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The role of national parliaments in the EU Building or stumbling blocks?

By Agata Gostyńska-Jakubowska



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- ★ In his Bloomberg speech in 2013 David Cameron made a passionate case for a greater role for national parliaments in the EU. But in his renegotiation Cameron pushed for parliaments to have the right to block EU draft legislation – rather than ways for them to engage with EU policy-making in a constructive way.
- ★ If Britain remains in the EU, parliaments will be able to show a so called ‘red card’ to Commission proposals that violate the subsidiarity principle. The Council of Ministers would then scupper the proposal unless parliaments’ concerns were addressed.
- ★ Parliaments are unlikely to take advantage of the powers Cameron has won for them. They have rarely managed to club together to use the existing ‘yellow’ and ‘orange’ cards, which force the Commission to reconsider a proposal.
- ★ If Britain remains in the EU David Cameron should push for a more positive role for parliaments. Here are eight light proposals for Cameron – and other EU leaders – to consider:
 - ★ **Greater collaboration between MPs and MEPs.** The European Parliament and national parliaments stand a greater chance of reducing the democratic deficit in the EU if they are on the same team.
 - ★ **Joint initiatives of MPs and MEPs.** National parliaments and the European Parliament could jointly call on the Commission to revise EU laws.
 - ★ **Pursue the House of Lords’ ‘green card’ proposal.** When member-states next decide to revise the EU treaties, parliaments should be given a collective right to ask the Commission to put forward legislative proposals.
 - ★ **Better use of the Conference of EU affairs committees.** COSAC, which brings together MPs from EU affairs committees and MEPs, should regularly discuss the Commission’s work programme and update MPs in all member-states on current and potential green, yellow and red card initiatives.
 - ★ **Facilitate interaction between MPs and MEPs.** The Dutch presidency – which has made inter-parliamentary deliberations more dynamic and interesting – should serve as an example for the British presidency in the second half of 2017.
 - ★ **Video conferencing.** MPs who find it difficult to combine parliamentary commitments with visits to Brussels should hold video conferences with their counterparts in the European Parliament.
 - ★ **Greater publicity for inter-parliamentary co-operation.** MPs and MEPs should disseminate their work to the public more effectively. Citizens should know that their MPs travel abroad to meet their counterparts in other member-states and in Brussels to discuss matters that are important to the public.
 - ★ **Strengthen the COSAC secretariat.** If other recommendations succeed in boosting collective parliamentary engagement in EU policy-making, parliaments should recruit extra staff to help them better co-ordinate efforts to influence the EU.

Among the things that Prime Minister David Cameron achieved in his renegotiation in February was a so-called 'red card' to enable national parliaments to block draft EU legislation. Some of the EU's critics think that national parliamentarians are better placed than Commission officials, who prepare draft laws, to judge whether EU legislation would benefit their citizens. Cameron believed that with a red card mechanism for parliaments, he could claim to have made the EU more democratic, and hence convince some of the more moderate eurosceptics to back his campaign to keep Britain in the EU.

This policy brief argues that Cameron placed too much emphasis on obtaining a collective veto right for parliaments, as opposed to pushing parliamentarians to be involved in EU policy-making in a more positive way. Parliaments will be hard pressed to take advantage of the powers Cameron has won for them because they have seldom managed to exploit the potential of the existing 'yellow' and 'orange' cards. But this does not mean that parliamentarians are happy about their standing in the EU. Many of them resent the fact that the Commission and the European Parliament tend to treat them as junior partners. And others recognise that they could do a better job of co-operating with each other. These are the challenges that David Cameron could have emphasised more during his renegotiation.

This brief looks at what Cameron achieved and at how Britain, in the event of a vote for Remain, could stimulate a more positive discussion about parliaments' roles in improving democratic legitimacy inside the EU.

This analysis complements the CER's May 2015 piece 'A ten point plan to strengthen Westminster's oversight of EU policy', which argued that the British government should focus first on improving parliamentary scrutiny of EU affairs at home, to increase parliamentarians' interest in European business, before advocating red cards. This recommendation still holds; without boosting MPs' understanding of EU affairs, even the most laudable ideas for involving parliaments in the EU decision-making process will come to nothing.¹

Cameron's deal: (Not) a big win for national parliaments?

The new mechanism endorsed by EU leaders at the February European Council would marginally strengthen the powers that national parliaments currently have to influence EU policy-making. Cameron's new red card mechanism enables national parliaments to block Commission proposals when they think that the Commission is breaching the subsidiarity principle (which says that the EU should only act when the member-states acting individually cannot achieve the desired objective).

In the new mechanism, each national parliament, regardless of the size of the country, will have two votes. For the EU's 13 bicameral parliaments each chamber will cast one vote; the 15 unicameral parliaments will have two votes each. If 55 per cent of all the votes allocated to national parliaments are cast against draft legislation, EU ministers will not give it further consideration unless the Commission addresses the concerns of national parliaments. This amounts to 31 votes in general, but if a country has opted out of a policy area (for instance, Denmark does not participate in Justice and Home Affairs co-operation), its parliament's votes would not count towards the threshold needed to block a Commission proposal in that area. National chambers would have 12 weeks to show a red card from the moment when the Commission sent its proposal to all parliaments.²

This new mechanism will take effect only if the UK remains a member of the EU. It is a stronger version of a mechanism that already exists today. The Lisbon treaty introduced the so-called early warning procedure. It enables parliamentary chambers to show a yellow or an orange card within eight (rather than 12) weeks. In the case of a yellow card, if one third of all the votes (or one quarter in the area of justice and home affairs) are cast against a Commission proposal, the Commission should review the draft and decide whether to maintain, revise or withdraw it. The orange card is stronger: if more than half of the votes are cast against EU draft legislation the Commission must review the proposal. If it decides to go ahead with its plans in spite of the votes against it, it has to justify this decision to the Council and the European Parliament. If the Council of Ministers or the European Parliament thinks that the Commission is wrong, they can scupper the proposal. The Lisbon treaty allows all parliaments to participate in the yellow and orange cards exercise, no matter whether their country participates in certain EU policies or whether it has opted out.

But national parliamentarians have hardly ever taken advantage of these powers. Since December 2009, when the Lisbon treaty entered into force, they have only managed to assemble the votes for a yellow card three times, and have never shown the Commission an orange card.

1: Agata Gostyńska-Jakubowska, 'A ten point plan to strengthen Westminster's oversight of EU policy', CER policy brief, May 27th 2015.

2: European Council conclusions, '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', Annex I, February 18-19th 2016.

In 2012, 12 national chambers (amounting to 19 votes) showed a yellow card to the Commission for its 'right to strike' proposal (the so-called 'Monti II' proposal). Parliaments argued that the Commission unnecessarily interfered with domestic labour laws including workers' right to take collective action. And in 2013, 14 chambers (amounting to 18 votes) opposed the Commission's proposal to set up the European Public Prosecutor's Office (EPPO), which would investigate crimes against EU financial interests. In May 2016, 14 chambers (amounting to 22 votes) showed a yellow card to the Commission's plans to revise the posted workers directive and to ensure that workers employed in one member-state but posted to work in another are entitled to the same pay and working conditions as local workers. The Commission dropped the Monti II proposal but it decided to maintain the EPPO proposal.³ It is yet to issue a response to the third yellow card.

The British government has argued that the red card mechanism would help parliaments take matters into their own hands and effectively block a Commission proposal. Philip Hammond, the foreign secretary, said in the House of Lords in January 2016 that "one reason the yellow card was an unattractive mechanism is that the previous Commission was clearly going to ignore it".⁴

But national parliaments are unlikely to use red cards more often than they have used yellow ones. There are 41 parliamentary chambers in the European Union; they have different political compositions, different political agendas, different constitutional constraints and different relations with their governments. The result is differing levels of parliamentary scrutiny of EU affairs and varying degrees of eagerness to conduct subsidiarity checks. Some parliamentary chambers have submitted a considerable number of opinions, which are called 'reasoned opinions' in EU jargon, and which could result in a yellow or orange card if other chambers submit them too. But other parliaments have been reluctant to club together to show a card.

The Swedish *Riksdag*, for example, has opposed Commission draft legislation on subsidiarity grounds more often than any other parliament in the EU (56 reasoned opinions up to the end of May 2016, see table 1). Sweden has a minority government and the *Riksdag* vigorously scrutinises its European policy. The *Tweede Kamer*, the lower chamber of the Dutch parliament, is

also among the chambers submitting large numbers of reasoned opinions to the Commission (22 reasoned opinions). After the Dutch 'No' in the referendum on the Constitutional treaty in 2005, the Netherlands reformed its parliamentary scrutiny of EU affairs; this has boosted parliamentarians' engagement in European business and encouraged them to take advantage of the instruments that the Lisbon treaty offers them.⁵

Though its scrutiny procedures need improvement, the UK House of Commons also submits a fair number of reasoned opinions.⁶ Academic research shows that parliaments in which parties are split over the desirability of further European integration are more likely to show a card to the Commission than other national chambers.⁷ Up till now the House of Commons has submitted 16 reasoned opinions.

“National parliaments are unlikely to use red cards more often than they have used yellow ones.”

But not all chambers see the early warning system as an opportunity for strengthening parliaments' say in the EU. Often, when a single governing party has a clear majority, the parliament will only act at the EU level when it suits the government.⁸ The Hungarian parliament, for instance, in which the right-wing Fidesz party has a large majority, has so far adopted three reasoned opinions; each time matching the government's views. On the other hand, the German Bundestag (three reasoned opinions) thinks that it has more chance of influencing EU policy when it lobbies the government to oppose Commission ideas, rather than opposing them directly. Other chambers prefer to influence the Commission by making policy recommendations rather than by objecting to draft legislation. In 2006 the Commission introduced the so-called 'political dialogue' procedure, whereby the Commission sends its legislative and non-legislative plans (eg 'green' and 'white' papers) to member-states' parliaments and gives them the chance to comment. The Portuguese parliament has responded by sending more opinions than any other chamber: in 2014 alone it submitted 118 opinions, which constituted almost a quarter of the total opinions submitted to the Commission that year under the 'political dialogue' initiative.⁹

3: The European Commission claimed that the Monti II proposal did not breach the subsidiarity principle but that it withdrew the draft because of a lack of political support for it in the Council of Ministers.

4: Inquiry of the House of Lords EU select committee on visions of EU reform, oral evidence by Philip Hammond, January 26th 2016.

5: The Tweede Kamer reformed its scrutiny practice by shifting European affairs to sectoral committees and by debating the Commission's annual legislative plans in order to identify in advance matters of particular interest to the Dutch MPs.

6: Agata Gostyńska-Jakubowska, 'A ten point plan to strengthen Westminster's oversight of EU policy', CER policy brief, May 27th 2015.

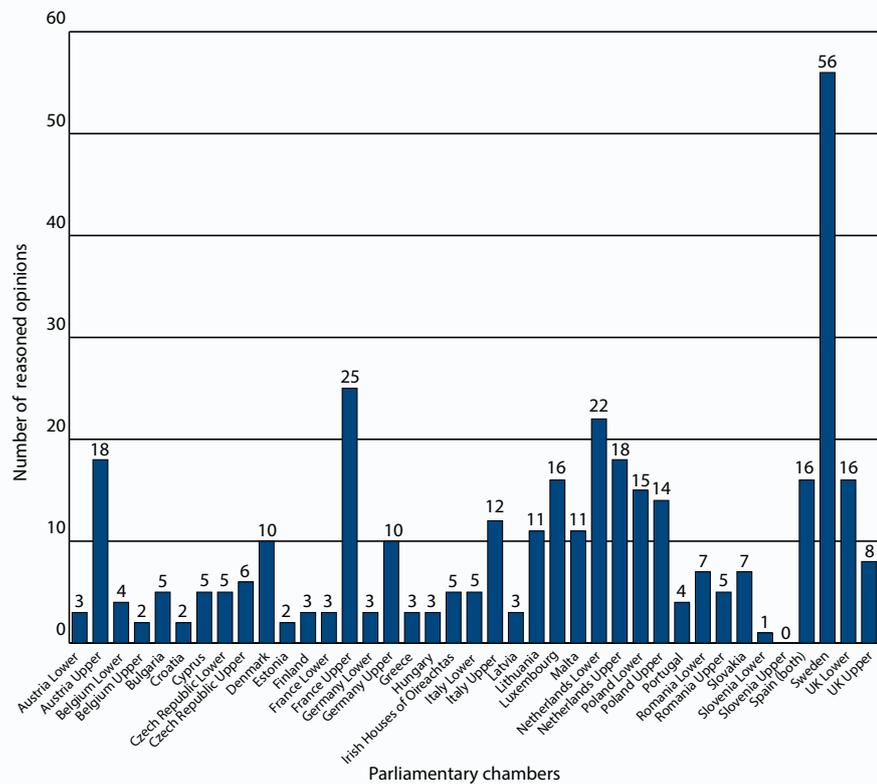
7: Katjana Gattermann, Claudia Heffler, 'Beyond institutional capacity: political motivation and parliamentary behaviour in the Early Warning System', *West European Politics*, Volume 38, Issue 2, 2015.

8: Gabriella Ilonszki, 'The Hungarian parliament and EU affairs: A modest actor dominated by the executive', in Claudia Heffler, Christine Neuhold, Olivier Rozenberg, Julie Smith (eds), 'The Palgrave Handbook of national parliaments and the European Union', 2015.

9: European Commission, 'Annual report on relations between the European Commission and national parliaments', July 2015.

Table:
Number of reasoned opinions per chamber in years 2010-2016 (up to May 27th 2016)

Source:
IPEX, the platform for EU inter-parliamentary exchange.



Not all parliaments see cards of different colours as the (only) way to exert their influence on EU policy-making. But it does not mean that there is nothing MPs would like to improve in their relationship with EU institutions and other parliamentary chambers. Quite the opposite; parliamentarians have complained that the European

Commission and the European Parliament do not always treat them seriously and that inter-parliamentary collaboration is far from perfect. The following sections of this paper look at these problems and possible solutions to them.

National parliaments: The Commission's junior partner?

National parliamentarians have long resented the fact that the Commission pays much more attention to the European Parliament than to them. This resentment is particularly strong in the British House of Commons, whose MPs have repeatedly questioned the democratic mandate of the European Parliament. Some British MPs find it difficult to come to terms with powers the Lisbon treaty granted to the European Parliament and the influence it currently has on the European Commission; despite plummeting turnout in European elections the European Parliament is today one of the EU's two lawmakers (the other one being the Council of Ministers) whereas national parliaments can only make comments on draft legislation or oppose it on the grounds of subsidiarity. The President of the European Commission regularly meets the President of the European Parliament and leaders of major political groups in the Parliament to discuss EU business. But according to an informal inter-parliamentary working group that in 2015 came up with ideas on how to improve the yellow card, it takes the Commission from four to five months to respond to the concerns of national parliaments about subsidiarity.

National chambers think this is unfair. They only have eight weeks to show the Commission a yellow or an orange card, so why should the Commission have so much more time? In the past, parliaments also complained that the Commission's replies failed to address their concerns. In the working group's final report parliaments argued that the Commission's "replies usually (with some exceptions) have a high level of generality".¹⁰ Parliaments have also been upset about the Commission's legalistic approach to their concerns. MPs can challenge a Commission proposal only when they think that it violates the subsidiarity principle. But they cannot show the Commission a card when they think that a Commission proposal goes beyond what is necessary to achieve objectives set out in the EU treaties (the so-called proportionality principle). Separating subsidiarity from proportionality is not easy, however; some parliaments, like the Swedish Riksdag, consider both when they conduct their subsidiarity check.

Cameron's deal only partially addressed these shortcomings. EU leaders agreed to give MPs four more

¹⁰: Report of the working group on the possibility of improving the 'yellow card' procedure presented at the COSAC meeting, June 2nd 2015.

weeks to show a red card, but they also set a higher threshold of 55 per cent, which will be difficult to reach. Parliamentarians will continue to have eight weeks to launch yellow or orange card procedures, with lower thresholds. The February settlement also states that “reasoned opinions issued by national parliaments in accordance with article 7(1) of protocol no 2 on the application of the principles of subsidiarity and proportionality are to be duly taken into account by all institutions involved in the decision-making process of the Union. Appropriate arrangements will be made to ensure this.”¹¹ It is far from clear what EU leaders had in mind with these words, and whether the Commission may agree to extend the scope of the early warning procedure to include a proportionality test.

The Juncker Commission deserves some credit. It has made much greater efforts than its predecessor to gain the trust of national parliaments. Frans Timmermans, the Commission’s vice-president and in charge of relations with national parliaments, wrote to his fellow commissioners in December 2014, urging them to treat national parliaments more seriously. Among other things, Timmermans asked his colleagues to boost ‘political dialogue’ with parliaments by responding to their opinions within three months and by addressing their concerns in a more specific way.¹² Officials in some national parliaments have acknowledged that the Commission’s replies are now indeed more specific and detailed.¹³

Timmermans also urged commissioners to visit parliaments more often. The Juncker Commission claims that in its first year, it exchanged views with national parliaments more than 200 times. At times, the Commission has taken inspiration from visits to European capitals. Timmermans travelled to Copenhagen soon after his appointment, and learnt about the Danish Business Forum for Better Regulation (which looks at ways of easing the regulatory burden on Danish business); Timmermans drew on this model in his better regulation package.¹⁴ And when commissioners cannot make it to national capitals, they are encouraged to meet MPs in Brussels. The House of Commons foreign affairs committee, for example, met the EU’s high representative for foreign and security policy, Federica Mogherini, in Brussels as part of its inquiry into the costs and benefits of EU membership for the UK’s role in the world.¹⁵

11: European Council conclusions, ‘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’, Annex I, February 18-19th 2016.

12: Letter of Frans Timmermans to members of the college, December 2014.

13: Interviews with officials from national parliaments.

14: Communication to the Commission, ‘The REFIT Platform: structure and functioning’, May 19th 2015.

15: House of Commons, Foreign Affairs Committee, ‘Implications of the referendum on EU membership for the UK’s role in the world’, April 26th 2016.

But the real test of the Juncker Commission’s intention to improve relations with MPs will be its response to the recent yellow card on the revision of the posted workers directive. Parliaments from Central and Eastern Europe (CEE) fear that the Commission’s attempt to ensure ‘equal pay for equal work in the same location’ will disadvantage their citizens, who often provide low-cost labour. If the Commission ignores these parliaments’ concerns it risks reinforcing the impression in some member-states (including Hungary and Poland) that the Commission tends to represent the interests of the older member-states. If the Commission dilutes or withdraws its proposal, however, it will infuriate those EU countries where average wages are higher than in CEE countries and where there is concern about unfair competition for local workers. Indeed, the EU-15 receives 86 per cent of all posted workers.¹⁶

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According to some parliaments, the political dialogue with the European Commission has “untapped potential”.¹⁷ MPs are used to exert influence at home by proposing, adopting or changing laws, while the Lisbon treaty limits their formal role in the EU to opposing draft legislation. Some national parliamentarians see no reason why they should not be able to put forward proposals at the European level, as they can in their own countries. This is why the House of Lords EU select committee developed the idea of the so called ‘green card’, whereby a certain number of national chambers could collectively ask the Commission to put forward a new proposal, or to amend or repeal an existing one. Though it is not a formally recognised power in the EU treaties, in July 2015 the House of Lords and 15 other national chambers submitted their first green card; they invited the Commission to take a more strategic approach to food waste reduction.¹⁸ The signatories of the green card asked the Commission to assess and acknowledge their recommendations within the ‘circular economy package’ (which aims to facilitate sustainable growth in Europe by reducing waste and boosting recycling). The Commission failed to refer directly to the initiative in the package that it adopted in December 2015, although some of its recommendations coincided with the green card suggestions.

16: European Commission, Impact assessment of the proposal amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, March 8th 2016.

17: European affairs committee, Danish parliament, ‘Twenty-three recommendations to strengthen the role of national parliaments in a changing European governance’, January 2014.

18: The House of Lords opted to suggest actions which would not require EU legislation, but if the green card idea gains ground and is supported by other parliamentarians, peers do not exclude the possibility of using a green card to suggest EU legislation.

The Commission fears that green cards could set a precedent of infringing on the Commission's monopoly in proposing laws. It is also wary that a more positive approach to green cards could upset the European Parliament, which can invite the Commission to table new

laws (this is its so-called right of 'indirect initiative').¹⁹ The Juncker Commission is legislating less than the Barroso Commission, and MEPs are likely to make use of this right more often. National parliaments' green cards could steal "the [European] Parliament's thunder".²⁰

National parliaments versus the European Parliament: A zero sum game?

The relationship between MPs and MEPs has never been plain sailing. Today, there are many formats for co-operation between national parliaments and the European Parliament, but none of them work very well.

Since 1963, speakers from national parliaments and the president of the European Parliament have met in the format of an EU Speakers' conference; since 1999 the conference has met regularly once a year, and has attempted to provide guidelines for inter-parliamentary co-operation in the EU. Since 1989 MPs from EU affairs committees and MEPs have met in the Conference of EU affairs committees (COSAC). The original objective of this inter-parliamentary co-operation was to exchange views on European business and best practice in the parliamentary scrutiny of EU affairs.²¹

But the Lisbon treaty gave national parliaments an early warning mechanism. Since December 2009, COSAC has aimed to ensure that national parliaments use it more effectively.²² There are two plenary COSAC meetings per year and two COSAC chairperson gatherings (composed of chairs of EU affairs committees in individual chambers, and the chair of the European Parliament's constitutional affairs committee (AFCO)). COSAC chairpersons discuss among other things the agenda for the COSAC plenary. EU candidate countries can send representatives from their parliament to COSAC meetings but they act only as observers. In the 1990s and 2000s parliaments also started sending liaison officers to Brussels. They have offices inside the European Parliament.²³ Parliaments' representatives meet colleagues from other national chambers every Monday morning to discuss the latest developments in the EU.

Since 2012 MPs and MEPs have also gathered twice a year to discuss EU foreign policy in the inter-parliamentary conference on Common Foreign and

Security Policy (CFSP) and on Common Security and Defence Policy (CSDP); and since 2013 to debate economic matters in the 'conference on stability, economic co-ordination and governance in the European Union'.²⁴ The European Parliament and the parliament of the country holding the presidency of the Council of Ministers can also organise other meetings and seminars. In addition, the European Parliament can host inter-parliamentary committee meetings in Brussels comprising MEPs from certain committees and MPs from corresponding national committees. MPs from member-states also use their party channels to stay in touch with their colleagues in Brussels or invite MEPs to attend discussions in national parliaments.

“The relationship between national parliaments and the European Parliament has never been plain sailing.”

Some national parliaments have complained that the European Parliament has tried to impose its own agenda on inter-parliamentary co-operation. Indeed, according to Francisco Gómez Martos, a former official of the European Parliament, the European Parliament has never been particularly happy about the COSAC model.²⁵ It felt uneasy that the distribution of seats in COSAC, whereby each national parliament and the European Parliament can send up to six delegates to meetings, put Brussels at a disadvantage.

The European Parliament has also picked unnecessary fights over the organisation of inter-parliamentary conferences on CFSP/CSDP, and on stability, economic co-ordination and governance. The European Parliament has limited formal influence over both EU foreign policy

19: Article 225 of the Treaty on the functioning of the European Union.

20: Agata Gostyrńska-Jakubowska, 'Power to the parliaments! But will Cameron's EU partners join his crusade?', CER insight, October 16th 2015.

21: The COSAC secretariat prepares – on the basis of answers to questionnaires sent to each parliamentary chamber – bi-annual reports which provide a useful overview of parliaments' views and best scrutiny practice.

22: Conference of speakers of EU parliaments, 'Guidelines for inter-parliamentary co-operation in the European Union', June 2008.

23: Andreja Pegan and Anna-Lena Högenauer, 'The role of parliamentary administrations in inter-parliamentary cooperation', in Nicola Lupo, Cristina Fasone (eds), 'Inter-parliamentary co-operation in the composite European constitution', May 2016.

24: The treaty on the functioning of the European Union also envisages that national parliaments and the European Parliament should jointly scrutinise the actions of the European Union law enforcement agency (EUROPOL). This will be the task of the so called Joint Parliamentary Scrutiny Group composed of MPs and MEPs. The composition of the group has not yet been decided.

25: Francisco Gómez Martos, 'Interparliamentary co-operation in the context of COSAC: a view from the European Parliament', in Nicola Lupo, Cristina Fasone (eds), 'Inter-parliamentary co-operation in the composite European constitution', May 2016.

and EU economic governance. It hoped that by securing stronger representation in both conferences, it would increase its bargaining power vis-à-vis member-states. It initially claimed 54 seats out of 162 in the inter-parliamentary conference on CFSP/CSDP. By contrast, national parliaments wanted a minimal role for MEPs in policy areas where the member-states lead.²⁶ National parliaments and the European Parliament eventually reached a compromise during the EU speakers' conference in Warsaw in 2012: national parliaments would send six MPs each and the European Parliament 16 MEPs to the CFSP/CSDP conference. The process of adopting rules of procedure for the inter-parliamentary conference on EU economic governance was equally bumpy: national parliaments and the European Parliament quarrelled for two years over how many MPs and MEPs should participate in the conference before finally agreeing that each delegation would determine its own size.²⁷

This political wrangling has made parliaments suspicious of the European Parliament's recent initiatives to strengthen co-operation with them. In March 2015 Klaus Welle, secretary-general of the European Parliament, asked national parliaments to provide the European Parliament with regular feedback on whether EU legislation was being properly implemented in member-states, and whether it served European citizens. But Welle's idea received a mixed response. Some chambers argued that it is the job of national governments rather than MPs to monitor and evaluate the transposition of EU law.

But national chambers may also have worried that the European Parliament was trying to use them for its own political purposes. MEPs could use the information obtained from parliaments to make a case for amendments to EU law – something that national parliaments could do on their own if EU institutions formally acknowledged their green card idea. But the European Parliament does not want to share its right to invite the Commission to come up with legislative proposals. And the Commission does not want to endorse the green card idea as this would anger the European Parliament. The Commission has relied on the European Parliament's support for its legislative programme and it does not want to put that at risk.

But the European Parliament is not to blame for all the problems besetting inter-parliamentary co-operation. Some parliamentary chambers have developed good working relations with their counterparts in the European Parliament and others have not. German and Polish MEPs can participate in the deliberations of their national EU

affairs committees if they want to. British MEPs, on the other hand, do not even have passes to the House of Commons. The number of MPs participating in inter-parliamentary conferences also varies. In 2013 Bulgaria, Luxembourg and Slovakia did not send a single MP to the first inter-parliamentary conference on stability, economic co-ordination and governance.²⁸

When they want, MPs and MEPs can co-operate rather than compete. Between 2010 and 2014 the European Parliament organised 58 inter-parliamentary committee meetings (ICM).²⁹ The ICMs held by the foreign affairs committee (AFET) seem popular with MPs. Some national parliamentarians struggle to obtain access to sensitive foreign policy documents through their national channels; the ICMs offer them an opportunity to learn about the latest developments in CFSP from colleagues from other EU capitals and from MEPs. Although the European Parliament does not have a formal role in CFSP decision-making, in 2006 it was granted access to some sensitive information concerning CFSP/CSDP.

“The European Parliament is not to blame for all the problems besetting inter-parliamentary co-operation.”

The ICMs organised by Elmar Brok, the chair of the AFET committee, are also attended by influential policy makers; the participation of Federica Mogherini, the high representative, in February's ICM on preparations for the NATO summit in Warsaw gave MPs an incentive to make an extra effort to travel to Brussels. MPs have at times complained that the European Parliament does not take into account the time it takes for MPs to get to Brussels; it holds meetings which are either too long for MPs to reconcile with their national commitments or too short for them to make their voices heard. But the inter-parliamentary committee meeting held by AFET in February 2016 lasted from 11.30 to 18.30. This enabled some MPs to participate actively in the discussions and to fly back home the same day.

MEPs also invite MPs to participate in workshops on topics related to the EU's legislative process. In February 2016 the European Parliament's committee on legal affairs (JURI) held a seminar on new rules for contracts in digital commerce. MPs had a chance to learn more about the Commission's recent proposals regarding online sales,

26: Anna Herranz-Surrallés, 'The EU's multilevel parliamentary (battle) field: inter-parliamentary co-operation and conflict in foreign and security policy', *West European Politics*, volume 37, issue 5, 2014.

27: See conflicting ideas and arguments in favour and against establishing the conference in Valentin Kreiling, 'The new inter-parliamentary conference for economic and financial governance', *Notre Europe* Jacques Delors Institute, October 2013.

28: Valentin Kreiling, 'Possibilities for upgrading inter-parliamentary co-operation after the 2014 European Elections', *The Polish Quarterly of International Affairs*, volume 23, Issue 1, May 2014.

29: Directorate for Relations with National Parliaments European Parliament, 'Report on inter-parliamentary relations between the European Parliament and national parliaments under the Treaty of Lisbon 2009-2014', annual report 2013/2014.

and to exchange views with independent experts on the legal issues surrounding online trading.

In some cases, MPs who cannot make it to Brussels can hold a video conference with their colleagues from the European Parliament. In October 2015, the European Parliament's committee on civil liberties, justice and home affairs (LIBE) held a video conference with MPs from the French National Assembly on migration and asylum. Sadly, not all national chambers have

the necessary equipment to take advantage of these technological innovations.

But MEPs still benefit more from inter-parliamentary committee meetings than MPs. A discussion with MPs offers MEPs a more nuanced view from national capitals, which they can use when considering legislation. MPs, on the other hand, have no guarantee that MEPs will include their views in their legislative work.³⁰

COSAC: Facilitator or blocker of parliaments' collective actions?

National parliaments should not expect the European Parliament or the European Commission to treat them more seriously as long as they struggle to co-ordinate their work and lack a common vision of the role they should play in the EU.

The current platforms of inter-parliamentary co-operation, such as COSAC, have helped to narrow differences in how parliaments scrutinise EU affairs, but they have been less successful in boosting joint efforts among parliaments to influence EU policy-making.

As a result, MPs have resorted to ad hoc meetings, outside COSAC, to discuss topics of common interest and co-ordinate their views on those policy areas that are unlikely to gather the support of all 41 chambers. These gatherings are often called 'clusters of interest'. Thus the French National Assembly organised a meeting in Paris on May 18th to discuss a French initiative for a green card on corporate social responsibility in European firms. There is nothing wrong with such gatherings as long as they are open to all national chambers (as was the case with the French initiative); not all parliaments may want to support the initiative but they should at least have an opportunity to learn about the plans of others.

There are several reasons why COSAC has struggled to boost parliaments' collective influence. The first is trivial: the timing of COSAC meetings does not always coincide with the Commission's submission of a legislative proposal and the deadline for showing a card. In 2012, COSAC provided a useful platform for parliaments to co-ordinate their efforts to show a yellow card to the Commission's 'Monti II' proposal. Danish MPs used a COSAC meeting in Copenhagen (April 22nd-24th) to disseminate the English version of the Folketing's opinion on the breach of subsidiarity in 'Monti II', and urged other parliamentarians to consider submitting similar

opinions.³¹ But when parliaments showed a yellow card to the proposal for a European Public Prosecutor's Office (EPPO), COSAC was of little help. The deadline for showing a yellow card was October 28th 2013, but the COSAC plenary meeting in Lithuania took place from October 27th to 29th – too late for parliamentary chambers to use this platform to co-ordinate their actions.³² Parliaments had to rely predominantly on their national representatives in Brussels and on 'IPEX' – an electronic platform for the exchange of information and documents among national parliaments and the European Parliament.

“National parliaments should not expect EU institutions to treat them more seriously as long as they struggle to co-ordinate their work.”

The second reason is procedural: COSAC plenary sessions offer little room for spontaneous discussions on matters which could result in subsidiarity checks or a green card. Some parliaments have to agree in advance their positions on the issues to be discussed during COSAC meetings. This often means that MPs deliver prepared speeches, making COSAC discussions a dull affair.

Third, MPs who want to work together more closely have to rely on their domestic resources, and get little support from the COSAC secretariat. The secretariat has only one permanent staff member, whose salary is paid for by national parliaments. He or she gets help from officials from the troika of presidencies (the preceding, current and future presidency) and a representative of the European Parliament, but the preparation for COSAC meetings leaves little time for other activities.

30: Diane Fromage, 'Standing committees in interparliamentary co-operation in the post-Lisbon era: towards the end of the European affairs committees' predominance' in Nicola Lupo, Cristina Fasone (eds), 'Inter-parliamentary co-operation in the composite European constitution', May 2016.

31: Ian Cooper, 'A yellow card for the striker: national parliaments and the defeat of EU legislation on the right to strike', *Journal of European Public Policy*, volume 22, issue 10, 2015.

32: Anne Pintz, 'National parliaments overcoming collective action problems inherent in the early warning mechanism: the cases of Monti II and EPPO', *School of Government, LUISS Guido Carli, Working Papers Series*, number 22, 2014.

Fourth, even if national parliaments had more resources to co-ordinate their actions, they would still struggle to make their voices heard. Some presidencies live-stream COSAC meetings and issue press releases, but this is not enough to draw wider public attention to parliaments' collective work on EU affairs.³³ As long as EU citizens remain unfamiliar with COSAC meetings other EU institutions are unlikely to take them seriously. COSAC also adopts so-called 'contributions' – non-binding documents which offer parliaments' views on recent EU developments and are addressed to EU institutions. But because the presidency aims to reach a consensus on contributions, the result is often the lowest common denominator. For example, the Luxembourg presidency found it difficult to push through the text of the COSAC contribution on the EU's migration agenda. Parliamentarians argued over whether COSAC should "welcome" the Commission's proposal for a permanent mechanism for relocating refugees; MPs from some CEE countries such as Hungary opposed more ambitious wording. In the end the watered-down statement only said that "COSAC acknowledges that a majority of parliaments welcome the European Commission's proposal for a permanent relocation mechanism for refugees".³⁴

Finally, the European Parliament feels uneasy about the idea of using the conference as a platform for MPs to act collectively. It worries that if it allows MPs to use COSAC in this way, they could in effect begin to act like the second chamber of the European Parliament.

But if COSAC fails to increase parliaments' collective influence in the EU, it risks becoming redundant. Many parliaments have (rightly) shifted European business from EU affairs committees to sectoral committees (such as home affairs or transport) in order to encourage more MPs to deal with European business and to improve the overall knowledge about EU affairs. COSAC has been pivotal to this process, as it has facilitated the exchange of best practice among MPs from different member-states.

This also means, however, that MPs from EU affairs committees, which attend COSAC, nowadays have less say in the scrutiny of individual EU policies. Instead, scrutiny increasingly takes place elsewhere; in sectoral committees and among MEPs and MPs who gather outside COSAC, in specialised inter-parliamentary conferences (e.g. the conference on economic governance) or in inter-parliamentary committee meetings.

After Bremain: Britain's role in reducing the EU's democratic deficit

In his Bloomberg speech of January 2013, David Cameron made a passionate case for expanding the role of national parliaments in the EU. He argued that "parliaments instil proper respect – even fear – into national leaders" and he promised to fight for a "bigger and more significant role" for them at EU level.³⁵ But in his renegotiations, Cameron focused mostly on giving parliaments the right to block EU draft legislation. He failed to address many of the existing problems of inter-parliamentary co-operation or to outline how parliaments could play a more positive role in the EU. Cameron's deal may have satisfied some of his more moderate eurosceptic critics, but it will not transform the role of national parliaments in EU decision-making. And it is unlikely to do a great deal for the democratic legitimacy of the EU.

In December 2014, experts who contributed to the British government's 'balance of competences review' suggested that parliaments should be able to oppose EU draft legislation not only on the basis of subsidiarity but also proportionality.³⁶ However, the deal struck between the EU and the UK in February 2016 is ambiguous on this issue. Formally, extending the early warning procedure to the proportionality principle would require a revision of

Protocol 2 to the EU treaties and hence treaty change – which many member-states deem undesirable today – but the Commission could enter into a gentleman's agreement with national parliaments to consider reasoned opinions that focused on the proportionality principle.

“Cameron's deal may have satisfied moderate eurosceptics, but it will not transform the role of EU parliaments.”

The yellow card on the posted workers directive will be a test of the Commission's intentions; parliaments that showed the card may well have based their reasoned opinions on both subsidiarity and proportionality principles. Before the European Commission takes any decision on whether to maintain, revise or withdraw the draft it should hold a meeting with those chambers that showed it a yellow card and discuss their concerns and possible solutions. Otherwise, it risks losing the trust of parliaments, which it has tried to gain since it took over from the Barroso Commission.

33: Mendeltje van Keulen, 'Reshaping COSAC as a dynamic venue for inter-parliamentary exchange' in Nicola Lupo, Cristina Fasone (eds), 'Inter-parliamentary co-operation in the composite European constitution', May 2016.

34: Contribution of the LIV COSAC Luxembourg, November 30th to December 1st 2015.

35: David Cameron, EU speech at Bloomberg, January 23rd 2013.

36: 'Review of the balance of competences between the United Kingdom and the European Union: Subsidiarity and proportionality', December 2014.

The House of Lords EU select committee also wanted Cameron to focus on ensuring that national parliaments can play a positive role in EU policy-making, but he did not take that advice on board. Cameron may have worried that this could upset the Commission and the European Parliament – whose help he would need in agreeing other elements (possibly more important for the average Briton) of the February deal.

But if on June 23rd the British vote to remain in the EU and Cameron's deal is implemented, the British prime minister should take the Lords' advice. Whereas post-referendum Britain would probably continue to be a reluctant European in some policy areas, it should lead a discussion on the role of national parliaments in reducing the EU's democratic deficit. The CER argued last year that the British prime minister should be prepared to go to the European Parliament to make his case for improving the EU's democratic legitimacy.³⁷ This recommendation still holds: Cameron's appearance in Strasbourg could mark a new chapter in the UK's relations with the EU and its institutions – something that Cameron promised in his Bloomberg speech in 2013. Eurosceptics would grumble that the British prime minister is accountable to the British parliament and that he should not appear in front of MEPs. But Cameron should disregard their advice and call for greater collaboration between MPs and MEPs. This could help narrow the democratic gap between ordinary citizens and the EU.

Here are eight points that a constructive British agenda on national parliaments should contain.

First, national parliamentarians and MEPs must understand that they are on the same team. Their common objective is to increase the democratic legitimacy of the EU. They have more to gain when they co-operate than when they compete. National parliaments often have a better sense than the European Parliament of what will benefit citizens. The European Parliament, on the other hand, can exert greater pressure on the Commission, since it elects the Commission president and can sack the Commission. By joining forces, MPs and MEPs stand a greater chance of improving the quality of EU policy-making than when each acts alone. The organisation of inter-parliamentary committee meetings in the European Parliament is a step in the right direction. But the chairs of the European Parliament's committees should regularly inform national parliaments about the practical outcome of ICMs. They should list which of their policy suggestions the committees have taken on board in their work on draft legislation. Parliamentarians might be willing to travel to Brussels more often if they could see tangible results from inter-parliamentary co-operation.

37: Agata Gostyńska-Jakubowska, 'Power to the parliaments! But will Cameron's EU partners join his crusade?', CER insight, October 16th 2015.

Second, greater co-operation among MPs and MEPs could result in a joint green card procedure, whereby both national parliaments and the European Parliament could call on the Commission to revise EU laws. Juncker's Commission has a leaner legislative programme than its predecessors and the European Parliament will have to focus on improving existing EU laws rather than on adopting new ones. MPs could offer the European Parliament national perspectives on the impacts of EU laws on their citizens.

Some experts have argued that the European Parliament would have to formally submit such a joint green card because the EU treaties gave the European Parliament, rather than national parliaments, the 'indirect initiative' right.³⁸ But national parliaments may fear that this would enable the European Parliament to claim credit for their work. If the European Parliament can reassure them that it has no such intention it stands a chance of getting parliaments on board. It could for example state in the preamble of the resolution setting out policy recommendations for the Commission that these are joint initiatives with national parliaments.

“After a vote to remain, Britain should lead a discussion on the role of national parliaments in reducing the EU's democratic deficit.”

Third, MPs and MEPs may not always agree on which law should be pursued or which should be revised. When they fail to agree, but a group of national parliaments makes useful recommendations, the European Commission should still give them careful consideration. If and when member-states decide to revise the EU treaties, Britain should call for the right of indirect initiative to be extended to national parliaments acting collectively. The House of Lords could help the British government to come up with a detailed proposal which would also include a minimum threshold for green cards. The European Commission could still refuse to put forward a legislative proposal (as it can refuse to address the European Parliament's policy recommendations), but it would have to justify its refusal on the basis of a rigorous assessment of the impact of the recommendations made by parliaments.

Fourth, video conferencing will not replace face-to-face contact between MPs and MEPs, but it can facilitate inter-parliamentary co-operation. Up-to-date technology would make life easier – particularly for those MPs who find it difficult to combine parliamentary commitments

38: Karolina Borońska-Hryniewiecka, 'The best of both worlds: the unexploited potential of inter-parliamentary co-operation in the EU', PISM policy paper, no 27, August 2015.

with visits to Brussels, or have budgetary constraints. Chambers which do not have the necessary equipment to hold video conferences should purchase it. It would require spending money now, but it would save them money in the long run, by avoiding some of the costs of flying to Brussels to discuss EU issues.

Fifth, effective co-operation among MPs themselves is the *sine qua non* of national parliaments' collective influence in the EU. National parliaments should make better use of COSAC conferences both to co-ordinate their actions in using the early warning system and for putting forward new policy recommendations. In February 2016 Kristalina Georgieva, a Commission vice-president, presented the Commission's work programme for 2016 at a COSAC chairperson meeting. The presentation of the annual work programme at COSAC should become standard practice. It would help to identify which of the Commission's new proposals could potentially breach the subsidiarity principle and be subject to a yellow, orange or red card. The identification of gaps in the Commission's legislative plans could also inspire parliaments to use a green card.

The COSAC presidency should allocate short slots in the COSAC programme for updates on ongoing and potential green, yellow and red card initiatives. This would give room to parliaments for explaining why a card is being considered, what the deadline for submitting one is, and which chambers might support it. Such an arrangement could encourage other parliaments to participate in a card procedure.

Sixth, inter-parliamentary conferences should be more dynamic. Boring conferences will discourage MPs from attending meetings, giving EU matters proper attention or taking joint action. The Dutch presidency has tried to address the problem by shortening plenary sessions of the Conference on CFSP/CSDP and turning off the microphone whenever parliamentarians spoke for too long. The Dutch also gave MPs and MEPs more time for informal discussions.³⁹ Indeed, the Dutch presidency should serve as an example for future presidencies, including the UK's in the second half of 2017.

A bi-annual report prepared by the COSAC secretariat in 2014 concluded that the quality of discussions was the greatest problem in COSAC co-operation.⁴⁰ This needs to change. During COSAC meetings MPs should be able to choose discussion topics that are of interest to them. This has now become standard practice during the Conference on CFSP/CSDP. Participants in the CFSP/CSDP conference take part in plenary sessions, but also break out into several parallel workshops. Each of the

sessions has its own rapporteur who reports back to the plenary on the outcome of the discussion. This practice enables MPs to attend workshops which interest them, and be updated about other discussions at the same time. COSAC should replicate this practice. One of the major objectives of COSAC is to provide a forum of exchange for best practice on parliamentary scrutiny of EU affairs; this should be on the plenary agenda while other topics should be discussed in the breakout sessions.

Language, however, could be an issue. Simultaneous translation into the EU's languages is provided during plenary COSAC sessions, but the presidency is unlikely to have the capacity to offer multi-language translation for all breakout meetings. MPs who do not speak English might make little use of these smaller gatherings. But the poor foreign language skills of some parliamentarians should not hold back others from organising breakout seminars.

“Effective co-operation among MPs themselves is the sine qua non of national parliaments' collective influence in the EU.”

Seventh, national parliaments should communicate the outcome of inter-parliamentary co-operation better, for example via social media. EU citizens (and the press) should know that their MPs are meeting their counterparts from other parliaments and from the European Parliament to discuss public concerns. COSAC 'contributions' should be more political and punchy, or be scrapped completely. The presidency often has to spend too much time trying to reconcile the differing views of 41 national chambers, ending up with unambitious, or worse, ambiguous documents that EU citizens do not even know exist. Fewer contributions are better than contributions that say nothing.

Eighth, if these recommendations succeed in boosting collective parliamentary engagement in EU policy-making, national parliaments may need to recruit at least one extra staff member for the COSAC secretariat.⁴¹ One official could continue to focus on assisting the presidency in preparing the COSAC agenda, and the other could help like-minded parliaments and their officials to make useful policy recommendations. Britain could urge other member-states to fund the officials' salary from the EU budget. If this idea is too controversial for the European Parliament and other member-states, national parliaments who wished to pursue it could agree to share the costs among themselves. Additional staff should increase the capacity of like-minded national parliaments to co-operate.

39: Interviews with officials from national parliaments.

40: COSAC secretariat, 'Twenty-first Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny', June 19th 2014.

41: The House of Lords EU select committee also recommended considering increasing the COSAC secretariat in its 2014 report.

Stimulating greater interest in collective action among parliamentarians would also help to revive COSAC. Parliaments may have shifted scrutiny of EU affairs to sectoral committees, but in most cases EU affairs committees are still formally responsible for the subsidiarity check.⁴² COSAC is therefore best placed to do the preparatory work for showing the Commission a card.

The EU treaties envisage that “national parliaments contribute actively to the good functioning of the Union”. It is time that these words are backed up by real actions.

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Agata Gostyńska-Jakubowska
Research fellow, CER

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⁴²: Diane Fromage, ‘Standing committees in inter-parliamentary co-operation in the post-Lisbon era: Towards the end of the European affairs committees’ predominance’, in Nicola Lupo, Cristina Fasone (eds), ‘Inter-parliamentary co-operation in the composite European constitution’, May 2016.