and increase is linked with the process of installation of a new Commission in 2014 and a change of working methods, including a decrease in legislative proposals submitted by the European Commission connected therewith.

⁴⁷ *ibid.*

⁴⁸ The Commission's annual reports on the relations with the national parliament between from years 2006-2010, only provide a limited information on the division between opinions and reasoned opinions submitted by national parliaments.

Figure 1 - Development of submissions of national parliaments to the European Commission (2010-2016)

Source: Annual reports of the European Commission on relations with national parliaments, 2010-2016

The Commission considers the opinions of national parliaments to be 'an invaluable source of insight and analysis for the Commission's interactions with other institutions'.⁴⁹ At the same time, the Commission acknowledges that it is impossible to make a direct link between the position of the individual national parliament, submitted in a form of opinion or a reasoned opinion, and the outcome of the legislative process.⁵⁰

The annual reports also enumerate the most active chambers of national parliaments in submitting opinions and/or reasoned opinions. In 2016, the most active national chambers in making submissions were the Italian *Senato della Repubblica* with 81 opinions, and the Swedish *Riksdag* with 12 reasoned opinions. The reports also repeatedly note that there is a large imbalance between the number of opinions or reasoned opinions coming from individual chambers, including the chambers of national parliaments that have not submitted any opinion in the last five years.⁵¹ However, one cannot argue that national parliaments from smaller or medium-sized Member States submit fewer opinions in comparison with the chambers/national parliaments from big Member States. The situation is quite the opposite, as the Portuguese *Assembleia da República* and the Czech *Senát* are frequently in the top five chambers submitting opinions, and the Swedish *Riksdag* or the Maltese *Kamra tad-Deputati* in the top three chambers submitting reasoned opinions. These developments and the distribution of opinions received by the European Commission are noted in the following table.

⁴⁹ COM(2017) 601 final, p. 7.

⁵⁰ *ibid.*

⁵¹ Based on the research of the Commission's annual reports, the Slovenian *Državni svet* did not submit any opinion between 2012 and 2016 and the Belgian *Sénat de Belgique/Belgische Senaat* between 2014 and 2016.

Table 4 – Distribution of opinions received by the European Commission (2012-2016)

	2016	2015	2014	2013	2012
1	<i>Senato della Repubblica (IT)</i> - 81	<i>Assembleia da República (PT)</i> - 55	<i>Assembleia da República (PT)</i> - 118	<i>Assembleia da República (PT)</i> - 192	<i>Assembleia da República (PT)</i> - 227
2	<i>Camera Deputaților (RO)</i> - 70	<i>Camera Deputaților (RO)</i> - 47	<i>Senato della Repubblica (IT)</i> - 63	<i>Senát (CZ)</i> - 64	<i>Senato della Repubblica (IT)</i> - 96
3	<i>Assembleia da República (PT)</i> - 57	<i>Senát (CZ)</i> - 25	<i>Congreso de los Diputados and Senado (ES)</i> - 45	<i>Bundesrat (DE)</i> - 40	<i>Bundesrat (DE)</i> - 59
4	<i>Bundesrat (DE)</i> - 47	<i>Senato della Repubblica (IT)</i> - 25	<i>Senát (CZ)</i> - 41	<i>Assemblée nationale (FR)</i> - 40	<i>Senát (CZ)</i> - 46
5	<i>Senát (CZ)</i> - 25	<i>Assemblée nationale (FR)</i> - 23	<i>Assemblée nationale (FR)</i> - 35	<i>Camera Deputaților (RO)</i> - 38	<i>Riksdag (SW)</i> - 33

Source: Annual reports of the European Commission on relations with national parliaments, 2012-2016

The Commission's annual reports on the relations with national parliament also show a considerable difference between the number of reasoned opinions submitted by various chambers of national parliaments in comparison to the amount of 'ordinary' opinions. During the last seven years, the reasoned opinions only represented approximately 9 % (350 out of 3 769) of all opinions of national parliaments. Table 5 shows the developments and distribution of reasoned opinions among the chambers/national parliaments in the last five years.

Table 5 – Distribution of reasoned opinions received by the European Commission (2012-2016)

	2016	2015	2014	2013	2012
1	<i>Riksdag</i> (SE) - 12	8 chambers submitted 1 reasoned opinion ⁵²	<i>House of Commons</i> (UK) and <i>Bundesrat</i> (AT) - 3	<i>Riksdag</i> (SE) - 9 reasoned opinions	<i>Riksdag</i> (SE) - 20
2	<i>Kamra tad-Deputati</i> (MT) - 5	-	<i>Tweede Kamer</i> (NL), <i>Riksdag</i> (SE) and <i>Sénat</i> (FR) - 2	<i>Bundesrat</i> (AT), <i>Seimas</i> (LT) - 6	<i>Sénat</i> (FR) - 7
3	<i>Poslanecká sněmovna</i> (CZ), <i>Bundesrat</i> (AT) - 4	-	9 chambers submitted 1 reasoned opinion ⁵³	4 chambers submitted 4 reasoned opinions ⁵⁴	<i>Bundesrat</i> (DE) - 5

Source: Annual reports of the European Commission on relations with national parliaments, 2012 - 2016

The key topics to which national parliaments reacted in their opinions or reasoned opinions vary from year to year and reflect the political situation and the interests of chambers/national parliaments. The European Commission's annual reports provide details of the key topics and the outcome of the political dialogue.

Table 6 shows that the focus of national parliaments' opinions and reasoned opinions is on draft legislative proposals i.e. proposals for new European legislation. Non-legislative proposals, such as communications and green papers are not often targeted, with the exception of communications on the Commission annual work programme which attracted the highest number of opinions in the last two years. Nonetheless, in its 2015 annual report on relations with the national parliaments, the Commission notes that 'a growing number of chambers chose to issue opinions on non-legislative proposals'.⁵⁵ The 2016 annual report does not however confirm this statement.⁵⁶

With regard to the position of regional parliaments within the national parliaments' scrutiny of the subsidiarity principle, the Commission notes that there is no explicit provision in the Treaties for direct interaction between the Commission and regional

⁵² Camera Deputaţilor (RO), Sénát (CZ), Congreso de los Diputados and Senado (ES), Poslanecká sněmovna (CZ), Riksdag (SE), Národná Rada (SK), Tweede Kamer (NL) and Országgyűlés (HU).

⁵³ Senato della Repubblica (IT), Congreso de los Diputados and Senado (ES), Sénát (CZ), Assemblée nationale (FR), Seimas (LT), Hrvatski Sabor (HR), Nationalrat (AT), Folketing (DK) and Chambre des Députés (LU).

⁵⁴ Congreso de los Diputados and Senado (ES), Kamra tad-Deputati (MT), Tweede Kamer (NL), House of Commons (UK).

⁵⁵ [COM\(2016\) 471 final](#).

⁵⁶ Although the communication on the Commission work programme 2016: No time for business as usual ([COM\(2015\) 610](#)) attracted the most attention from national parliaments as to 'ordinary' opinions (25 opinions/0 reasoned opinions) in 2016, the majority of other opinions were linked to draft legislative acts.

parliaments. Nonetheless, the Commission also notes that in 2016 some regional parliaments (from Austria and Germany) submitted comments on the Commission's proposals.⁵⁷

Regarding bilateral contacts with national parliaments and various meetings and conferences, the annual reports provide the enumeration of the main meetings and their main goal. According to the annual report 2016, there were approximately 180 visits and meetings between the representatives of the European Commission and national parliaments in 2016. Furthermore, Commission officials attended more than 80 meetings of committees of national parliaments 'in order to discuss legislative proposals on a more technical level'.⁵⁸ In 2015, there were more than 200 Commission visits to national parliaments.⁵⁹

⁵⁷ The European Commission Annual Report 2016 on the relations between the European Commission and national parliaments, p. 11.

⁵⁸ *ibid.*, p. 11 - 12.

⁵⁹ The European Commission Annual Report 2015 on the relations between the European Commission and national parliaments, p. 11.

Table 6 – Key topics for opinions/reasoned opinions (O/RO) of national parliaments

	2016	2015	2014	2013	2012
1	Communication on the Commission work programme 2016 - COM(2015) 610	Communication on the Commission work programme 2015 - COM(2014) 910	Proposal for a Directive amending on waste [...] - COM(2014) 397	Proposal for a Regulation on the establishment of the European Public Prosecutor's Office - COM(2013) 534	Proposal for a Council Regulation on the exercise of the right to take collective action [...] - COM(2012) 130
O/RO	25/0	26/0	10/3	7/13	5/12
2	Proposal for a Directive amending Directive 96/71/EC concerning the Posting of Workers [...] - COM(2015) 610	Proposal for a Regulation establishing a crisis relocation mechanism [...] - COM(2015) 450	Proposal for a Regulation on organic production and labelling of organic products - COM(2014) 180	Proposal for a Directive on the approximation of the laws, [...] concerning the manufacture, presentation and sale of tobacco and related products - COM(2013) 534	Proposal for a Directive on the protection of individuals with regard to the processing of personal data by competent authorities [...] - COM(2012) 10
O/RO	9/14	7/5	10/2	10/7	10/3
3	Proposal for a Regulation establishing the criteria [...] for examining an application for international protection [...] - COM(2016) 270	Proposal for a Regulation amending Regulation (EC) No 1829/2003 [...] - COM(2015) 177	Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office - COM(2013) 534	Proposal for a Directive establishing a framework for maritime spatial planning and integrated coastal management - COM(2013) 534	Proposal for a general data protection regulation - COM(2012) 11
O/RO	6/8	10/2	10/0	5/9	8/4

Source: Annual reports of the European Commission on relations with national parliaments, 2012-2016

2.2 Annual reports on subsidiarity and proportionality

The Commission's annual reports on subsidiarity and proportionality look at the EU institutions and bodies' implementation of these two principles. The Commission here explains the principles and objectives of subsidiary and proportionality analysis. In addition, these annual reports provide an analysis of those draft legislative proposals that were the subject of reasoned opinions of national parliaments. These annual reports are complementary to the annual reports on relations between the European Commission and national parliaments. The annual reports on subsidiarity and proportionality can be found on the [website](#) of the European Commission.

In its 2016 Annual report,⁶⁰ the Commission notes that in 2016, national parliaments expressed an increased interest in European decision-making as in this year there was a rise of reasoned opinions from 8 to 65 (as noted in table 3 and graph 1). The annual report also provides a short analysis of the Commission's follow up actions to the most important reasoned opinions from national parliaments. It does not however always provide details of all individual cases. Furthermore, the annual report gives an overview of the measures taken with regard to the principles of proportionality and subsidiarity by Parliament and by the Council. The Commission notes that Parliament and the Commission each receives a **different number** of submissions from national parliaments. It reaches the same conclusion regarding the Council. The Commission acknowledges this discrepancy 'as not all institutions have received all reasoned opinions or the institutions count the number of reasoned opinions received differently'.⁶¹

2.3 Other Commission reports and documents

The position of national parliaments within the EU constitutional structure is also occasionally raised in some other reports and documents adopted by the European Commission. For instance, the **Five Presidents' Report: Completing Europe's Economic and Monetary Union** (2015) highlights the key role for the European Parliament and national parliaments with regard to democratic accountability, legitimacy and institutional strengthening in completing Europe's economic and monetary union.⁶² The report notes 'a new form of interparliamentary cooperation', which takes place within the European Parliamentary week. According to the report, the European Commission should make its interaction with national parliaments more efficient. Similarly, the level of cooperation between the European Parliament and national parliaments should be increased.⁶³

Since 2006, the European Commission has developed a working relationship with national parliaments. Provision of information to national parliaments, receiving national parliaments' reasoned opinions and reacting to these opinions, and extended political dialogue with national parliaments are the most obvious examples of the application of the Treaty provisions with regard to national parliaments by the Commission. The Commission's annual reports on relations with national parliaments and the annual reports on subsidiarity, despite their somewhat limited conclusions, provide a description of the development of the application of rights of national parliaments. However, in order to get a full picture, these annual reports should be read together with the annual report on relations with national parliaments produced by the European Parliament's Directorate for relations with national parliaments.

⁶⁰ [COM\(2017\) 600 final](#).

⁶¹ *ibid.*, p. 10, footnote 28.

⁶² Five Presidents' report, p. 17.

⁶³ *ibid.*, p. 20.

3. The European Parliament and national parliaments

The European Parliament plays an important role with regard to national parliaments. First of all, the European Parliament is one of the subjects of interparliamentary cooperation and secondly, it is one of the EU institutions which receives submissions issued by national parliaments, whether opinions or reasoned opinions, with regard to scrutiny of the principle of subsidiarity. The plenary of the European Parliament, its committees and its secretariat, point to the relations between the European Parliament and national parliaments in their various documents. European Parliament resolutions, as well as the numerous research documents published by its services, create an indispensable source of information on this particular topic.

3. 1. Plenary

The plenary of the European Parliament refers to the status of national parliaments in several of its resolutions. This is the case, for instance, in Parliament's [resolution](#) of 25 October 2016, with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights. Parliament here emphasises that its own role and the role of national parliaments should be 'in measuring the progress of, and monitoring compliance with, the shared values of the Union, as enshrined in Article 2 TEU' (point 9).⁶⁴

The European Parliament [resolution](#) of 13 April 2016 on 'the EU in a changing global environment – a more connected, contested and complex world', Parliament expressed its opinion that national parliaments could be more closely involved in monitoring the exercise of EU measures with regard to the EU global strategy on foreign and security policy (point 46). Parliament also emphasises the importance of actively involving national parliaments in this process during the sessions of the Interparliamentary Conference on CFSP/CSDP (point 48).⁶⁵

Furthermore, Parliament, in its [decision](#) of 9 March 2016, on the conclusion of an Interinstitutional Agreement on Better Law-Making between the European Parliament, the Council of the European Union and the European Commission, stresses the need to improve the use of arrangements for political dialogue with national parliaments.⁶⁶ Parliament here highlights the national parliaments' positive contributions in this respect and encourages better use of the existing subsidiarity and proportionality mechanisms as laid down in the Treaties. Finally, Parliament questions the eight week deadline for national parliaments to issue a reasoned opinion on non-compliance with the principle of subsidiarity, and calls for a greater flexibility in the enforcement of this deadline (all under point 12).

⁶⁴ P8_TA(2016)0409.

⁶⁵ P8_TA(2016)0120.

⁶⁶ P8_TA(2016)0081.

Apart from these resolutions and a decision where the issues linked to national parliaments were only secondary, several resolutions, namely the following resolutions from 2009, 2014 and 2017, closely discuss national parliaments and their 'new' post-Lisbon competences.

European Parliament [resolution](#) of 7 May 2009 on the development of the relations between the European Parliament and national parliaments under the Treaty of Lisbon

This Parliament resolution reacts to the new position of national parliaments included in the provisions of the Treaty of Lisbon.⁶⁷ Parliament welcomes the rights and obligations accorded to national parliaments under the Treaty of Lisbon, and considers that these rights will enhance the national parliaments' role in EU affairs (point 1). Similarly, Parliament welcomes the development in its relations with national parliaments through various joint activities, including interparliamentary meetings or joint parliamentary meetings on horizontal topics (point 2). With regard to future relations, Parliament considers that there should be new forms of 'pre- and post-legislative dialogue between the European Parliament and national parliaments' (point 3). Furthermore, Parliament underlines the need for interparliamentary cooperation, including the possibility for Members of the European Parliament to speak, when invited, before plenary sittings in national parliaments (point 9). Parliament also calls for better cooperation between specialised parliamentary committees (point 10).

With regard to the EWM, Parliament argues that this procedure will 'allow European legislation to be influenced and scrutinised at an early stage and will contribute to better law-making, as well as to improved coherence of legislation at EU level' (point 11). This procedure also contributes to 'to stronger democratic control and brings the Union closer to the citizen' (point 12). With regard to the exchange of information, Parliament appreciates the creation of the IPEX database – an electronic platform for the exchange of information between parliaments (point 15). Parliament also envisages systematic monitoring of the 'pre-legislative' dialogue between the Commission and national parliaments and calls on national parliaments to send their opinions to Parliament at the same time as to the Commission (point 16). Finally, Parliament also underlines that COSAC should remain a forum for the exchange of information and debate on general political issues and best practices (point 21).

In its [follow-up](#) to this Parliament resolution, the European Commission notes that one of the most important contributions of the Treaty of Lisbon is the increasing role of national parliaments.⁶⁸ It also values the interparliamentary conferences, which according to the Commission are 'a very effective tool for this cooperation'. The Commission considers the political dialogue with national parliaments to be a considerable development which should continue alongside the subsidiarity checks.

European Parliament [resolution](#) of 16 April 2014 on relations between the European Parliament and the national parliaments

⁶⁷ P6_TA(2009)0388.

⁶⁸ SP(2009)3564.

This 2014 Parliament resolution welcomes the provisions strengthening the position of national parliaments and their active involvement in EU affairs (point 1).⁶⁹ Parliament commends the steps taken by national parliaments, especially with regard to their role in guidance and scrutiny (point 4), and recognises the important role played by parliamentary committees (point 5).

The purpose of the early warning mechanism (EWM) is, according to Parliament, to improve the quality of EU legislation by ensuring that the EU operates within its competences and not to block the European decision-making process (point 8). In this regard, the subsidiarity scrutiny by national parliaments is not 'an undue restriction', but 'a mechanism for guaranteeing the competences of the national parliaments' (point 9). Furthermore, the EWM should be perceived as a tool 'for ensuring effective cooperation between European and national institutions' (point 10). In addition, the reasoned opinions of national parliaments should be viewed as 'an opportunity to gain a clearer picture of how best to achieve the objectives set for legislative acts' (point 12). The Commission is, in this context, called upon to reply promptly and fully to any submission sent by national parliaments.

Regarding interparliamentary cooperation, Parliament notes that this cooperation does not replace the scrutiny exercised by Parliament. According to Parliament, its aim is to foster the exchange of information and best practices among the parliaments, to foster a European parliamentary and political culture, and to ensure that the parliaments exercise their powers in full (point 13). Parliament also stresses the need to organise interparliamentary meetings in close cooperation with national parliaments and recommends that national parliaments are included at 'the earliest stage possible in drafting the agenda for interparliamentary meetings' (point 17). Parliament stresses the openness and inclusiveness of interparliamentary cooperation (point 22). In addition, Parliament notes that the Commission's 'political dialogue' set up by the 2006 initiative of the Barroso Commission and the EWM are 'two sides of the same coin' (point 23).

The resolution also includes the Parliament's proposal to develop an understanding between the national parliaments and the European Parliament (point 24). Parliament calls for regular meetings between political groups and European political parties, which should be held in the framework of the EU interparliamentary cooperation (point 25). According to Parliament, COSAC should remain 'the forum for a regular exchange of views, information and best practice regarding practical aspects of parliamentary scrutiny' (point 27).⁷⁰

⁶⁹ P7_TA(2014)0430.

⁷⁰ Apart from the two previously mentioned and discussed resolutions on relations between the European Parliament and national parliaments, European Parliament [resolution](#) on relations between the European Parliament and the national parliaments in European integration (2001/2023(INI)), covering the issue of interparliamentary relations should also be noted. However this resolution was adopted before the changes in the status of national parliaments introduced by the Treaty of Lisbon. This resolution is consequently not discussed in detail.

European Parliament [resolution](#) of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty

Parliament in this resolution also notes that 'political dialogue between national parliaments and the European Parliament should be enhanced and practical possibilities for the use of the yellow card and orange card improved' (letter I).⁷¹ In this context, it calls for intensified, more meaningful and substantial, political dialogue between national parliaments and Parliament (point 10). Parliament also encourages political dialogue with national parliaments 'on the contents of legislative proposals' (point 20). In this regard, Parliament calls on national parliaments to better scrutinise national governments' actions at European level (letter V. and point 78).

Parliament also stresses the importance of interparliamentary cooperation, through joint bodies such as COSAC or the Conference on Common Foreign and Security Policy. The Commission and the Council are called upon to participate at a high political level in the interparliamentary meetings (point 21). Also the exchange of best practices in parliamentary scrutiny including meetings between experts is encouraged (point 22).

Furthermore, Parliament recalls the role of national parliaments with regard to the subsidiarity principle. It calls for a strengthening of the practical cooperation between national parliaments in this respect (point 49). National parliaments are encouraged to involve themselves more deeply in interparliamentary cooperation, including the framework of the European Parliamentary Week (point 59).

3.2 Committees

In addition to Parliament's plenary, its Committees are also active with regard to national parliaments. The EP Committees directly engage in expert dialogue with national parliaments at committee level.⁷²

The 2009 and 2014 non-legislative European Parliament resolutions, mentioned above, were built on two reports of the Committee on Foreign Affairs (AFCO):

- [report](#) on relations between the European Parliament and national parliaments (2013/2185(INI)) ('Cassini report'); and
- [report](#) on the development of relations between the European Parliament and national parliaments under the Treaty of Lisbon (2008/2120(INI)) ('Brok report').⁷³

During the course of 2017, the AFCO Committee has carried out several fact-finding missions to national parliaments regarding the draft report on 'the Implementation of

⁷¹ P8_TA(2017)0049.

⁷² With regard to interparliamentary cooperation and interparliamentary committee meetings, see point 3.3.

⁷³ Apart from the two above-mentioned reports on relations between the European Parliament and national parliaments, the [report](#) on relations between the European Parliament and the national parliaments in European integration (2001/2023(INI)) ('Napolitano report'), which covered the issue of interparliamentary relations, should also be noted. However, this report was written before the changes in the status of national parliaments introduced by the Treaty of Lisbon.

Treaty provisions regarding national Parliaments' (2016/2149 (INI)), namely the Danish Parliament and the Hellenic Parliament. In its final report following these missions (2017), the Committee presented its findings, which include, for example, the need to:

- enhance the use of the early warning mechanism by national parliaments,
- consider the green card as a part of the early warning mechanism,
- better coordinate interparliamentary activities,
- reassess the role of COSAC,
- increase the flow and exchange of information through IPEX, and
- enhance cooperation between the European Parliament and national parliaments through a committee-based approach.

3.3 Reports on relations between the European Parliament and national parliaments

An overview of relations between the European Parliament and national parliaments is provided in comprehensive reports on relations between the European Parliament and national parliaments produced by the Parliament's Directorate for relations with national parliaments (Directorate-General for the Presidency). Five reports provide an assessment of relations between the European Parliament and national parliaments since 2009. These reports are accessible on the [website](#) of the Directorate for Relations with National Parliaments (DRNP).

The latest DRNP annual report was published in April 2017 as a [mid-term report 2016](#) on relations between the European Parliament and national parliaments. The report (1) analyses the key 2016 political developments, such as, Brexit, or the legislative proposal to amend the Posting of Workers Directive. Furthermore, it analyses (2) the development of interparliamentary cooperation between interparliamentary bodies; (3) the forms of interparliamentary dialogue; (4) subsidiarity checks; and (5) administrative tools and networks for interparliamentary cooperation.

The reports provide several statistics with regard to the number of written submissions received from national parliaments by the European Parliament. They use the term 'reasoned opinion' if the submission was communicated to Parliament within the eight-week period (Article 6, Protocol No 2), and if it is claimed that a draft legislative act does not comply with the principle of subsidiarity. For the submissions that do not fulfil these criteria the reports use the term 'contribution'.⁷⁴

Similarly, as in the previously mentioned Commission annual reports on relations with national parliaments, the DRNP's annual reports also provide an overview and development of the submissions by national parliaments. The 2016 mid-term report notes that national parliaments do not use the early warning mechanism to 'stall the legislative

⁷⁴ The reports use the approach approved by Parliament's Committee on Legal Affairs (JURI), see, Conference of Committee Chairs document of 15 December 2010: 'Common approach for the treatment at committee level of national Parliaments' reasoned opinions and all other contributions of national Parliaments'.

process in the EU', as so far only 16 % of all submissions sent by national parliaments allege a breach of the subsidiarity principle.⁷⁵ The report also argues that few national parliaments have sent large numbers of reasoned opinions.⁷⁶ In this context, it claims that 'it is clear that national parliaments are willing to comment on the substance of legislative acts, and that they do not really hinder the decision-making process'. According to the report, national parliaments and their submissions constitute 'an opportunity and a resource for the European Parliament in the development of its thinking and positions on various areas'.⁷⁷

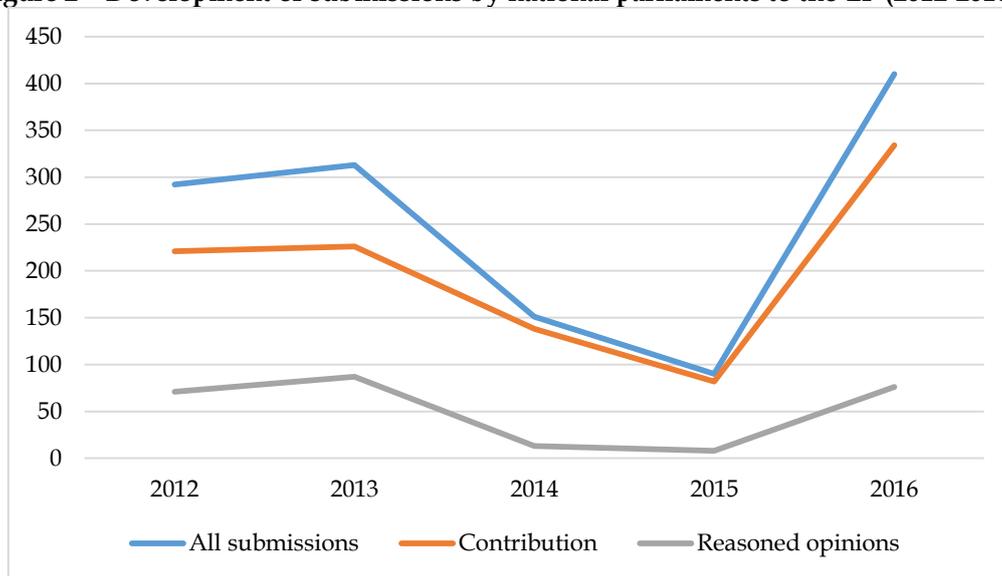
Table 7 and graph 2 below provide an overview of submissions received by Parliament from national parliaments, and their development between 2012 and 2016. They only list those national parliament submissions that were sent in response to draft legislative acts and do not include documents sent in reaction to non-legislative documents.

Table 7 – Submissions by national parliaments to the European Parliament (2012-2016)

	All submissions	Contribution	Reasoned opinions	Percentage of reasoned opinions
2016	410	334	76	18.5 %
2015	90	82	8	8.9 %
2014	151	138	13	8.6 %
2013	313	226	87	27.8 %
2012	292	221	71	24.3 %

Source: Reports on relations between the EP and national parliaments 2012-2016

Figure 2 – Development of submissions by national parliaments to the EP (2012-2016)



Source: Reports on relations between the EP and national parliaments 2012-2016

⁷⁵ Mid-term report 2016, p. 18.

⁷⁶ *ibid.*

⁷⁷ *ibid.*

National parliaments' submissions to the European Parliament follow a similar trajectory as national parliaments' submissions to the European Commission. Similarly, as in the case of the Commission, during 2014 and 2015, the number of both contributions and reasoned opinions from national parliaments submitted to Parliament dropped considerably. Conversely, 2016 saw a huge increase in submissions – approximately 400 % – in comparison with 2015 (from 82 to 334), and an increase in reasoned opinions of approximately 950 % (from 8 to 76). Without making any conclusive statements, it could be assumed that this decrease and increase is linked with the process of installation of a new Commission in 2014 and a change in working methods, including a connected decrease in legislative proposals.

The DRNP annual reports also show that there is a considerable difference between the number of contributions and reasoned opinions submitted by individual chambers/national parliaments to Parliament. On average, reasoned opinions only represent 25 % of all the submissions of national parliaments presented to Parliament. A distribution of reasoned opinions, as in the previous case, is rather diverse and limited to some of the chambers/national parliaments.

Table 8 – Distribution of contributions received by the EP (2012-2016)

	2016	2015	2014	2013	2012
1	<i>Senato della Repubblica</i> (IT) - 65	<i>Senato della Repubblica</i> (IT) - 13	<i>Senato della Repubblica</i> (IT) - 32	N/A ⁷⁸	<i>Assembleia da República</i> (PT) - 56
2	<i>Assembleia da República</i> (PT) - 63	<i>Cortes</i> (ES) - 10	<i>Cortes</i> (ES) - 31	N/A	<i>Senato della Repubblica</i> (IT) - 47
3	<i>Senatul</i> (RO) - 39	<i>Assembleia da República</i> (PT) - 8	<i>Assembleia da República</i> (PT) - 25	N/A	<i>Bundesrat</i> (DE) - 15
4	<i>Senát</i> (CZ) - 35	<i>Camera Deputaților</i> (RO) - 7	<i>Senát</i> (CZ) - 10	N/A	<i>Senát</i> (CZ) - 12
5	<i>Bundesrat</i> (DE) - 25	<i>Assemblée Nationale</i> (FR), <i>Senát</i> (CZ) - 6	<i>Camera dei deputati</i> (IT) - 9	N/A	<i>Chambre des Représentants</i> (BE) - 5

Source: Reports on relations between the EP and national parliaments 2012-2016

The DRNP annual reports do not provide specific information on the substance of cases in which national parliaments submitted the highest number of contributions or reasoned opinions.

⁷⁸ The DRNP report on 'Interparliamentary relations between the European Parliament and national parliaments under the Treaty of Lisbon', 2009-2014: Annual Report 2013/2014, does not include information about the number of reasoned opinions/submissions submitted by chamber/national parliament in 2013. It only includes a division of reasoned opinions and contributions by parliamentary chambers between 2010 and 2013 (Annex IV).

Table 9 – Distribution of reasoned opinions received by the EP (2012-2016)

	2016	2015	2014	2013	2012
1	<i>Riksdag</i> (SE) - 12	8 chambers submitted 1 reasoned opinion ⁷⁹	<i>Bundesrat</i> (AT) - 5	N/A	<i>Riksdag</i> (SE) - 11
2	<i>Sénat</i> (FR) - 8	-	8 chambers submitted 1 reasoned opinion ⁸⁰	N/A	<i>Sénat</i> (FR) - 6
3	<i>Kamra tar-Rappreżentanti</i> (MT), <i>Bundesrat</i> (AT) - 5	-		N/A	<i>Tweede Kamer</i> (NL) - 4

Source: Reports on relations between the EP and national parliaments 2012-2016

As to the interparliamentary cooperation, the 2016 mid-term report provides an enumeration of bilateral and multilateral relations between the European Parliament and national parliaments, including participation in various institutional parliamentary bodies such as:

- the Conference of Parliamentary Committees for Union Affairs (COSAC), and
- the annual and informal Conferences of Speakers of Parliaments of the European Union.

Furthermore, it pays attention to interparliamentary cooperation including:

- European Parliamentary Week and the Interparliamentary Conference on Stability, Economic Coordination and Governance in the European Union,
- Interparliamentary cooperation on foreign and security policy,
- Interparliamentary Committee Meetings and other interparliamentary meetings.

The report notes that the majority of the meetings follows the format of interparliamentary committee meetings.⁸¹ The 2014-2015 annual report highlights that in the context of interparliamentary committee meetings there is a trend towards 'small more focused interparliamentary debates'.⁸²

⁷⁹ Camera Deputaţilor (RO), Senát (CZ), Cortes (ES), Poslanecká sněmovna (CZ), Riksdag (SE), Národní Rada (SK), Tweede Kamer (NL) and Országgyűlés (HU).

⁸⁰ Nationalrat (AT), Senát (CZ), Sénat (FR), Seimas (LV), Chambre des Députés (LU), Tweede Kamer (NL), Riksdag (SE), House of Commons (UK).

⁸¹ Mid-term report 2016, p. 16. Based on the DRNP annual reports, interparliamentary committee meetings are rather numerous, as between 2012 and 2016 there were 63 of these meetings (2016 - 14, 2015 - 16, 2014 - 6, 2013 - 17 and 2012 - 10).

⁸² The DRNP report on relations between the European Parliament and national Parliaments under the Treaty of Lisbon 2014-2015, p. 18.

3.4. Other European Parliament studies and briefings

Several studies, in-depth analyses and briefings were written or outsourced by the European Parliament secretariat to assess the relations between the European Parliament and national parliaments and the position of national parliaments in the EU constitutional system. These studies were either requested by the European Parliament or its committees, or written by European Parliament secretariat research departments on their own initiative.

The Role of National Parliaments in the EU after Lisbon: Potentialities and Challenges (March 2017), [Policy Department study](#)

The study analyses the implementation of the Treaty provisions on national parliaments and other related developments since 2009.⁸³ It concentrates on the early warning mechanism and the principle of subsidiarity; political dialogue between national parliaments and the European Commission; interparliamentary cooperation; and the various challenges linked with the developments of the European legislative procedure.

Although the study notes that the early warning mechanism is 'the improvement of the justification [...] regarding the principle of subsidiarity', its assessment of this mechanism is rather negative,⁸⁴ and claims that this procedure has been made 'almost redundant'.⁸⁵ Furthermore, the study argues that this procedure suffers from 'contingency and from the proximity between parliamentary majorities and national governments'.⁸⁶ In this context, the study also critically assesses the focus on subsidiarity as national parliaments and their members 'may primarily be interested by the content of the issue rather than the legal categorisation'.⁸⁷

The study discusses two emerging collective actions from national parliaments: (1) a 'green card' initiative that would allow national parliaments to suggest a legislative initiative to the Commission; and (2) a 'red card' initiative that would allow a majority of national parliaments to block a draft legislative proposal.⁸⁸ With regard to the 'green card' procedure, the study notes that national parliaments' support for the introduction of 'green cards' is weak overall, and predicts that this initiative 'will face difficulties to be implemented in the future, especially if the proposals deal with less consensual issues than the environment'.⁸⁹ With regard to the 'red card', the study notes that it has not disappeared from national parliaments' political agenda.⁹⁰

⁸³ [The Role of National Parliaments in the EU after Lisbon: Potentialities and Challenges](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, March 2017, study commissioned for the European Parliament Committee on Constitutional Affairs.

⁸⁴ *ibid.*, p. 29.

⁸⁵ *ibid.*, p. 19.

⁸⁶ *ibid.*

⁸⁷ *ibid.*, p. 25.

⁸⁸ *ibid.*, p. 31.

⁸⁹ *ibid.*, p. 38.

⁹⁰ *ibid.*, p. 35.

On the other hand, the study assesses the informal system of exchange of information between the Commission and national parliaments positively, with more than 4 000 opinions sent to the Commission by national parliaments. According to the study, this procedure can be understood as 'a way to produce information related to the actors preferences in the multi-level setting of the EU'.⁹¹ The study also provides a positive assessment of extensive interparliamentary cooperation between national parliaments and the European Parliament. Nonetheless, it notes that cooperation could work better if 'a committee-based approach' was adopted, and if there was better coordination with regard to timing and an upgrade of overall working methods in interparliamentary meetings.⁹² Regarding a committee-based approach to interparliamentary cooperation, the study argues that this 'seems to be the most promising evolution'.⁹³ With regard to interparliamentary cooperation, the study provides specific recommendations, according to which it is necessary to:

- modify the rules of procedure of the conferences to make them more effective and efficient,
- dedicate additional resources to interparliamentary coordination,
- improve the timing of meetings and conferences,
- conduct meetings and conferences in a more interactive way, and
- upgrade the overall working methods of interparliamentary meetings and conferences.⁹⁴

Conversely, the study is rather negative about the capacity of the interparliamentary conference envisaged by the Treaty on Stability, Coordination and Governance 'to establish a genuine democratic control over the economic governance of the EU'.⁹⁵ The study also notes that COSAC presents several weaknesses, such as a lack of resources, and meetings that are 'not responsive' to recent developments.⁹⁶

Finally, the study provides general recommendations on several topics, such as the opposition parties in the EU, interparliamentary cooperation, differences of rhythm between national and EU politics, and the transparency of EU agreements. For example, the study recommends:

- strengthening the position of national opposition parties in EU parliamentary activities, including a pluralist composition for any parliamentary delegations, so that minority parties are also included, or sending minority opinions to the EU institutions,
- deepening the committee-based interparliamentary cooperation,
- enabling a cyclical and iterative parliamentary intervention that would not be limited to the early period of legislative agreements, and

⁹¹ *ibid.*, p. 7.

⁹² *ibid.*, p. 41.

⁹³ *ibid.*

⁹⁴ *ibid.*, p. 41-42.

⁹⁵ *ibid.*, p. 8.

⁹⁶ *ibid.*, p. 34.

- improving EU legislative procedure transparency, including trilogues and the informality and partial secretiveness of the decision-making process within the Council.⁹⁷

The legislative role of national parliaments in the European Union (March 2017), [Policy Department briefing](#)

This briefing addresses the role of national parliaments in the legislative process of the EU.⁹⁸ It proposes to change the focus of national parliaments on 'the overall rationality of the EU legislative procedure and its outputs'.⁹⁹ In this regard, the briefing suggests that the early warning mechanism should not be limited to the principle of subsidiarity, but that national parliaments should also consider the principles of conferral and proportionality. According to the briefing, 'separating the three principles in a subsidiarity review within the early warning mechanism' poses considerable difficulty.¹⁰⁰ Furthermore, the briefing considers that a 'green card' procedure would strengthen the position of national parliaments in the EU legislative process. However, the briefing notes that national parliaments should not receive a right of legislative initiative as such, but should instead be able to require 'the presentation of proposals on certain policy issues or the review of existing legislation'.¹⁰¹ Instituting a 'red card' procedure would, according to the briefing, strengthen the role of national parliaments. Nonetheless, the briefing acknowledges that an amendment of the Treaties is necessary in this case.¹⁰² Finally, the briefing calls for the enhancement of political dialogue regarding the jurisprudential role of national parliaments.

Subsidiarity as a means to enhance cooperation between EU institutions and national parliaments (March 2017), [Policy Department briefing](#)

This briefing concentrates on the principle of subsidiarity in relations between the EU institutions and national parliaments.¹⁰³ According to the briefing, the creation of the early warning mechanism contributed to the enhancement of the cooperation between the EU institutions and national parliaments.¹⁰⁴ The briefing claims that the European Commission plays the primary role in relations with national parliaments with regard to this mechanism, despite the fact that the European Parliament also receives reasoned opinions from national parliaments.¹⁰⁵ In this context, there are visible positive developments at EU and national levels with regard to the early warning mechanism, such as the enhanced role of national parliaments in EU affairs, or the possibility for national

⁹⁷ *ibid.*, p. 52 - 56.

⁹⁸ The legislative role of national parliaments in the European Union, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, March 2017.

⁹⁹ *ibid.*, p. 5.

¹⁰⁰ *ibid.*

¹⁰¹ *ibid.*, p. 1.

¹⁰² *ibid.*, p. 7.

¹⁰³ Subsidiarity as a means to enhance cooperation between EU institutions and national parliaments, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2017.

¹⁰⁴ *ibid.*, p. 9.

¹⁰⁵ *ibid.*, p. 1.

parliaments to make their concerns more visible.¹⁰⁶ Nonetheless, several challenges are highlighted, including:

- the mechanism's narrow scope, as it only covers subsidiarity checks;
- a lack of a common definition of the principle of subsidiarity;
- the challenge of the restricted time allowed for checks on subsidiarity; and
- a high level of interdependence among national parliaments.

The briefing also argues that the Commission treats all reasoned opinions 'as contributions if the threshold necessary for a yellow card fails to be triggered'.¹⁰⁷ The briefing concludes that national parliaments are eager to play a more positive role in EU affairs.

Regional participation in EU decision-making: Role in the legislature and subsidiarity monitoring (April 2016), [EPRS in-depth analysis](#)

This in-depth analysis not only concentrates on the position of regional parliaments in the EU framework, but also focuses on regional participation in the EU in general.¹⁰⁸ With regard to the issues covered by this study, the in-depth analysis notes that 'the Lisbon Treaty explicitly recognised the sub-national dimension of the subsidiarity principle'.¹⁰⁹ It also underlines the fact that national parliaments, depending on their national legal provisions, can consult regional parliaments with legislative powers when considering draft EU legislation and the decision to trigger the 'yellow card' procedure. In these cases, national parliaments follow national legal arrangements.¹¹⁰ The in-depth analysis notes that regional engagement is uneven and varies among the Member States. The study questions the actual contributions from regional parliaments to the subsidiarity scrutiny as 'the function of regional parliaments is merely advisory in this context'.¹¹¹ The study also notes several challenges regarding regional parliaments, including financial or practical challenges.¹¹²

Enhancing cooperation between the European Parliament and EU national parliaments on EU human rights policy (March 2014), [Policy Department study](#)

This study provides an overview of interparliamentary cooperation carried out by the European Parliament and national parliaments and pays particular attention to the promotion of human rights in EU external policies.¹¹³ Furthermore, it concentrates on cooperation between the European Parliament and national parliaments in the field of human rights, including its development, methods and tools.

¹⁰⁶ *ibid.*, p. 7.

¹⁰⁷ *ibid.*, p. 8.

¹⁰⁸ Tilindyte, L., *Regional participation in EU decision-making: Role in the legislature and subsidiarity monitoring*, April 2016.

¹⁰⁹ *ibid.*, p. 12.

¹¹⁰ *ibid.*, p. 14 - 15.

¹¹¹ *ibid.*, p. 13.

¹¹² *ibid.*, p. 16 - 17.

¹¹³ *Enhancing cooperation between the European Parliament and EU national parliaments on EU human rights policy*, Policy Department for External Policies, March 2014.

The study concentrates on interparliamentary cooperation between the European Parliament and national parliaments, and points to the strengths and weaknesses of such cooperation. The study notes that a particular strength of this interparliamentary cooperation is that it creates a forum for exchange of information. In this regard, the study sees benefits for those national members of parliaments who are members of minority party groups or a political party outside the national government.¹¹⁴ Interparliamentary cooperation is perceived as an additional layer of scrutiny for national governments.

The study calls for greater consistency between different types of interparliamentary cooperation, especially with regard to potentially overlapping agendas of ad hoc initiatives and permanent bodies.¹¹⁵ Furthermore, the study notes that the interparliamentary cooperation's success depends, to a large extent, on the motivation for parliamentarians to participate.¹¹⁶ It also finds several factual constraints, such as various time and financial costs linked to interparliamentary cooperation. However, according to the study, the main challenges for interparliamentary cooperation are 'the differing perceptions of the role of the European Parliament' between national parliaments and the European Parliament.¹¹⁷

The study produces several recommendations with regard to the institutional and organisational framework of interparliamentary cooperation, its topics, and human rights issues. Although some of these recommendations are exclusively linked to human rights, the institutional and organisational recommendations are much broader and applicable to the whole interparliamentary cooperation organisation. In this context, the study recommends:

- mitigating the risk for interparliamentary cooperation fatigue;
- streamlining the timing, scope and agendas of standing interparliamentary cooperation bodies' meetings;
- reassessing the organisation of ad hoc interparliamentary cooperation meetings and seeking synergies with standing bodies;
- considering organising recurring interparliamentary cooperation weeks;
- ensuring coherence and consistency among members of national parliament delegations;
- consolidating all interparliamentary cooperation-related information under the umbrella of IPEX;
- favouring targeted and timely topics;
- breaking down large-scale events into specialised workshops and side-events;
- ensuring visible outcome and effective follow-up following meetings; and
- ensuring coherence and consistency through collaboration between the relevant European Parliament and national parliament committees.¹¹⁸

¹¹⁴ *ibid.*, p. 27.

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

¹¹⁷ *ibid.*, p. 28.

¹¹⁸ *ibid.*, p. 50 - 53.

The study provides a summary of various interparliamentary cooperation channels. The following table presents an excerpt of this summary, concentrating on the strengths and weaknesses of these channels.

Table 10 – Strengths and weaknesses of interparliamentary cooperation channels (excerpt)

	Strengths	Weaknesses
Conference of the Speakers of the Parliaments of the EU	<ul style="list-style-type: none"> - leader in interparliamentary cooperation - creates 'common conscience' 	
COSAC	<ul style="list-style-type: none"> - most established body - discuss substantive issues - outputs (reports) - opportunity for networking 	<ul style="list-style-type: none"> - size and recurrence - lack of flexibility - general character of discussions
Interparliamentary Conference on CFSP and CSDP	<ul style="list-style-type: none"> - responds to concerns in CFSP and CSDP matters - targets topical matters 	<ul style="list-style-type: none"> - size and organisational challenge - accumulation of large-scale events
Interparliamentary Conference on Stability, Economic Coordination and Governance	<ul style="list-style-type: none"> - responds to concerns in matters covered by the Treaty on stability, coordination and governance 	<ul style="list-style-type: none"> - size and organisational challenge - accumulation of large-scale events
Joint Parliamentary Meetings	<ul style="list-style-type: none"> - broad format - overarching topics - may reinforce links between party groups 	<ul style="list-style-type: none"> - complex organisation requiring long-term planning - no tangible results
Joint Committee Meetings	<ul style="list-style-type: none"> - sectoral format - may reduce 'power divide' between EP and national parliaments - gives visibility to national parliaments of country holding the Council presidency 	<ul style="list-style-type: none"> - complex organisation requiring long-term planning
Interparliamentary Committee Meetings	<ul style="list-style-type: none"> - sectoral format - efficient unilateral organisation 	<ul style="list-style-type: none"> - the EP as unilateral organiser might be perceived negatively

Source: Enhancing cooperation between the European Parliament and EU national parliaments on EU human rights policy, Directorate-General for External Policies, Policy Department, March 2014, p. 29

The role of national parliaments in regional policy under the Treaty of Lisbon (March 2010), [Policy Department note](#)

This 2010 note analyses the provisions included in the Treaty of Lisbon which strengthen the position of national parliaments within the EU constitutional system.¹¹⁹ Firstly, the note provides an overview of a historical development of relations between national parliaments and the European institutions, especially the European Parliament. Furthermore, it discusses then 'new' legislative powers of the European Parliament: enlarged scope of regional and cohesion policy; and the extension of the principle of subsidiarity to the local and regional level. Regarding the updated role of national

¹¹⁹ Policy Department for Structural and Cohesion Policies, European Parliament, 2010.

parliaments, the note analyses their new prerogatives and the early warning mechanism closely, while highlighting that this is the first time that national parliaments 'have the opportunity to comment on European draft legislation independently from their governments'.¹²⁰

¹²⁰ *ibid.*, p. 16.

4. The Council and national parliaments

The Council is one of the EU institutions that, according to the provisions of the Treaty and the Protocols, can be active in their relations with national parliaments – the Council can participate actively in the early warning mechanism procedure. On the one hand, the Council can receive submissions, whether reasoned opinions or other submissions from national parliaments. On the other hand, as one of the co-legislators, Council has a final say in the case of 'orange' card procedures when the co-legislators can decide that a draft EU legislative proposal is not compatible with the principle of subsidiarity and that the proposal will not be given further consideration.¹²¹

In comparison with the European Parliament or the European Commission, the Council does not produce any report assessing its relations with national parliaments. The website of the Council and the [database](#) of its documents provide only scarce information with regard to national parliaments or the Council's relation with the parliaments. Although the Council's database provides several results when seeking reasoned opinions provided by national parliaments, the Council does not provide an annual overview of submissions received from national parliaments.

Nonetheless, in its annual reports on subsidiarity and proportionality the European Commission notes that the Council also receives submissions from national parliaments. However, the number of these submissions differs from that of submissions delivered to the Commission or the European Parliament. The Commission's annual report gives the number of reasoned opinions and opinions that were distributed by the Council secretariat to delegations. However, as shown in table 11, the data and information provided by the Commission is also limited and incomplete.

Despite the incompleteness of the data a decrease in the submissions by national parliaments in 2015 and a subsequent growth in 2016 can also be observed here. Neither the website of the Council, nor the other available documents (such as the Commission's annual reports) make any reference to the political dialogue between the Council and national parliaments. Despite this, it is difficult to imagine that the representatives of the Council have no contact at all with national parliaments.

¹²¹ See Chapter 1, Point 2.1.

Table 11 – Amount of national parliaments' reasoned opinions and opinions distributed by the Council Secretariat to delegations (2013-2016)

	2016	2015	2014	2013
Reasoned opinion	69	9	250(?) ¹²²	'high number of opinions and reasoned opinions' ¹²³
Opinion	280	86	250(?)	

Source: European Commission annual report on subsidiarity and proportionality

It appears that the Council is less active with regards to national parliaments; or at least the Council publishes less materials on these particular relations than the Commission or Parliament. This status quo can, however, be questioned, as Council proceedings should be interesting for national parliaments and vice versa, since national parliaments should, according to their national constitutional provisions, scrutinise their national governments – represented in the Council.

¹²² Annual report 2014 on subsidiarity and proportionality ([COM\(2015\) 0315 final](#)), European Commission, p. 7. The 2014 annual report does not distinguish between reasoned opinions and opinions.

¹²³ Annual report 2013 on subsidiarity and proportionality ([COM\(2014\) 0506 final](#)), European Commission, p. 6. The annual reports prior to 2013 do not include this information.

5. Conference of Parliamentary Committees for Union Affairs

The Conference of Parliamentary Committees for Union Affairs (COSAC) is the only interparliamentary forum recognised in the Treaties, namely in Article 10 of Protocol No 1. It brings together the national parliaments' EU affairs committees and the European Parliament in biannual meetings. During these meetings, the leading role in defining its work and direction is given to the national parliament of the Member State holding the Presidency in the Council. According to Article 10 of Protocol No 1, COSAC may submit any contribution it deems appropriate for the attention of Parliament, the Council, and the Commission. Furthermore, COSAC should encourage the exchange of information between national parliaments and Parliament, and may organise interparliamentary conferences on specific topics.

The COSAC meetings are topical and react to major political developments in the EU. As noted in the 2016 mid-term report of the Directorate for Relations with National Parliaments in 2016, 'discussions over the green card or enhanced political dialogue and the yellow card occupied a less important position among the debates of the delegations' than the Brexit debates.¹²⁴

During its meetings, COSAC adopts biannual reports that are published on its [website](#). The reports provide an overview of the latest developments and of the national parliaments' interests and their position in the EU constitutional structure.

The latest, [27th COSAC biannual report](#), 2017, discusses, among other issues: the scrutiny of national governments; Brexit; the future of the EU and its role; and the scrutiny of CWP 2017. The 27th biannual report shows that in the majority of national parliaments' chambers (29 out of 37)¹²⁵ the European Affairs Committee is not the only committee responsible for scrutiny of EU legislative proposals.¹²⁶ The responsibility for this scrutiny is shared or delegated to sectoral parliamentary committees.

The report notes that the scrutiny procedures and practices enabling national parliaments to control national governments vary according to the national context and to constitutional provisions in place. The frequency of the scrutiny of governments' positions on EU proposals also varies. The vast majority of responses confirms (29 out of 36) that this frequency is not governed by any legal text.¹²⁷ Only a small portion of national parliaments

¹²⁴ 2016 Mid-term Report of Directorate for Relations with National Parliaments, European Parliament, p. 11.

¹²⁵ The 27th biannual report is based upon a questionnaire taken by chambers/national parliaments. There were 38 replies to the questionnaire. Three Member States with bicameral systems provided a single set of questions, while one parliament did not submit any answers due to national elections. At the same time, different questions did not receive the same volume of answers.

¹²⁶ The 27th biannual report, p. 9.

¹²⁷ *ibid.*, p. 11.

scrutinise their government's position throughout the whole EU legislative process. The majority of national parliaments' claims (22 out of 37) note that the scrutiny of the government's position is based on the importance and sensitivity of the EU legislative file.¹²⁸

National governments brief national parliaments before taking a position in the Council, in less than one half of cases only (17 out of 37).¹²⁹ In 13 cases, the governments send explanatory memoranda outlining their position on all EU proposals and in 15 cases, the governments send explanatory memoranda outlining their position on selected EU proposals. Furthermore, the government needs a mandate from national parliament before taking a position in the Council in only 9 cases.¹³⁰ In subsidiarity cases, less than half the responding national parliaments always receives the government's position on the draft legislative act within the 8 week deadline (17 out of 37). The majority of the remaining national parliaments receive this information upon request.¹³¹

The evaluation of existing EU legislation with regard to the implementation of EU law in national parliaments is carried out in only a minority of cases (4 out of 37). However, over half of national parliaments (22 out of 36) engage in the scrutiny of government positions on Commission reports evaluating existing EU legislation.¹³²

As to the tools used by national parliaments to scrutinise their governments on the implementation of EU law, in the majority of national parliaments their members can raise an issue in the respective committee or raise an issue in debate in plenary.¹³³ More than half the responding national parliaments also consider that national parliaments should have a greater role in better monitoring implementation and transposition of EU law.¹³⁴

The [26th COSAC biannual report](#), 2016,¹³⁵ also discusses the relations between national parliaments and the European Commission (the current 'Juncker' Commission), among other issues. Here, the majority of national parliaments (27 out of 39) note and welcome an increase of visits by Commissioners to national parliaments.¹³⁶ With regard to the Commission's responses to the reasoned opinions issued by national parliaments, the national parliaments' replies also note that the Commission's responses improved somewhat (17 out of 39), although there still is room for improvement when communicating and exchanging information with the Commission (27 out of 39).¹³⁷ For

¹²⁸ *ibid.*

¹²⁹ *ibid.*, p. 12.

¹³⁰ *ibid.*

¹³¹ *ibid.*, p. 14.

¹³² *ibid.*

¹³³ *ibid.*, p. 15.

¹³⁴ *ibid.*, p. 16.

¹³⁵ The 26th biannual report is based on a questionnaire taken by chambers/national parliaments. There were 39 replies to the questionnaire while three of Member States with bicameral system provided a single set of answers.

¹³⁶ *ibid.*, p. 21-22.

¹³⁷ *ibid.*, p. 23.

instance, the Commission should pay more attention to the concerns of national parliaments and give less general responses. Furthermore, the Commission should analyse reasoned opinions from all possible points of view.

Several issues worth mentioning in this study are also raised in the [25th COSAC biannual report](#), 2016.¹³⁸ This report, for instance, discusses modes and experiences of national scrutiny of EU affairs and shows that national parliaments have an ambition to play an active role at the EU level.¹³⁹ National parliaments also note various elements that are important when scrutinising their own governments concerning EU affairs, such as:

- holding the government to account regarding EU affairs;
- actively influencing the government's EU position;
- communicating with the public on EU affairs; and
- active exchange with other national parliaments.¹⁴⁰

The majority of national parliaments explain that formal contacts between members of parliament and MEPs take place through regular or irregular meetings.¹⁴¹

Furthermore, the majority of national parliaments (21 out of 37) note that they do not appoint rapporteurs on EU-related dossiers.¹⁴² With regard to the 'green card' procedure, one third of responding national parliaments (12 out of 36) propose the introduction of a threshold for introducing a green card on one third of the votes of national parliaments. Other national parliaments propose some other threshold (one quarter, one fifth, or 80 % of votes).¹⁴³ According to 15 out of 34 replies from national parliaments, national parliaments initiating the 'green card' procedure should have discretion to fix the deadline to participate in this procedure.¹⁴⁴ The 25th biannual report also touches upon the issue of trilogues. The majority of national parliaments (29 out of 34) consider that the exchange of information among parliaments on trilogues is a useful tool that can improve scrutiny of EU affairs.¹⁴⁵ The report also shows that national parliaments, for the purpose of gathering and exchanging information on EU related matters, very often use the network of their parliamentary representatives in Brussels (35 out of 39).¹⁴⁶

¹³⁸ The 25th biannual report is based on a questionnaire taken by chambers/national parliaments. There were 39 replies to the questionnaire while three of Member States with bicameral system provided a single set of answers.

¹³⁹ *ibid.*, p. 9.

¹⁴⁰ *ibid.*

¹⁴¹ *ibid.*, p. 10.

¹⁴² *ibid.*, p. 10 - 11.

¹⁴³ *ibid.*, p. 12.

¹⁴⁴ *ibid.*, p. 12 - 13.

¹⁴⁵ *ibid.*, p. 14.

¹⁴⁶ *ibid.*, p. 16.

6. The Conference of Speakers of EU Parliaments

The Conference of Speakers of EU parliaments is an annual venue which brings together the speakers of Member States' parliaments. Its main purpose is to exchange views, information and experiences on topics related to the role of national parliaments. The conference adopts its conclusions.

The [conclusions](#) of the April 2017 Conference concentrated on the future of the EU as a global player and on bringing the parliamentary agenda closer to citizens. Although it did not specifically discuss the status of national parliaments, it touched upon the need to improve communication among Member States, national parliaments, and European institutions, as well as with the citizens, in various conclusions (point 4). The conclusions noted that one of the roles of national parliaments and the European Parliament is to bridge the gap between citizens and policy-making (point 10). The conclusions in this regard called for closer cooperation between national parliaments and the exchange of good practices in order to address the communication gap between citizens and policy-makers and to enhance democratic legitimacy and accountability (point 10).

The [conclusions](#) of the 2016 Conference (May 2016), among other issues, directly addressed the role of national parliaments in EU affairs. Firstly, the speakers acknowledged that national parliaments should play a greater role in the EU decision-making process (point 18). The willingness of national parliaments to play an active role in the EU was also emphasised, including the debates around the European semester and reform programmes (point 26). The conference also called for access to information relating to ongoing trade negotiations (point 27). Furthermore, the Conference noted that a 'green card' procedure would be a practical tool for encouraging national parliaments to play a proactive role in the EU affairs (point 28). The Conference however acknowledged that some national parliaments might not be able to use this procedure 'because of internal constitutional traditions'. With regard to the 'yellow card' procedure, the speakers noted the need for improvement 'without Treaty change', and called on the Commission 'to ensure better quality and more timely responses to reasoned opinions' (point 30). The Conference acknowledged the 'red card' procedure proposed in the draft decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union (point 31).

The April 2015 Conference [conclusions](#) noted the role of national parliaments in negotiations on international treaties. Speakers reaffirmed that national parliaments must be granted the possibility 'of performing specific competences in relation to as many free-trade agreements' (point 4). In this regard, they called for greater access to information. The speakers acknowledged that 'political dialogue' is the main channel of interaction between national parliaments and the EU institutions. They encouraged the exchange of views on the merits of the EU political and legislative choices (point 1). They also called for enhanced quality and effectiveness in this dialogue, while allowing contributions at the

early stages of the legislative process. The Commission was called upon to improve the speed and quality of its responses to national parliaments' contributions (point 3). In addition, the need for enhanced cooperation between the rapporteurs of the European Parliament and national parliaments was highlighted (point 5).

The [conclusions](#) of the 2014 Conference (April 2014) welcomed the growth of interparliamentary cooperation and political dialogue between national parliaments and the Commission (points 13, 14, 19, 20). The speakers also welcomed the greater involvement of national parliaments in the EU legislative process (point 15). They stressed a limitation of the present system to the issue of subsidiarity (point 16). Furthermore, the speakers stressed that the eight week period for submission of a reasoned opinion is not always sufficient for all national Parliaments (point 22). Before any future Treaty revisions with regard to improving the subsidiarity check procedure, the speakers called for a political agreement with the Commission to improve this system.

In addition, the [conclusions](#) of the 2013 Conference (April 2013) called for a greater role for national parliaments in EU affairs. They called for intensified cooperation between the European Parliament and national parliaments with regard to EU system of economic governance (point 3).

7. Conclusions

Based on the analysis of the reports, studies and documents mentioned above, several general conclusions applicable to the present status of national parliaments in the EU system can be reached:

- Although the European Parliament, the European Commission and the Council receive various submissions from national parliaments, the EU institution that provides national parliaments with the most information, and receives the majority of national parliaments' submissions, is the European Commission.
- The European Parliament, the European Commission, and the Council receive a different number of submissions, opinions and/or reasoned opinions from national parliaments.
- The European Parliament and the European Commission use different terminology (at least in English) for submissions from national parliaments. While the European Parliament distinguishes between 'submissions' and 'reasoned opinions', the European Commission distinguishes between 'opinions' and 'reasoned opinions'.
- The early warning mechanism limits national parliaments to the assessment of compliance of draft EU legislative proposals with the principle of subsidiarity, even though national parliaments are occasionally interested in reacting on the substantive issues raised by the draft legislative act. Furthermore, it is not easy to completely distinguish between the subsidiarity principle and the principle of proportionality, as these principles to a certain extent overlap.
- It seems that the eight week period in which national parliaments are obliged to submit their reasoned opinion is considered insufficient, which presents another limitation for national parliaments.
- The individual chambers/national parliaments differ in their activities regarding the submission of reasoned opinions, as well as any other submissions that do not meet the standards of reasoned opinions.
- There is a considerable difference between the number of reasoned opinions and other submissions submitted by national parliaments.
- Reasoned opinions submitted by national parliaments do not seem to slow down or halt the EU legislative processes.
- Formalising 'green' and/or 'red card' procedures is often perceived as possibly strengthening national parliaments' position in EU affairs.
- Despite the lack of a legal basis, the informal 'green card' procedure is beginning to find its place among national parliament measures.
- The impact of regional parliaments on the early warning mechanism is limited and depends on national parliaments.
- The body of parliamentary research dealing with the position of national parliaments within the EU constitutional framework provides a critical assessment of the existing situation and of the application and development of the national parliaments' rights and status. Parliamentary research takes either a specialised topical approach, or a general descriptive approach.

- The research papers differ in approach and in methods used. In many cases, parliamentary research provides various recommendations that might improve the existing situation, however it depends on Parliament how and if these recommendations will be taken on board.
- However, the research papers available do not reflect the official position of the European Parliament, but only that of their authors.
- Better coordination of interparliamentary cooperation in respect of time and content is needed to prevent interparliamentary cooperation fatigue.
- A committee-based approach to interparliamentary cooperation seems to be preferred.
- COSAC's biannual reports provide a considerable amount of information on the functioning of national parliaments with regard to scrutinising EU affairs from the point of view of national parliaments. The reports however react to the most important political and factual developments in the EU, and therefore the position of national parliaments in the EU constitutional structure is not always their most prominent feature. A similar conclusion can be reached regarding the conclusions of the annual Conference of Speakers of the EU parliaments.
- Furthermore, the COSAC is only one of several fora for interparliamentary cooperation.
- Despite the inclusion of national parliaments in the text of the Treaties, their ability to act in EU affairs remains limited. Apart from the inclusion of the early warning mechanism into the text of the Treaties, other changes brought by the Treaty of Lisbon with regard to national parliaments have been rather minor.
- National parliaments are willing to play a more active role in EU affairs and their participation is generally perceived as positive.

When assessing the position of national parliaments in the constitutional structure of the European Union and ways to improve this position, the main reason behind the inclusion of national parliaments into the EU constitutional framework must be considered. It seems that there are currently several potential explanations of what the ultimate goal of the national parliaments' in the EU affairs should be. This division seems to be one of the reasons why the practical implementation of the Treaties and other arrangements might potentially lack focus or could be almost exclusively based on ad-hoc arrangements.

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National parliaments possess certain democratic qualities and responsibilities, such as popular legitimacy or scrutiny of the executive power. However, for decades the European Treaties have neither regulated nor envisaged any substantive relations between national parliaments and the European institutions – the role of national parliaments was marginal or overlooked. The situation began to change slowly with the adoption of the Treaty of Maastricht (1992). However, the real change in national parliaments' status in the EU is connected with the adoption of the Treaty of Lisbon (2007), which has enabled national parliaments' active involvement in EU affairs and enhanced the dialogue between national parliaments and the EU institutions.

Today, national parliaments actively participate in the scrutiny of subsidiarity principles in draft EU legislative acts; they are engaged in a political dialogue with the European Commission; and they are involved in interparliamentary cooperation with the European Parliament. National parliaments strive to become an active and appreciated player at EU level. Against this background, this European Implementation Assessment seeks to provide an overview and analysis of the body of research carried out with regard to the position of national parliaments in the EU.

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