

UNIVERZITA KARLOVA V PRAZE

FAKULTA SOCIÁLNÍCH VĚD

Institut politologických studií

Disertační práce

2012

Viera Knutelská

UNIVERZITA KARLOVA V PRAZE

FAKULTA SOCIÁLNÍCH VĚD

Institut politologických studií

Katedra mezinárodních vztahů

Viera Knutelská

**Institutional aspects of the democratic deficit:
The role of national parliaments in EU
matters**

Disertační práce

Praha 2012

Autor práce: **Viera Knutelská**

Vedoucí práce: **doc. PhDr. Běla Plechanovová, CSc.**

Rok obhajoby: 2012

Abstract

This dissertation examines the role of national parliaments in the European Union within the context of the democratic deficit debate. It follows two levels on which national parliaments influence European input legitimacy: the European level, where parliaments may directly interact with European institutions and with each other, and the national level, on which the parliaments influence their governments and the actions those take in the Council. The analysis is based on the multi-level governance approach, although it pays more attention to the systemic factors at the European level than on the national level, as this second level offers more possibility to study individual factors.

The first level is examined by studying the inter-parliamentary cooperation. The results show that European level incentives, such as acknowledgement of national parliaments' role at the European level support inter-parliamentary cooperation, but this support is stronger when this acknowledgement is accompanied by real powers in the decision-making process. They also show that national parliaments do not yet fulfil the criteria of acting as a collective at the European level, which is a precondition of their contribution to the legitimacy of the European Union at this level.

The second level is examined by studying the manifestations of domestic activity at European level (in the Council) and by comparative analysis of three new Member States, the Czech Republic, Poland and Slovakia. The results show that the formal rules and models of parliamentary scrutiny have impact only on the organisation of the parliamentary scrutiny, but not on the level of activity and influence of the parliament in question. Moreover, the results also show that parliaments of the new Member States have been so far less active in European affairs than the parliaments from the Old Member States.

The dissertation is framed by the democratic deficit debate. It falls within the so called Vertical Democracy Paradigm within this debate, although it also offers some consideration on the future relevance of national parliaments' role in European integration for the other paradigms of the debate.

Keywords

European Union, democratic deficit, national parliaments, scrutiny of European affairs, Czech Republic, Poland, Slovakia

Declaration

I hereby do solemnly declare that the work presented in this dissertation has been carried out by me and that I have clearly and specifically indicated all sources used. I also solemnly declare that none of the presented work has been used to obtain any other academic qualification or degree.

Prohlášení

Prohlašuji, že jsem předkládanou práci zpracovala samostatně, s využitím uvedených pramenů a literatury a vlastního výzkumu. Dále prohlašuji, že práce nebyla využita k získání jiného titulu.

Souhlasím s tím, aby práce byla zpřístupněna pro studijní a výzkumné účely.

V Praze dne

Viera Knutelská

Table of contents

Foreword.....	8
Introduction.....	10
1 Theoretical and methodological framework	18
1.1 Democratic deficit.....	18
1.1.1 The concept and its development.....	18
1.1.2 Theorizing the democratic deficit	21
1.1.3 National parliaments in European affairs	24
1.2 Conceptualising national parliaments in European decision-making.....	31
1.3 Methods, timeframe and availability of data	37
2 National parliaments' activities on the European level	40
2.1 Need for Inter-parliamentary cooperation	40
2.2 Incentives and mechanisms for inter-parliamentary cooperation	43
2.3 Coordinated test of subsidiarity	47
2.4 Selected legislative cases, mid-2004 to mid-2009	57
2.5 Overall use of IPEX	63
2.6 Conclusions.....	67
3 Comparing different models of parliamentary scrutiny through their EU-level manifestations	73
3.1 Models of Parliamentary scrutiny.....	73
3.2 Parliamentary scrutiny reservations.....	79
3.3 Data and analysis of PSRs	83
3.4 Conclusions.....	88
4 Parliamentary scrutiny in the Czech Republic, Poland and Slovakia.....	91
4.1 In dept-analysis of parliamentary scrutiny in individual countries.....	91
4.2 Case study of the Czech, Polish and Slovak parliaments	95
4.2.1 Legal basis and origins.....	95
4.2.1.1 European affairs committee and involvement of specialised committees	101
4.2.1.2 Access to information	102
4.2.1.3 Mandating power	104
4.2.2 Day-to-day scrutiny and working practices	107
4.2.2.1 Capacities.....	107
4.2.2.2 Document processing.....	109
4.2.2.3 Working-level involvement and timing	111
4.3 Conclusions.....	117
5 Conclusions and discussion	120
Shrnutí.....	127
References.....	131
Appendix.....	143

List of Tables

Table 1 - Timely completion of the coordinated tests of subsidiarity checks	53
Table 2 – Inter-parliamentary cooperation in the coordinated test of subsidiarity checks	55
Table 2a – Inter-parliamentary cooperation of national parliaments in the coordinated subsidiarity checks – detailed information	144
Table 3 -Use of IPEX by individual parliaments/parliamentary chambers in other selected cases	59
Table 4 – Overall use of IPEX by national parliaments / parliamentary chambers	64
Table 5 -Number of opinions received by the Commission from national parliaments	69
Table 6 - Use of the PSRs in the period May 2004 – June 2009	85

Foreword

When I started my Bachelor studies in International Relations almost eleven years ago, I hoped to learn about the great matters of peace and war and start my journey of learning the fine art of diplomacy. Less than three years before the 2004 Slovakia's entry to the European Union, our curriculum was packed with information on the EU and its functioning, yet it has never drawn my interest. However, in my second year, we were given a short Spanish article on Europol by our Spanish lecturer with the sole aim to broaden our vocabulary.

It is to this moment that I can in fact trace the origins of this dissertation, for I was so intrigued by the topic that I wrote my Bachelor thesis on Europol. This in turn contained just half a page on democratic control over Europol, as there was no time or space to study the matter further. Many questions remained, and I looked for answers in my Master thesis on democratic control over the third pillar and particularly the Europol. Once again, while I learned a lot, the democratic deficit proved to be a vast area of research, and I carried that topic with me to my doctoral studies at the Charles University.

Coincidentally, I did my obligatory traineeship at the Slovak Ministry of Foreign Affairs in November 2004, at the time that the Slovak system of cooperation between the government and the parliament in scrutiny of European affairs was being finalised. In time, the two interests came naturally together, and this dissertation is a result of those many coincidences and unanswered questions I encountered during the last ten years of my studies.

Some of the answers I found did not surprise me much, such as the use of parliamentary scrutiny reservations analysed in part two of this dissertation. Others, such as the great

difference between the formal powers of scrutiny of European affairs of the Slovak parliament and the lack of their real use were more surprising. So, although at times difficult, doing the research for this dissertation has been a very rewarding experience.

I would like to take this opportunity to thank those who helped it to be so.

First, I would like to thank all those anonymous civil servants I interviewed for this research, for their time and their openness. Their answers not only gave me data that helped me answer the questions I'd already had, but also helped me formulate new ones. They also gave me the very satisfying feeling that my questions were worth asking.

Second, I would like to thank all those who commented on my work during the years, whether they did so at the conferences and workshops I attended or as anonymous reviewers of my papers for their insights and suggestions.

Third, I would like to thank my colleagues and fellow students at the Department of International Relations, both for their comments on my work and for their support over the years.

My deepest gratitude goes to the Head of my department and my tutor, doc. Běla Plechanovová, for her patience and all the advice she has given me over the years on this dissertation and on other matters of academic life.

Last, but not least, I would have never come this far without the love and help of my family. I would like to express the most heart-felt thanks to my parents, for their love, their support, both emotional and financial, and for the occasional but very useful tips about MS Excel. I would also like to thank Radek, for his love, for the life I have with him outside the academia, and for never questioning the amount of time I have spent at the computer.

Introduction

This dissertation deals with institutional aspects of the democratic deficit of the European Union, particularly the powers of national parliaments and their capabilities to influence decision-making at the European level. Originally, the project of the dissertation dealt also with the position and powers of the European Parliament (EP); however, I have decided to reduce the research question due to its complexity and the fact that there are already many works on the EP. The national parliaments, on the other hand, have not been studied so frequently in relation to European integration; for obvious reasons this is even truer about the parliaments of the Member States that joined the Union in 2004 and 2007. While the dissertation will deal with some aspects of the work of national parliaments of all Member States, more detailed studies are devoted to the cases of the Czech Republic, Poland and Slovakia.

This dissertation poses questions in the three main areas of research that are all devoted to some practical aspects of national parliaments' involvement in European affairs.

First, it examines the involvement of national parliaments at the European level and whether national parliaments do have the opportunities, capabilities and are willing to carry out effective collective control of European decision-making at the European level. As this area of national parliamentary involvement in European affairs is relatively new both in practice and in research (Raunio 2005a; Fraga 2006; Crum and Fossum 2009; Cooper 2006; Cooper 2010) and there has been only little research related to its actual practice (Cooper 2010), closer look at some of its practical

arrangements should be particularly useful. The main questions are how the European involvement of national parliaments works in practice and whether national parliaments do fulfil the criteria of collective activity at the European level.

Second and third areas of this research are related to the national level and the involvement of national parliaments in European-decision making through the scrutiny and control of their governments.

The second area of this research is also related to all national parliaments and aims to make a contribution to the comparison of national parliamentary scrutiny among 27 Member States. While there have been important academic works comparing the rules of national parliamentary scrutiny systems (Bergman 1997; Maurer and Wessels 2001; Buzogány 2010; Karlas 2011), these are all dedicated to comparison of formal rules. The reasons are obvious; it would be methodologically very difficult to assemble comprehensive and comparable data on practical workings of all the national parliaments. (There are now 27. But as in many bicameral systems the two chambers scrutinise the European affairs at least partially individually, a really comprehensive study would need to include 40 individual parliamentary chambers). The main questions asked here are about differences in practice between old and new Member States and between states with different types of national parliamentary scrutiny.

Third area is related to particular cases of national parliamentary scrutiny of the Czech Republic, Poland and Slovakia. Although there already have been some specific studies regarding one or more of these three countries (Łazowski 2007; Pítrová and Coxová 2007; Bartovič and Král 2012), there are still many open questions about the development and practice of their national parliamentary scrutiny of European affairs

systems and the factors that influence them. The main question here is whether the practice of national parliamentary scrutiny systems corresponds to the aims at the time of the designing and creation of the formal rules.

All three areas are bound together by several key aspects of my approach:

First, in all of them I introduce and use new sources and forms of data (parliamentary scrutiny affairs, IPEX, data from in interviews from both parliamentary and executive staff etc.) that have not been used before to analyse some practical implications of the chosen system of scrutiny and length of parliamentary experience for the practice of that parliamentary scrutiny.

Second, I move from the study of mere formal arrangements to the study of everyday practice. Although there have been works on some national parliaments that have done that (see e.g. Pollak and Slominski 2003; Cooper 2010), this is one of the first such studies on European level involvement of national parliaments, pan-European comparison of national parliamentary scrutiny systems and also on cases of the Czech Republic, Poland and Slovakia. In the last case, it is also first study that bases the analysis of practice of parliamentary scrutiny mostly on day-to-day decision-making arrangements and administrative background.

Third, although I place different emphasis on different factors on different levels, in all cases national parliaments are viewed as independent actors, who decide on their actions within the multi-level environment that is co-created by national parliaments themselves and also by other actors and conditions (e.g. the Treaties and other European institutions, such as the European Commission, on the European level, and national governments on the national level). The link between the collective efforts of

national parliaments and domestic level activity is also taken into account. On the European level, I conceptualise this approach on the basis of the multi-level parliamentary field notion (Crum and Fossum 2009) to allow for inclusion of multiple manifestations of parliamentary involvement of European affairs including inter-parliamentary cooperation. On the national level, I focus more on finer day-to-day administrative factors that I assume to be highly relevant, but whose influence would be very difficult to determine at the European level.

Fourth, the whole dissertation is framed by the debate of the democratic deficit. This last point requires some clarification here. This dissertation necessarily has to start with a brief introduction of the democratic deficit debate as it has been crucial both as the reason for strengthening the powers of national parliaments at the European level and as the reason for their reflection in academic research.

Since the term “democratic deficit” has been first used by David Marquand (Marquand 1979) it has been used and redefined to point to the lack of democratic legitimacy of European decision-making in comparison to the democratic legitimacy of the decision-making in the Member nation states – parliamentary democracies. Though the term in its broadest definition can include many alleged democratic shortcomings of the European Union, in its original and simplest meaning it refers to the weakening of legislatures and strengthening the executives in the course of European integration. In other terms, it means that the executives have taken over some of the legislative powers originally belonging to parliaments, and the parliaments are not fully capable of holding the executives accountable for their execution of these powers in the Council. The democratic deficit debate thus offers important framework for the study of national

parliaments, hence the first chapter describes some important features of the debate in general and its focus on national parliaments in particular.

It is important to note at this time that although the dissertation does not aspire to make any normative conclusions, the democratic deficit notion has a negative connotation on its own. The term suggest that the deficit is a shortcoming of the Union that should be remedied, and indeed there have been changes to the European institutional framework intended to improve the democratic legitimacy, including strengthening the European Parliament and acknowledging the role of national parliaments. However, even if this dissertation studies the level of activity and strength of all or some national parliaments, it does not presume to claim that stronger national parliaments are “better” for the EU. It merely studies the relation between the formal rules of national parliamentary scrutiny (including their formal strength) and the practical workings of national parliaments and manifestations of their activity. Moreover, although I define and then analyse criteria of collective activity of national parliaments at the European level as a precondition for national parliamentary legitimisation at the European level, their fulfilment would not mean that national parliaments do alleviate the Union’s democratic deficit, but only that they could. Indeed, there are many questions I do not examine in this dissertation but that would be highly relevant in any future complex assessment of national parliamentary role in (not) easing the EU’s democratic deficit. These questions would deal especially with domestic public debate on European issues, its reflection and relevance in the national parliamentary election process, its reflection and relevance in parliamentary debates etc. Moreover, there would have to be some

mutual evaluation of these factors on both national and European parliamentary levels to assess the relative contribution to the European Union’.

The dissertation is organised as follows:

The first chapter introduces the debate on the democratic deficit and the conceptualisation of national parliaments used in the research itself.

The second chapter deals with mutual national parliaments’ relations and cooperation in the area of European affairs. It aims to understand the nature and relevance of the possible cooperation of national parliaments both for the EU’s legitimacy and for the development of individual national parliamentary scrutiny systems. It is based on data on the coordinated tests of subsidiarity checks and use of existing cooperation channels, notably IPEX and some data on their communications with other institutions, namely the Commission. While there have been some studies (see e.g. Cooper 2006; Cooper 2010) on the national parliaments’ cooperation in relation to the introduction of the so called early warning mechanisms by the Lisbon Treaty, the issue represents a fairly new area of study. The decision to include section on the inter-parliamentary cooperation (COSAC and coordinated tests of subsidiarity, IPEX etc) was also based on the fact that the research on specific parliaments presented in the fourth chapter suggests great relevance of inter-parliamentary cooperation and learning from older Member States’ parliaments in designing the formal rules in the new Member States (cf. also Buzogány 2010).

The third chapter studies the manifestations of domestic national parliaments’ scrutiny of European affairs at Union level. As already mentioned, it would be almost

impossible to assemble comprehensive and comparable data on practical workings of all the national parliaments.

Therefore, this chapter of this dissertation does not aim to present a comprehensive comparison of all the national parliaments. It uses quantitative data on some of the manifestations of parliamentary activity that could be gathered using the same source for all national parliaments to look for some general attributes and differences between national parliaments and groups of national parliaments. This variable, the use of the so called parliamentary scrutiny reservations in the Council, represents a direct manifestation of national parliamentary scrutiny

The fourth chapter of the dissertation is a detailed comparative analysis of the systems of national parliamentary scrutiny of three new Member States, the Czech Republic, Poland and Slovakia. It describes the formal arrangements for the scrutiny of European affairs by national parliaments made in these countries, reasons for designing those specific systems and then analyses the day-to-day practice of these systems. It follows from the third chapter by looking for the relevance of the types parliamentary scrutiny systems in the cases of these particular parliaments.

This part of the dissertation contains most of the original research as it is based on the study of formal documents (legal acts, reports, parliamentary records etc.) and semi-structured interviews with civil servants from parliaments and executives of the three countries.

The choice to include these three specific countries was based on several considerations. First, only new Member States (i.e. those that joined the EU in 2004) were considered, as there has already been more research done on the old Member

States. Second, although all these national parliaments share many features, they differ in others. The set thus includes one unicameral (Slovak) and two bicameral parliaments (Czech and Polish), two parliaments that have chosen mandating systems (Slovakia and Poland), albeit with different formal strength and one that applies the document-based or procedural system (Czech Republic).¹ Last reason for this choice concerns the design of my research: the detailed study of day-to-day working practice including administrative arrangements requires at least passive knowledge of the working language of each parliament, a factor that also limited my choice.

Each empirical chapter contains its own conclusions. The final chapter is devoted to the overall conclusions. In the final discussion, I go back to the democratic deficit debate and I offer some considerations about implications of my results to the debate and future research.

¹ For details on mandating and document-based/procedural systems, see Chapter 3.1

1 Theoretical and methodological framework

1.1 Democratic deficit

“Europeans feel themselves, rightly or wrongly, at the mercy of a process of integration that they do not understand and certainly do not control – however much they enjoy its material benefits.” These words of Phillippe Schmitter (2000, 116) represent a very clear and simple reason why the democratic deficit has been used so extensively in academic debate, in practical discussions at times of amending the Treaties as well as in public debate. The following chapter present some of that debate and practical developments relevant for the issues raised further in this dissertation.

1.1.1 The concept and its development

As mentioned above, the notion of democratic deficit was first used by David Marquand (Marquand 1979) who claimed that the national parliaments are no longer able to hold their government accountable for what Council, the main legislator at the time, has done. He used this point to advocate for stronger and directly elected European Parliament to fill this gap in democratic parliamentary oversight of European legislative process.

The nature of European decision-making and the powers and mutual relations among its three main institutions have changed considerably since then. However, the most common and basic definition of the democratic deficit has not changed much; the

democratic deficit of the European Union can be defined as an increased power of executives at the expense of legislatures, especially in the area of legislative process, and the insufficiency of parliamentary oversight over the exercise of these powers by executives.

In broader sense, the notion includes other problems, such as increasing technocratic decision-making, lack of transparency at all levels, insufficient public participation both in relevant elections (European Parliament) and in public debate, excessive use of administrative discretions, non-existent or inadequate mechanisms of control and accountability etc. (see Follesdal and Hix 2006, 14–15). While the notion of democratic deficit has been originally related to the European Union, it has since then been used in studies of other international organizations, such as the World Trade Organization or the International Monetary Fund (cf. Held 1991)

At the same time, there is by no means a general agreement that a democratic deficit exists and that it is a problem the European Union should solve. It has been argued that the claims of democratic deficit of the European Union are based on the incorrect choice of standards derived from a nation state, but the nature of the European decision-making lies in efficiency-enhancing policies that can be legitimised by results and not by majoritarian decision-making (Majone 1998). Similarly, Moravcsik (2002) has argued that the debate has wrongly focused on comparing the practice of European Union decision-making with the abstract idea of parliamentary democracy rather than with the practice of modern democracies. According to Moravcsik, the late-twentieth century developments of most modern democracies include transfer of decision-making on regulatory issues to semi-autonomous institutions, a process that is similar to the

European Union's developments and the powers given to the European Central Bank, European Court of Justice or European Commission in areas such as the competition policy. Similar points are raised by Zweifel, who also reflect the relevance of the classification of the political system in question, whether it is a regulatory state (or bureaucratic democracy) or a federation comparable with states like Switzerland or USA (see e.g. Zweifel 2003).

Moreover, the debate has necessarily evolved over time, as there have been important practical developments since the term of democratic deficit was first used (Weiler, Haltern, and Mayer 1995; Moravcsik 2002; Majone 1998), most notably including the strengthening of the European Parliament including the direct elections and the introduction of the codecision procedure. The European Parliament, now directly elected by proportional representation within national constituencies and decides mostly within clear ideological (left-right) cleavages just as national parliaments do (Moravcsik 2002; Hix, Noury, and Roland 2007). Since these arguments about the importance of developments for the democratic legitimacy were made, more reforms were introduced with the same aim, including turning the codecision into the ordinary legislative procedure, recognizing the role of national parliaments or introducing the European citizens' initiative (see below).

The famous answer to these arguments was made by Follesdal and Hix (2006), who stress that the link between voter's preferences and policy outcomes should not just occur, but be ensured through democratic mechanisms. Moreover, they stress the importance of democratic debate that does not just serve as a vessel carrying the preferences from voters to representatives, but as a venue where voters' preferences are

shaped. Without the democratic debate, the voters' preferences are thus not known (Follesdal and Hix 2006, 545). However, the paper was written in relation to the Constitutional Treaty debate, and many of the developments authors have argued would improve EU's democratic legitimacy (increasing powers of the EP, formally linking the results of the EP elections to the choice for the Commission president) have come to force through the Lisbon Treaty.

1.1.2 Theorizing the democratic deficit

To understand the main points of the debate better, one can make use of theoretical classifications of different approaches and main arguments raised both to support and refute the notion of democratic deficit.

A very useful classification was made by Jolly (Jolly 2003) who distinguished four basic paradigms of the democratic deficit debate: a) the Efficiency Paradigm (output paradigm), b) the Vertical Democracy Paradigm, c) the Horizontal Democracy Paradigm and d) the Socio-Psychological Paradigm (input paradigm). Of course, these paradigms do not overlap with individual works, and many of the aspects can be found in most of the works on democratic deficit.

Within the first paradigm, authors try to answer the question whether the balance between the efficiency of decision-making and democracy shall be the same as in the political systems of the Member States. The above-mentioned Majone's (1998) and Moravcsik's (2002) arguments that the EU competences are strongest in the areas that are neither under strong democratic control in national states falls within this paradigm,

as does the Follesdal's and Hix's (2006) argument that democratic output requires democratic input.

The Vertical Democracy Paradigm examines relations between the European and national level. The intergovernmentalists support the idea that the EU is legitimised mostly by democratic accountability of national governments (Moravcsik 2002; Rittberger 2005; Scharpf 2006), thus the democratic deficit does not exist. On the other hand, there are opinions that some specific characteristics of the EU, especially the nature of the Council decision-making and Commitology, allow national representatives to avoid the national control mechanisms (Mancini 1998; Wincott 1998).

The Horizontal Democracy Paradigm examines the question how democracy could be strengthened by redistribution of power among the European institutions. Here the usual solution of the democratic deficit problem is to strengthen the European Parliament, especially in its relations to the EU 'executive' – the European Commission. It has also been the solution that was mostly applied in practice of European primary law reforms. On the other hand, some authors reject it claiming that the legitimacy of the European parliament is not sufficient, because the EP elections usually attract lower participation and the campaign is not shaped by truly European themes, but by national politics. (On the (un)sufficient legitimacy and (un)sufficient powers of the EP, see e.g. Wessels and Diedrichs 1997; Chrysochoou, Stavridis, and Tsinisizelis 1998; Blondel, Sinnott, and Svensson 1998; Delwit, De Waele, and Magnette 1999; Katz and Wessels 1999; Mather 2001; Neuhold 2001; Decker 2002; Delwit and Poirier 2005; Rittberger 2005.)

The Socio-Psychological Paradigm examines the way the non-existence of the European demos influences the future of the EU, particularly, if the democracy is possible without or if it would be desirable to attempt to create it (Lord 1998; Chrysoschoou, Stavridis, and Tsinisizelis 1998; Scharpf 1999; Decker 2002; Schmidt 2004; Schmidt 2006; Mair 2007). This paradigm is often used together with the Horizontal Democracy Paradigm in relations to the legitimacy of the powers of European Parliament. For example the non-existence of the European demos is often connected to the question of the EP elections and the powers of the EP. Follesdal and Hix (2006) suggest possible direct elections of the Commission's President by all European citizens as a possible remedy for this aspect of the democratic deficit.

From this distinction it would seem clear that involvement of national parliaments should fall under the Vertical Democracy Paradigm. However, with increasing direct involvement of national parliaments at the European level, some of the activities of national parliaments and their possible contribution to the legitimacy of European Union could be considered under the Horizontal Democracy Paradigm of the democratic deficit debate, as the coining of the term "virtual third chamber" (Cooper 2010) could suggest. At this point the question of national parliaments' powers in the European decision-making as a part as other than Vertical Democracy Paradigm remain open and I will discuss them further in the final discussion.

Another possible way to classify the studies on the democratic deficit is to use definitions of democracy and to analyse which of its criteria are applicable at the EU level. Thus three or four criteria may be defined: a) government by the people (participation), b) government of the people (representation), c) government for the

people (effective government) and, eventually, d) government with the people (consultations with interests groups). This approach is used by Schmidt (2004) who concludes that the first two should be applied at the national level while the last two may also be successfully applied at the European level.

Second useful classification of various aspects of the democratic deficit was made by Schmidt (2004; 2006). She uses the classic Abraham Lincoln's definition of democracy as government of the people, by the people and for the people adding a fourth criterion of government with the people and examines which of these criteria are applicable at the EU level. She concludes that government of the people (representation) and government by the people (participation) have been so far applied mostly at the national level. Government for the people (i.e. efficient government) and government with the people or, more precisely, with some of the people (consultations with interest groups etc.) have also been successfully applied at the European level.

1.1.3 National parliaments in European affairs

The European integration has influenced national parliaments greatly: their decision-making capacity has been decreased and there has been a transfer of decision-making authority from the parliamentary level to the Member States' executives (Katz and Wessels 1999, 11; Moravcsik 2002; Holzacker 2002, 460). Originally, the most important role in answering the democratic deficit problem was given to the European Parliament.

However, national parliaments are also directly elected, and thus more strongly legitimised than most of the other organs and institutions (Kiiver 2006b, 71). This has

been often emphasized in the literature on the democratic deficit and on the relation of national parliaments to European integration, and given as one of the main reasons for the importance of the national parliaments in the domestic part of European decision-making (Majone 1998; Raunio 1999; Katz and Wessels 1999; Falkner 2000; Dimitrakopoulos 2001; Holzacker 2002; Hansen and Scholl 2002; Hix and Raunio 2000; Pernice 2004; Cooper 2006; Kiiver 2006b; O'Brennan and Raunio 2007).

Kiiver (Kiiver 2006a) goes on to explain this further from two key angles, namely the national constitutional and European perspectives. The first means that, as governments participate in the adoption of EU legislation that is binding upon national parliaments, parliaments do not participate in it in the same way as in the case of domestic legislation. There is therefore a lack of effective accountability of national governments to their national parliaments for their EU policies, effectively creating a 'de-parliamentarisation' at the Member State level. The second refers to the idea that "poor parliamentary oversight over the governments' EU policy may essentially mean an interruption of the chain of democratic accountability that leads up to the decision-making in the Council" as the only way to legitimise the Council, neither directly elected nor accountable, via the individual accountability of ministers to their respective national parliaments (Kiiver 2006b, 79–80). A third point could be added in developing the European perspective, namely that, if national parliaments do not have direct access to European decision-making, the whole process lacks sufficient legitimisation, as the powers of the EP cannot counterbalance the limitations that national parliaments face (O'Brennan and Raunio 2007, 3).

Thus, the role that parliaments may, want and will play in European integration is important to the question of European democracy. So far, national parliaments have been able to take part in the European decision-making process mostly in their national arena, and their powers and influence there have depended almost solely on national rules. At the same time, the discussion on the democratic deficit and the need for institutional reform of the EU in the 1990s and 2000s have resulted in various incentives, and even legally binding rules, for the inclusion of national parliaments at the European level of the European decision-making process.

All this has been somewhat recognised by attempts to include the national parliaments' role in the primary European law in the last two decades. The Treaties recognised the role of national parliaments in declarations attached to the Maastricht Treaty (1992) and a protocol annexed to the Amsterdam Treaty (1997). (Declaration on the role of national parliaments in the European Union, Declaration on the Conference of Parliaments, and Protocol on the role of national parliaments in the European Union respectively).

The Declaration attached to the Maastricht Treaty merely stated that the involvement of national parliaments in the activities of the EU should be encouraged. The Protocol attached to the Amsterdam Treaty notably stressed the need for national parliaments to be informed and to have enough time (i.e. six weeks) to study proposals in certain areas such as the third pillar of the EU. It also referred to the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC), especially to its right to make contributions to the European institutions and to examine legislative proposals in the area of freedom, security and justice. In this way, the need

for the involvement of national parliaments was officially declared in the European Treaties without giving them any actual powers at the European level.

The Treaty establishing the Constitution for the European Union (2004) as well as the Lisbon Treaty (2007) also contained Protocol on the role of national parliaments in the European Union.

The role of national parliaments has also been debated by the Convention on the Future of Europe, and reflected in the proposed text of the Constitutional and Lisbon Treaties. Working group IV of the European Convention, discussing the role of national parliaments, has specifically distinguished between three different roles of national parliaments: scrutinising governments, monitoring the application of the principle of subsidiarity, and involving national parliaments at the European level through multilateral networks or mechanisms. It also called for clarifying and strengthening the role of COSAC (European Convention 2002). The Lisbon Treaty contains numerous references to national parliaments; it gives the national parliaments the right to receive information and documents from the European Union and charges them with ensuring compliance with the principle of subsidiarity (European Union 2007). Moreover, the Treaty on the European Union now contains a specific article on the national parliaments' role in the EU (Article 12 of the Treaty on European Union), and two related Protocols (Protocol on the role of national parliaments in the European Union and Protocol on the application of the principles of subsidiarity and proportionality). The first protocol states that the EP and national parliaments shall together determine the organisation and promotion of effective and regular inter-parliamentary cooperation within the Union. The second protocol of course introduced the so-called early warning

mechanism allowing the national parliaments to interfere in the European legislative process directly (see Cooper 2010).

In their latter version (i.e. Lisbon Treaty), which are now in force, the Protocols contain an obligation for the Commission to forward all the proposed legislation directly to national parliaments and also strengthen the possibility to object to it. National parliaments have the right to object to a proposed legislative act due to its non-compliance with the principle of subsidiarity within eight weeks (against six weeks in the Constitutional Treaty proposal) of the transmission of the proposal. If at least one third of the votes of national parliaments² object on non-compliance grounds, the proposal must be reviewed (a so-called 'yellow card'). If a simple majority of the votes of national parliaments objects to such non-compliance, the proposal must be reviewed, and a reasoned opinion of the Commission and the compliance with the principle of subsidiarity must be considered by the legislator (a so-called 'orange card').

The European institutions have also reacted to these developments, sometimes going further than the Treaties formally prescribed. The Commission, in anticipation of the ratification of the Constitutional Treaty, introduced the so-called Barroso mechanism in 2006, and started forwarding the legislative proposals and other documents to national parliaments before it was under any legal obligation to do so. The Commission has begun developing other channels of relations with national parliaments, such as visits to national parliaments, participation at the COSAC meetings, openness to communication with national parliaments etc. (COSAC 2005b). It also started monitoring more closely

² Every national parliament has two votes. If the parliament is bicameral, every chamber has one vote.

its relations with national parliaments and, since 2005, has published annual reports on its relations with national parliaments.³

Pending the ratification of the treaty, President of the Commission Barroso introduced a mechanism for forwarding the documents to national parliaments, known as the 'Barroso mechanism', which has been applied since September 2006. Also, the COSAC has organised the first coordinated test of subsidiarity following the drawing up of the protocols annexed to the Constitutional Treaty to test how the system might work if ratified, and followed this practice ever since in expectation of such a system eventually becoming the everyday reality of European decision-making. Moreover, the Lisbon Treaty also contains a new article regarding national parliaments (Article 12 of the Treaty on European Union) and various other provisions mostly requiring national parliaments to be informed on certain issues.

Despite these developments, the greatest possibility for the national parliaments to influence European affairs lies at the national level in influencing their governments and the positions they present at the Council meetings. However, unlike the institutional provisions regarding the European institutions, the models of cooperation between national parliaments and governments differ considerably among the member states. Designing such a system is one of the most important institutional, decision-making and administrative adaptations the new Member States have to undergo while joining the European Union. While the executives also need(ed) time to adapt to the nature of decision-making in the European Union, it might take even longer for the

³ http://ec.europa.eu/dgs/secretariat_general/rerelations/rerelations_other/npo/index_en.htm (Accessed 3 July 2012)

newcoming parliaments to find a model that will suit their needs and for their parliamentarians to learn to use all the possibilities it may offer.

Based on the theoretical distinction made by Kiiver (Kiiver 2006a) as mentioned above, and the practical developments, two basic perspectives for examining national parliaments can be defined:

(a) National parliaments influence national input legitimacy at the European level on European issues by directly entering into the European decision-making process and interacting with European institutions participating in this process, especially the European Commission and the European Parliament. The first attempt to include this role in the Treaties has been made in the above mentioned Protocols on the application of the principles of subsidiarity and proportionality attached to the Constitutional and Lisbon Treaties.

(b) National parliaments influence national input legitimacy at the national level on European issues by influencing and controlling their respective national governments and the positions those uphold in the Council of the EU. This occurs according to national rules that differ in every country, whilst also sharing many similar features. The formal powers of national parliaments range from the simple scrutinising and adopting of non-binding resolutions to the possibility of mandating the government. At the same time,

some parliaments with weaker formal powers may also be able to influence their government's position rather effectively.

Of course, in practice, this distinction does not preclude individual national parliaments from combining both routes, or to do so in cooperation with, not in opposition to, their governments (Dimitrakopoulos 2001). It does however open new questions regarding the possibilities of national parliaments' cooperation or even coordination at the European level. This question is one of the main focuses of the second chapter of this dissertation. The third chapter focuses primarily on the national level.

1.2 Conceptualising national parliaments in European decision-making

Although there have been quite a lot of studies on national parliaments, many of them are not very explicit about their theoretical assumptions. A very useful and rather comprehensive review of theoretical approaches to the study of national parliaments, especially regarding the national institutional adaptation and factors that influence the type and strength of national parliamentary scrutiny system has been done by Goetz and Meyer-Sahling (2008) and Buzogány (2010). The rational choice institutionalism approach has been reflected by the study of such factors as coalition formation and government – opposition relations (e.g. Hix and Raunio 2000; Pollak and Slominski 2003) or bargaining power of Member State in the Council (O'Brennan and Raunio 2007). Historical institutionalism has been reflected in studying of such factors as the

overall strength of the parliament or strength of committees (Dimitrakopoulos 2001; Raunio 2005b). Sociological institutionalism can be apparent e.g. in attention to the relevance of country euroscepticism (Pahre 1997; Raunio 2005b) or learning from the best (Buzogány 2010). In cross-country comparative studies, many of these assumptions are usually tested (Bergman 1997; Maurer and Wessels 2001; Raunio 2005b; Buzogány 2010; Karlas 2011a).

It seems clear from the above overview that most studies on national parliaments do not clearly follow one of the three neoinstitutionalist logics (rational, historical, sociological). While in general the same can be said about my approach, in this dissertation I will place greater emphasis on the sociological perspective in the sense that options and possibilities, which national parliaments as actors in the European decision-making have, are formed and changed in the environment co-created by national parliaments themselves and other European and national institutions. Therefore, preferences and options of national parliaments are not constant, which does however not prevent them from rational assessment of that environment and rational attempt to increase their own power within the system (Woll and Jacquot 2010). Moreover, while the national parliaments do react to changes in their environment, a delay caused by the time necessary for adaptation and learning can be expected. This has been shown for example on the cases of national parliaments of new Member States (O'Brennan and Raunio 2007).

There also already have been some attempts to conceptualise the environment in which national parliaments interact with the European decision-making system.

National parliaments at the European level have been conceptualised as a “virtual third chamber” (Cooper 2010). This means that the national parliaments as a group have, under the provisions of the early-warning mechanism, many characteristics of a parliamentary chamber, such as the oversight of the executive, public deliberation and collective decision-making. However, this is virtual as its members do not meet together in the same physical space (Cooper 2010, 7). Cooper claims that national parliaments have more collective power under the early warning mechanism than other institutions that aspired to be the third chamber, such as the European Economic and Social Committee or the Committee of Regions, and more power than the European Parliament had at some stages of its development. Cooper thus concludes that, even though there are serious obstacles to the application of the system, the future potential influence of national parliaments over legislative developments should be taken seriously (Cooper 2010, 28).

Moreover, the interconnection of both levels may be conceptualised via multi-level governance approaches (see, for example, Flinders, M. and Bache 2004). Multi-level governance is often conceived of as a governmental and institutional game (for detailed analysis of multi-level governance and its relation to the question of democracy, see Peters and Pierre 2004). Players in this game, the national parliaments in our case, can enter the game and align at different levels, namely both the national level/national political system and the European level/European political system. These levels are then inter-linked, in the sense that individual national parliaments can play an important role at both levels.

Crum and Fossum (2009) used the multi-level governance approach and the notion of 'field' (Bourdieu 1989) to create "a new heuristic tool", namely the notion of a multilevel parliamentary field (MLPF). This entails, first, the character and density of inter-parliamentary interaction, second, the character of parliaments as the constitutive units of the field and, finally, the mutual relation and interaction of these two dimensions.

This dissertation uses the concept of the Multi-level parliamentary field mainly in the second chapter to understand the nature, relevance and possible cooperation of national parliaments for the EU's legitimacy. While the concept of a network could be sufficient for studying the inter-parliamentary information-exchange and cooperation as a factor influencing the performance of individual national parliaments within their national political systems, the multilevel parliamentary field also allows integration of other factors, such as European level incentives (Treaties, Commission's activities etc) into the analysis. It thus allows us to perceive national parliaments as a collective.

For the national channel of democratic legitimisation of European integration to work at the European level, activities of national parliaments at this level should indeed meet some criteria of collective activity. Unlike legitimisation at the national level, where each national parliament controls individually its respective governments, legitimisation at the European level does require that activities of national parliaments are done collectively. While this does not necessarily mean that every single parliament or parliamentary chamber must actively participate every time any European-level tool of parliamentary involvement is used, isolated activities of individual national parliaments towards European institutions cannot contribute to European-level

legitimation on their own. (Although these could contribute to national-level legitimation of European issues in given member state.)

These criteria of collective activity can be derived from the notion of the MLPF that stresses the relevance of shared function, structural character of the field and the fact that the field is more than sum of its constitutive parts (Crum and Fossum 2009, 259–267).

I define these criteria of collective activity as follows:

(a) National parliaments perceive each other as sharing the same function within the integration process. Shared perception of having the role of representing people's interest in the EU decision-making keeps the components of the parliamentary field together (Crum and Fossum 2009, p.260) and allows for interpretation of the activities of national parliaments at the European level within the context of legitimation (and not just simple attempt to acquire more power for the power itself).

(b) National parliaments are aware of scrutiny processes or positions held by other members of the multi-level parliamentary collective; a precondition that makes it possible for national parliaments to act collectively by conscious effort (and not just act at the same time by simple coincidence). This leads directly to the third criterion:

(c) National parliaments are able to execute coordinated efforts to influence the European decision-making process.

In the second chapter I will consider to what extent these criteria are fulfilled in present-day EU.

This dissertation reflects all the above mentioned concepts in the sense that it acknowledges the multi-level nature of the European decision-making process and the

involvement of national parliaments in it. While the focus is on their participation in the decision-making process at the European level, it also takes into account interactions with the national level. For example, the reasons for the cooperation of national parliaments may be at the European level (for example, some characteristics of the specific issue), the parliamentary level (for example, the coordinated tests of subsidiarity) or the national level (for example, specific national interests or objections regarding a specific issue reflected in specific voting in the Council). This is reflected in the selection of cases for studying the inter-parliamentary cooperation in the second chapter.

The third and fourth chapter that focus on national level of parliamentary involvement take into account the multi-level nature of the European decision-making and the relevance of the environment for the practice of national parliamentary scrutiny of European affairs by taking into account the relevance of European-level factors (Council's custom of respecting the parliamentary scrutiny reserves in the third chapter or relevance of old Member States' models and learning in the fourth chapter).

However, in descending to the level of individual parliaments / parliamentary chambers in the fourth chapter, more detailed factors have to be taken into account. These include capacities of national parliaments, information independence on the executive and access to executive coordination system, and are described in more detail in the introductory part of the fourth chapter. While one can reasonably assume that these factors are also relevant for each national parliament's involvement at the European level (i.e. collective parliamentary activities), I assume they do not influence the overall pictures of all national parliaments examined together as a collective, however, they

can influence a case of a single national parliament. Therefore, I place the emphasis on European level factors in examining the choices and activities of the collective of national parliaments at the European level, and more emphasis on national factors and individual factors in examining the practice of national parliaments on the national level, especially in the detailed case studies of the Czech Republic, Poland and Slovakia.

1.3 Methods, timeframe and availability of data

All the empirical chapters of this dissertation present explanatory case studies using either quantitative or qualitative data.

The second chapter on inter-parliamentary cooperation is based on a case study of national parliaments' use of tools and channels of inter-parliamentary cooperation, especially the IPEX database. First, it studies the European-level incentives, mainly changes in the Treaties, and the reactions of national parliaments to these incentives on the basis of available European documents and data from the documents of COSAC and IPEX. It thus examines the influence of European-level incentives on the creation and use of these tools. It also follows from the conceptualisation made above and analyses the fulfilment of the three criteria of collective activity of national parliaments. The third chapter on the manifestations of national parliaments' activity at the European level is a case study of the use of parliamentary scrutiny reservations by Member States in the Council. It examines the effect of two independent variables

(model of parliamentary scrutiny and old/new Member States) on the level of activity of national parliaments as manifested by the use of PSRs.

The fourth chapter is a case study of systems and workings of national parliamentary scrutiny in three new Member States, Czech Republic, Poland and Slovakia that takes a comparative approach to analysing both formal and informal aspects of the national parliamentary scrutiny of European affairs in these three countries.

Most of the research focuses on the period from mid-2004 to mid-2009, i.e. the first five years after the Eastern Enlargement. This period is interesting for two reasons: first, discussions on the Constitutional and Lisbon Treaties and preparations for the entry into force of the new European competencies of national parliaments have led to development of new tools and channels of inter-parliamentary relations. At the same time, as the use of some of these tools increased only after the entry into force of the Lisbon Treaty, some data from the later period are also used.

Second, the first years after the Eastern Enlargement were a period of testing the newly designed systems of national parliamentary scrutiny, where the national parliaments and governments could learn to apply these rules, develop informal practices and refine the rules if necessary or desirable.

As such, the first five years after the Enlargement represent a key period for the questions raised in this dissertation. However, as the research on inter-parliamentary cooperation presented in the second chapter suggested that cooperation was very frequent or substantial in this period, this part of the dissertation also includes some data on the post-Lisbon development.

Creation of the datasets used in the second and third chapter was possible especially thanks to recent developments in the transparency of European decision-making. In 2001, the White Paper on European Governance listed five principles of good governance (European Commission 2006a). The first principle was that of openness, requiring an active communication on the part of EU institutions regarding the decision-making process, providing up-to-date information and using language accessible and understandable for general public. It also affirmed the aspiration to have the Europa website evolve into an inter-active platform for information, feedback and debate, linking parallel networks across the Union. Similar aspirations and commitments have been voiced in many other documents since then, notably the 2005 Action Plan to Improve Communicating Europe by the Commission as a part of the Plan-D for Democracy, Dialogue and Debate (European Commission 2005) claiming that the Commission will use state-of-art Internet technology to actively debate and advocate its policies in cyberspace; and the 2006 White Paper on a European Communication Policy planning to create ‘debate Europe’ fora (European Commission 2006a). There have also been important legislative acts, notably the Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (European Union 2001). This approach was reflected in practice. The first data on parliamentary scrutiny reservations I collected in 2007 listed only 40 different PSRs. As more documents became available in the Council register of documents, I was able to create a dataset of 809 PSRs.

Collection of data from IPEX was made possible mainly thanks to redesign of the IPEX database in 2011.

2 National parliaments' activities on the European level

2.1 Need for Inter-parliamentary cooperation

As explained above, this chapter examines the involvement of national parliaments at the European level, their opportunities, capabilities and willingness to carry out an effective control of European decision-making at the European level.

It asks how the European involvement of national parliaments works in practice and whether national parliaments do fulfil criteria of collective activity at the European level.

The criteria of collective activity are (a) perception of shared legitimisation function in European integration, (b) mutual awareness of activity and positions of other national parliaments and (c) ability to execute coordinated efforts, as defined in the chapter 1.2 on conceptualising the national parliaments above.

It starts from the assumption that national parliaments aim to increase their power in the European decision-making process, and that they find their opportunities and are limited by the European-level environment that they co-created together with other European actors.

The European level currently offers national parliaments one clearly defined legal tool, namely the early warning mechanism. However, this mechanism has two main limitations. First, officially, it allows national parliaments to control only the question of subsidiarity. At the same time, unofficially, it is well understood that multiple

objections on the part of national parliaments would have to be taken into account by other institutions (Pilot interview 1 and 2, Interviews 18 and 19). Therefore, even if there has been only a single case with sufficient number of national parliaments criticising the compliance with the subsidiarity principle in any specific case yet⁴, this mechanism can still work well as a channel to voice any kind of objections that national parliaments may have. Second, the early warning mechanism allows national parliaments to substantially influence the decision-making process only as a group, or a substantial part of a group. This leads to a need for mutual cooperation and coordination if national parliaments want to achieve results directly at the European level, which is already assumed here.

This need to act collectively (see also Olson 1965) has led national parliaments to take various steps to facilitate the exchange of information and cooperation, including the COSAC, IPEX, national parliaments' representatives etc.

At time same, it seems clear that the costs of cooperation of 27 national parliaments consisting of 40 parliamentary chambers, and, in the case of subsidiarity checks, of the need to achieve one third or a majority of votes may be very, if not too, high. Moreover, the number of actors also increases uncertainty – will all or a sufficient number participate and/or cooperate? At the same time, as some countries, such as Denmark, have been great supporters of inter-parliamentary cooperation, such as COSAC and IPEX, these high costs must have been apparent to them. Therefore, it is important to look for other reasons of individual parliament than immediate gain.

⁴ On the draft of 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, see <http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20120130.do> (Accessed 3 July 2012)

Lahno (2007, 444–446) introduces what he calls a coordination rule. Simply put, he says that there are some who follow coordination rules because they believe that it is right:

A person who adheres to the rule will still, and in spite of the disadvantage he faces, endorse that it is (and was) right to follow the rule; rather than regretting his action he will blame the others for acting wrongly. The rule follower will perceive the imperative of the rule as categorical, as prescribing the right way of conduct rather than as describing his personal means to achieving his ends. It is true that if nobody else follows the rule, then the rule follower will in the long run most probably adapt his way of action, and he may also revise his conviction about the authority of the rule (Lahno 2007, 445).

Regarding national parliaments, one may thus expect some national parliaments – namely, coordination rule followers or coordination supporters - to cooperate. Nevertheless, they will probably prefer some low-cost forms of cooperation. This may not immediately lead to significant results in terms of the power of national parliaments at the European level, but it may attract those parliaments which so far have not been very interested or active in European issues at either level, and may make them more aware of the possibilities to influence the European legislative process. Thus, at the first sight, there are no systemic obstacles that would prevent national parliaments from fulfilling the three stated criteria of acting collectively.

The role of incentives and the fulfilment of the three criteria of acting collectively at the European level are analysed on the behaviour of national parliaments by analysing the so-called coordinated tests of subsidiarity and other legislative proposals being discussed since the enlargement in 2004, as well as the overall use of the IPEX as the most prominent tool of inter-parliamentary cooperation.

2.2 Incentives and mechanisms for inter-parliamentary cooperation

As the democratic deficit debate has not been merely academic, but also an integral part of the discussions on institutional reforms of the European Union, there have been series of developments in the formal acknowledgement of national parliaments' role in the EU that can be interpreted as an incentive for national parliaments to create tools and channels to effectively exercise these powers in order to maximise their power at the European level.

These developments include all the Protocols relevant to the national parliaments' role since the Maastricht Treaty to the Lisbon Treaty (see chapter 1.1.3).

The national parliaments themselves have responded to these developments by creating various channels and instruments of inter-parliamentary cooperation that in turn were expected to boost this cooperation. Most relevant instruments are the COSAC, permanent representatives of national parliaments in Brussels and the IPEX database.

First and foremost, COSAC was established in 1989 by a decision of the Conference of Speakers. It meets twice a year and serves as a venue for exchange of information and teaching best practices. The COSAC and the Conference of Speakers have since then

launched various other initiatives to facilitate inter-parliamentary cooperation, such as the creation of IPEX and the organisation of the coordinated test of subsidiarity checks in anticipation of the introduction of the early warning mechanism. The role of these fora in organising these cooperation tools (see the specific sections below) points to the conclusion that national parliaments do share some perception of their common function in the European integration. This can be further illustrated by specific declarations of such role to be found in their documents, such as “national parliaments contribute actively to the good functioning and to increase the democratic legitimacy of the European Union” (Conference of Speakers of the European Union Parliaments 2008) or “the Conference of Speakers... aims at safeguarding and promoting the role of parliaments” (Conference of Speakers of the European Union Parliaments 2010).

Another network facilitating the cooperation among national parliaments is represented by the permanent representatives of national parliaments in Brussels. At the moment, all national parliaments have created an office of a permanent representative (sometimes there are two representatives for individual chambers in bicameral parliaments) representative in Brussels.⁵ Titles of these permanent representatives vary – they may be either permanent representative to the European Parliament or to European institutions. Some are affiliated to their respective Permanent Representations, others are more institutionally independent. However, all permanent representatives of national parliaments have offices at the EP’s premises in Brussels which facilitates not only the cooperation between their parliaments and EP / European institutions, but also the mutual cooperation among national parliaments.

⁵ List of these representatives is available at <http://www.cosac.eu/permreps/> (accessed 3 July 2012)

Permanent representatives facilitate mostly the informal, day-to-day cooperation. It is mostly the Conference of Speakers and COSAC that launch new initiatives and prepare the framework for inter-parliamentary cooperation.

For example, the Conference of Speakers has adopted the Guidelines of inter-parliamentary cooperation. The first version, known as The Hague Guidelines (Conference of Speakers of the European Union Parliaments 2004), was adopted in 2004 in response to the draft Constitutional Treaty and Protocol annexed to it. The Guidelines determine the main objectives of inter-parliamentary cooperation in Europe, which are

- (a) to provide information and strengthen parliamentary scrutiny in all areas of competence of the EU and
- (b) to ensure the efficient exercise of parliamentary competencies in EU matters, in particular in the area of subsidiarity control by national parliaments.

The Guidelines list eight possible occasions or venues for inter-parliamentary cooperation: Conference of EU Speakers, meeting of sectoral committees organised by national parliaments or by the European Parliament, COSAC, and simultaneous debates in interested parliaments, secretaries general, IPEX, representatives of national parliaments in Brussels, and the European Centre for Parliamentary Research and Documentation (ECPRD). Moreover, they list four fields of cooperation. First, in the field of subsidiarity control, the parliaments are recommended to inform others of their activities concerning the subsidiarity checks. Second, parliaments are encouraged to exchange information and documents on all levels. Use of IPEX is promoted in both these fields. Third, the Guidelines support organisation of conferences or other events,

and, fourth, they suggest that the Conference of EU Speakers could select priority policy areas. The Guidelines have been slightly amended at the Conference of Speakers in Lisbon in June 2006 (Conference of Speakers of the European Union Parliaments 2008).

Apart from this general framework, national parliaments have also undertaken some practical steps to improve their cooperation, especially in reaction to the drafting of the early-warning mechanism in the Constitutional Treaty.

All these developments have created the environment for interaction between national parliaments and the European decision-making process and other institutions active within this process. National parliaments have been prompted to consider possibilities for collective activities by various incentives. This include, first, formal changes of rules in the Treaties, ranging from mere mention of national parliaments in the Maastricht Treaty to the new rights and competences of national parliaments at the European level under the Lisbon Treaty. Second, reactions of European Commission, the institutions that has under these new provisions most obligations towards national parliaments, also represented an additional incentive for national parliaments to work on ways of mutual communication and possible cooperation.

National parliaments have then also undertaken some practical steps to improve their cooperation, especially in reaction to the drafting of the early-warning mechanism in the Constitutional Treaty. These include especially the launch of the IPEX database itself and organisation of the coordinated tests of subsidiarity checks.

The Conference of Speakers started to consider creation of an information exchange website as early as in the year 2000. National parliaments have created various

functions and fora, the IPEX Steering Group, the IPEX Board and the IPEX Correspondents. The first website was created in 2004, fully launched in 2006 and substantially revised in 2011. It contains dossiers on all European legislative proposals and allows national parliaments and the European Commission to upload information on the scrutiny process, subsidiarity checks, including all documents parliaments have drafted or adopted in the process and the Commission's reactions. The Hague Guidelines (Conference of Speakers of the European Union Parliaments 2004) summarise the expected role of IPEX:

The objective of IPEX (Interparliamentary EU Information Exchange) is to support interparliamentary cooperation in the European Union by providing a platform for the electronic exchange of EU-related information between parliaments in the Union including a calendar of meetings and forums for exchange of views on subsidiarity control. Each parliament/chamber has an IPEX correspondent to represent the parliament.

2.3 Coordinated test of subsidiarity

The coordinated tests of subsidiarity represented the first major step in the interparliamentary cooperation, as they were important for developing channels of cooperation including IPEX. The national parliaments have organised them through COSAC following the drawing up of the protocols annexed to the Constitutional Treaty

in order to test how the system might work if ratified. They have followed this practice even after the failure of the Constitutional Treaty in expectation of such a system eventually becoming the everyday reality of European decision-making - as it did in the Lisbon Treaty. As these tests constitute a relatively easy (pre-prepared) opportunity to attempt to coordinate the efforts of national parliaments, it is the first obvious source of the empirical evidence.

As mentioned above, the coordinate subsidiarity checks run as if the appropriate protocols (to the Constitutional Treaty or the Lisbon Treaty) were in place. The choice of a proposal to be submitted to a check was usually made beforehand based on the interest of national parliaments in an intended legislative initiative announced in the Commission working plan.

The first 'pilot project' of a subsidiarity check was agreed by the COSAC at its XXXII meeting in 2004, when COSAC decided to "carry out an experiment" and test the subsidiarity checks on a legislative proposal from the European Commission (COSAC 2004). This first test was applied on the Third Railway package in 2005 and was followed by seven others⁶; the last one was concluded just after the Lisbon Treaty entered into force. The idea behind the tests was to (a) try out the mechanisms of

⁶ Legislative proposals on which the coordinated test of subsidiarity checks were organised are: (1)^{3rd} Railway package - test running since 1 March 2005 until 12 April, 2005; (2) Regulation on the applicable law and jurisdiction in divorce matters – test running from 17 July until 27 September 2006; (3) Proposal for the full accomplishment on the Internal Market for Postal Services – test running from 31 October until 11 December 2006; (4) Proposal for the Framework Decision on Combating Terrorism – test running from 26 November 2007, until 21 January 2008, (the first time running for eight weeks according to the provisions of the Lisbon Treaty); (5) The Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Religion or Belief, Disability, Age or Sexual Orientation – from 9 July 2008, till 4 September 2008; (6) Proposal for the Directive on standards of quality and safety of human organs intended for transplantation – from 10 December 2008, till 6 February 2009; (7) Proposal for the Council Framework Decision on the right to interpretation and to translation in criminal proceedings – from 20 July 2009, till 14 September 2009; (8) Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession - from 21 October until 17 December 2009.

subsidiarity checks adopted in individual Member States, (b) find out whether national parliaments can comply with the requirements of the early-warning mechanism (such as the time limits imposed) and (c) see if national parliaments can be reasonably expected to reach the required number of votes (one third or simple majority) to raise the yellow or orange cards.

Every national parliament runs the subsidiarity check according to its own national procedures. Usually, one parliamentary committee is responsible for the check, and it may ask other committees to give an opinion, and, sometimes, the plenary might be involved. The parliament must carry out the check quickly enough to comply with the six or eight week deadline, but at the same time it is in its interest to carry it out with as high a quality of expertise as possible. So, if the parliament finds a case of non-compliance with the principle of subsidiarity, its reasoned opinion will be harder to contradict. In theory, including other Committees than the European Affairs Committee into the process brings more expertise⁷, as it requires more time and may always help the effectiveness of the process.

In addition to subsidiarity checks questions (when the parliaments would attempt to influence the legislative process via the scrutiny systems by influencing the positions taken by their governments in the Council and coordinated their efforts to increase the chance of changing the proposal), the timing is also important, as the chance to influence the substance of the legislative proposal is higher at the earlier stages of the decision-making process, when there is detailed negotiation on partial issues.

⁷ There might be exceptions based on the organisation of the committees in individual Member States, for example in the House of Lords in the United Kingdom, the committee responsible for European Affairs has various sectoral sub-committees.

The tests showed⁸ several problematic aspects of the subsidiarity tests and potential cooperation of national parliaments. Main challenge for national parliaments lied in the limited time as many parliaments found it difficult to finish the check in time even without disseminating information on their opinion to other national parliaments or attempting further cooperation.

During the first three tests, the deadline was set for six weeks on the basis of provisions in the draft Protocol to the Constitutional Treaty. According to reports on these tests by COSAC and responses to questionnaires, the parliaments completed each test, but six weeks was considered too short a period to carry out the whole subsidiarity check process, including preparing reasoned opinions. This limited the capability of the parliaments and committees to make necessary consultations. In the case of the second coordinated test (relating to divorce matters), only eleven parliamentary chambers from nine Member States concluded the check in time. However, more parliamentary chambers finished the check by the time a report on the check was drafted by the COSAC secretariat in the second half of November. According to the report by COSAC, ten parliaments in total particularly noted that the time available for national parliaments was not sufficient for a proper consultation procedure. The problem was aggravated by the fact that the test was running mostly during the summer recess. In the case of the third test (concerning postal National services), only ten parliamentary chambers from nine Member States completed the check before the deadline. By the time the report by COSAC was drafted, at the end of January 2007 and some seven weeks later, 27 parliamentary chambers from 21 Member States had completed the

⁸ All data in this part are based on the COSAC reports and accompanying questionnaires, to be found at <http://www.cosac.eu/subsidiarity-tests/> (Accessed 3 July 2012).

check. Moreover, not all the language versions were available when the check started, thereby either shortening the deadline for some national parliaments or forcing the officials and members of parliament to work in a language other than their official one (especially in the new Member States).

The fourth check (on combating terrorism) was the first to run according to the Lisbon Treaty provisions, which prolonged the test to eight weeks. Also, the timetable for the check was, for the first time, set only when all the language versions were already available - as stated in the Lisbon version of the Protocol -, and not beforehand as it had been done in the previous cases (with the already mentioned result that those checks had started before those version were available). Thus, in this case, 25 parliamentary chambers from 20 parliaments concluded the check by the deadline. At the end of January when the COSAC report was drafted, 29 parliamentary chambers from 23 Member States had concluded the check. Nevertheless, some national parliaments still reported that the period was too short.

The number of 'successful' parliaments dropped again during the fifth check (on antidiscrimination) due to the fact that the check was again carried out during the summer recess. Only 17 parliamentary chambers from 13 Member States concluded the check by the deadline. Another 15 parliamentary chambers from 13 Member States started the check, but could not complete it in time because of summer recess. Some of them proposed to disregard the four weeks of August, but such an initiative would have required the support of the European institutions engaged in the legislative process.

The sixth check (concerning transplantation) faced the problem of the Christmas recess. However, by the deadline, 27 parliamentary chambers from 20 Member States had

completed the check, whilst four others had started, but had not managed to finish in time. The seventh check was again carried out during the summer period. In this case, 21 parliamentary chambers from 17 Member States were able to complete the check within the deadline, and ten other chambers from nine Member States started the check, but did not finish it in time. Once again, the summer parliamentary recess was identified by many parliaments as the cause for delay in the check. The eighth check was the most successful in this respect. The check was completed by almost all of the parliaments, with 36 parliamentary chambers from 25 Member States participating in the process.

It is clear from the above cited data that parliaments encountered two main external obstacles that prevented them from completing the checks in time. First, it was the late availability of the legislative proposal in question, including the respective language version. This obstacle has been removed by new rules applied since the fourth check. Altering of the Protocol in its Lisbon Treaty version that extended the time limit to eight weeks was thus a direct result of experiences and complains of national parliaments after the first three checks. Another clear outcome was based on the repeated complains about late availability of legislative proposals in all language versions. However, as the Treaty specifically states that the eight-week period begins after the transmission of a draft legislative act in the official languages of the Union, this should not be major problem, although national parliaments capable of processing legislative proposals in the working languages of the Commission may sometimes have the advantage of more than just eight weeks to check the proposal. Moreover, the

number of parliaments finishing the subsidiarity check in time has risen with the extension of deadline between the third and the fourth test, as shown in Table 1.

Table 1 - Timely completion of the coordinated tests of subsidiarity checks

	<i>ST1</i>	<i>ST2</i>	<i>ST3</i>	<i>ST4</i>	<i>ST5</i>	<i>ST6</i>	<i>ST7</i>	<i>ST8</i>
n° of parl. chambers completing the check in time	NA	11	10	25	17	27	21	11
collision with summer recess	N	Y	N	N	Y	N	Y	N

Source: COSAC reports on coordinated tests

The time concerns proved to be especially relevant in cases where the six / eight-week period overlapped with parliamentary recess, especially during summer, but also during Christmas holidays. The Commission took these tests and arrangements national parliaments had made into account when preparing its practical arrangements for the operation of the early-warning mechanism after the entry into force of the Lisbon Treaty. For example, it promised to use IPEX to post copies of legislative proposals as well as reasons of its decisions made in response to an alleged breach of subsidiarity by national parliaments. Perhaps the most significant result is the Commission's promise that "in order to take account of national Parliaments' summer recesses, the Commission considers that the month of August should not be taken into account when determining the deadline referred to in Protocol No 2" (European Commission 2009b). Moreover, despite the limitations of the Treaty, the Commission has invited national parliaments to comment not only on subsidiarity issues, but also on the substance of a

proposal, although it asked them to distinguish between the two (European Commission 2009b).

The coordinated tests of subsidiarity checks were also the first opportunity for national parliaments to exchange information and try to cooperate in a real case of scrutiny subject to actual legislative process in the European Union. It is thus the first example on which the second (mutual awareness of activity) and third (coordinated effort) criterion of national parliamentary legitimisation role at the European level can be evaluated. Table 2 summarises the inter-parliamentary cooperation in the tests four to eight (as the questionnaires and reports on the first three tests do not offer specific information in this regard). More detailed account of the cooperation is also given in the Table 2a in the Appendix. In this case “cooperation” is understood as any communication, information exchange, passive or active, on the subject of the coordinated test. The data show that roughly half of the parliaments / parliamentary chambers attempted some cooperation. . During the fourth, fifth and sixth checks, nine, 18 and 17 parliaments or parliamentary chambers respectively reported some cooperation with other parliaments. Only 14 parliamentary chambers reported such contacts during the seventh subsidiarity check, but 19 chambers cooperated in the last subsidiarity check.

There is also a clear preference to use the newly established channels of cooperation - the permanent representatives and the IPEX – to individual bilateral relations. While it would be premature to claim that national parliaments were aware of proceedings in other parliaments *during* the scrutiny process, the indicated effort of national

parliaments to offer and / or obtain this information clearly shows that many national parliaments perceived the information exchange as important part of the process.

Table 2 – Inter-parliamentary cooperation in the coordinated test of subsidiarity checks

	<i>any attempt at cooperation with other national parliaments</i>	<i>cooperation through permanent representatives</i>	<i>cooperation with individual parliaments</i>	<i>IPEX used to search for information on scrutiny in other national parliaments</i>
ST no. 4	9	0	5	6
ST no. 5	18	6	2	10
ST no. 6	17	8	4	12
ST no. 7	14	6	2	12
ST no. 8	19	6	2	14

Source: COSAC reports on coordinated tests

Moreover, the fact the COSAC Secretariat itself has begun to emphasise the cooperation by posing the question about cooperation with other national parliaments in questionnaires since the fourth coordinated tests also points to increasing awareness of the importance of collective activities of national parliaments at the European level, particularly under the provisions of the early warning mechanism.

However, the use of the IPEX database usually did not prove useful. Member States often did not post any detailed information, or they posted it too late for the others to consider. There were also linguistic challenges. Many national parliaments posted documents only in their respective national language(s), which also hampers possibilities for cooperation. For example, in the case of the sixth subsidiarity check, there were 23 parliamentary chambers that posted documents. In 10 cases, the document was available in English (and in the national language if different), whilst

there were 13 documents in national languages (in four cases, this was French and in two cases, German). In the case of the seventh subsidiarity check (concerning the issues of interpretation and translation in criminal proceedings), two weeks before the deadline for the check, the webpage did not contain any document. It contained 19 documents three weeks after the deadline, most of which had been posted after the deadline. Whilst participation improved in the eighth check, the availability of the documents via IPEX did not. Seventeen chambers did not upload the information before the end of the check. Also, information was often available only in the original language. Simply put, many parliaments repeatedly report difficulties in accessing the results in other national parliaments. For example, in the case of the second subsidiarity check, the Dutch Parliament complained that only a few documents regarding scrutiny in other parliaments were available through IPEX, and none of them were in French, English or German. Similar reservations were also raised in other checks by different parliaments. The French National Assembly, on the occasion of the third test questionnaire, emphasised this problem in relation to the short period available for the check.

Another interesting point concerns the approach to cooperation. According to the questionnaires and reports, multiple countries are often interested in proceedings in specific countries, such as the United Kingdom, Denmark or France. At the same time, these countries, especially Denmark and the United Kingdom, did not actively seek cooperation themselves. The countries whose proceedings were interesting to others are mainly those with strong parliamentary scrutiny (such as Denmark, see for example Raunio 2006) or with formally weaker, but still influential systems (for instance, for

their expertise – such as in the case of the United Kingdom - see for example, Neuhold and de Ruiter (2010)). The parliaments that sought information were often those with weaker scrutiny systems or those from the new Member States, which were also weaker in practice (such as those of Portugal, Slovakia, the Czech Republic, Poland, Romania (see for example, (Maurer and Wessels 2001; O’ Brennan and Raunio 2007)).

2.4 Selected legislative cases, mid-2004 to mid-2009

Other cases used for the analysis of the inter-parliamentary cooperation in the period before mid-2009 were chosen on the basis of some aspects of the specific decision-making processes. Extensive databases on the EU decision-making of the project Eastern Enlargement and Patterns of the Decision-Making in the EU⁹ were used to pre-select relevant cases on the basis of one of the following criteria:

(a) Proposals in which at least five Members of the Council cast a dissenting vote (i.e. voted against or abstained) in the period of five years after the enlargement. This criterion is based on the assumption that if a proposal that is problematic enough for some Member States to vote against it or abstain at least once, this should illicit more interest from national parliaments, as their deliberations are usually based on cooperation with their governments. Cases of confirmatory applications of public access to documents and anti-dumping related issues were excluded from the set (as they are not well suited for parliamentary scrutiny).

⁹ carried out at the Department of International Relations, 2009-2011

(b) Legislative proposals adopted by the Commission after the Enlargement in 2004 that underwent the process of three readings in the codecision procedure. This criterion was based on the assumption that such rare proposals were more problematic for the European Parliament and that there are some contacts between the EP and the national parliaments, ergo such cases could also illicit the interest of national parliaments.

Both these criteria are also based on the multi-level nature of the European decision-making process and as such on the assumption that activities of other actors or levels have impact on the activities of national parliaments.

The application of these criteria resulted in the set of 25 cases.

The exchange of information among national parliaments on other selected issues was analysed on the basis of the data on the use of IPEX, specifically how many parliaments or parliamentary chambers post information, and how usable this information is to others. Table 3 shows a slight, but noticeable, increase in posting information on IPEX. More parliaments posted at least some kind of information; for example, they use status icons or post links on the documents in their language). Similarly, more parliaments posted detailed information, such as opinions and minutes, in English, French or German, which are the working languages of the EU institutions. At the same time, it is obvious that most of the parliaments posting most information in languages easily usable by others were also mostly the parliaments that had no need to translate them, as these are their official languages. The only exceptions were the Czech Senate in three cases, the Italian Senate in two cases and the Polish Sejm, also in two cases. They all used English translations of their documents. This again points to the high costs of efficient cooperation and information exchange, namely the time and cost

of the translations. Among parliaments that tend to post any information are those with stronger powers (i.e. Denmark, Sweden, United Kingdom, Germany) or the parliaments of new Member States (especially Poland and the Czech Republic), with the exception of the Italian Chamber of Deputies. Some information, even if it is in a language that is not commonly used, may also be helpful, as it sometimes encourages those interested to contact the person responsible in the respective parliament to ask for further information as suggested in some reports on the coordinated tests of subsidiarity and interviewees (Pilot interviews 1 and 2).

The data on the use of IPEX also suggests the different importance of the criteria used for the selection of cases. The number of parliaments posting information on cases that were selected because they underwent three readings under the codecision procedure (distinguished by '3rdg' in the first column of the table 3) was much smaller than in the other cases; in addition, no increase was recorded. This would suggest that incentives from the national level prompt more cooperation than incentives from the European level. However, the number of these cases was small (i.e. eight) and most of them were part of a package on maritime safety (COD 2005/237 to 241).

Table 3 - Use of IPEX by individual parliaments/parliamentary chambers in other selected cases

<i>discussed in years</i>	<i>dossier</i>	<i>n° of parl. posting any info</i>	<i>parliaments posting any info</i>	<i>n° of parl. posting detailed opinion in EN, FR or DE</i>	<i>parliaments posting detailed opinions</i>
2004/05	COD/2003/175	3	DK Folketinget, FR Senat, UK House of Commons	1	FR Senat
2004-06 3rdg	COD/2004/175	3	DK Folketinget, IT Camera dei Deputati,	0	

2004-06 3rdg	COD/2004/218	2	SE Riksdagen IT Camera Dei Deputati, SE Riksdagen	1	DE Bundesrat
2004-09	COD/2004/209	1	SE Riksdagen	0	
2005-06	COD/2005/41	2	IT Camera dei Deputati, SE Riksdagen	0	
2005-06	COD/2005/43	5	IT Camera dei Deputati, PL Sejm, PT Assembleia da Republica, SE Riksdagen, UK House of Commons	3	DE Bundesrat, IR Oireachtais, IT Senato
2005-06	CNS/2005/44	3	DK Folketing, PL Sejm, SE Riksdagen	1	IR Oireachtais
2005-07 3rdg	COD/2005/191	4	IT Camera Dei Deputati, ML Il- Kamra Tad-Deputati, PL Sejm, SE Riksdagen	0	
2005-09 3rdg	COD/2005/237	1	SE Riksdagen	0	
2005-09 3rdg	COD/2005/238	1	SE Riksdagen	0	
2005-09 3rdg	COD/2005/239	1	SE Riksdagen	0	
2005-09 3rdg	COD/2005/240	1	SE Riksdagen	0	
2005-09 3rdg	COD/2005/241	6	DE Bundesrat, IT Camera dei Deputati, PL Sejm, PL Senat, FI Eduskunta, SE Riksdagen,	3	IR Oireachtais, UK House of Commons, UK House of Lords
2006	COM (2006) 78	6	DE Bundestag, ML Il-Kamra Tad- Deputati, PL Sejm, PL Senat, SK Nrsr, SE Riksdagen,	2	IR Oireachtais, UK House of Lords
2006	CNS/2006/173	6	DK Folketing, DE Bundestag, ML Il- Kamra Tad-Deputati, PL Sejm, SE Riksdagen, UK House of Commons,	2	DE Bundesrat, FR Senat
2006	COM (2006) 252	5	ES Senado, IT Camera dei Deputati, PL Sejm, SK Nrsr, SE Riksdagen,	2	FR Assemblée Nationale, FR Senat
2006/07	COD/2005/260	8	DK Folketing, DE Bundestag, IT Camera dei Deputati, HU Országgyűlés, PL	4	CZ Senat, IR Oireachtais, UK House

			Sejm, PL Senat, SL Drzavni Zbor, SE Riksdagen		of Commons, UK House of Lords
2006/07	CNS/2006/256	8	CS Snemovna, DK Folketingent, ES Senado, IT Camera dei Deputati, ML Il-Kamra Tad-Deputati, PL Sejm, PL Senat, SE Riksdagen,	4	FR Assamble Nationale, FR Senat, IR Oireachtais, UK House of Commons, DE Bundesrat, IR Oireachtais, UK House of Commons
2006/07	CNS/2006/162	7	DK Folkentigent, DE Bundestag, ES Senado, IT Camera dei Deputati, LU Chambre des Deputes, PL Sejm, SE Riksdagen,	3	CS Senat, DE Bundesrat, FR Assaemblee Nationale, IR Oireachtais, UK House of Lords
2007	CNS/2007/85	6	CS Snemovna, ES Senado, PL Sejm, PL Senat, SE Riksdagen, UK House of Commons	5	DE Bundesrat, FR Assaemblee Nationale, IR Oireachtais, UK House of Lords
2007-08	COD/2007/113	6	CS Snemovna, DK Folkentigent, IT Camera dei Deputati, PL Sejm, PL Senat, SE Riksdagen,	5	DE Bundesrat, FR Assemble Nationale, IR Oireachtais, UK House of Commons, UK House of Lords,
2007/09	COD/2007/94	19	CS Snemovna, CS Senat, DK Folkentigent, DE Bundesrat, ES Senado, FR Assemble Nationale, FR Senat, IE Oireachtais, IT Camera dei Deputati, IT Senato, LT Seimas, HU Orszaggyules, ML Il-Kamra Tad-Deputati, PL – Sejm, PL –	7	CS – Senat, DE – Bundesrat, FR – Assemble Nationale, FR – Senat, IT Camera dei Deputati, IT – Senato, UK - Commons

2008	CNS/2008/144	7	Senat, FI - Eduskunta, SE – Riksdagen, UK – Commons, UK - Lords CS Snemovna, DE Bundestag, ES Senado, PL Sejm, PL Senat, SK National Council, SE Riksdagen,	4	FR Assemblée Nationale, IR Oireachtais, UK House of Commons, UK House of Lords
2009	COM (2009) 51	3	CS Snemovna, DE Bundestag, PL Senat, SE Riksdagen,	5	FR Assemblée Nationale, IR Oireachtais, PL Sejm, UK House of Commons, UK House of Lords
2009	COM (2009)56	6	CS Snemovna, DE Bundestag, IT Camera dei Deputati, PL Senat, SE Riksdagen, UK House of Lords,	4	FR Asemnlee Nationale, IR Oireachtais, PL Sejm, UK House of Commons,

Source: own data based on Eastern Enlargement and European Decision-Making Project database and IPEX (IPEX available at <http://www.ipex.eu/IPEXL-WEB/home/home.do> (accessed 3 July 2012))

The data on these relevant cases of legislative proposals show that, in the pre-Lisbon period, the national parliaments, despite the creation of the IPEX as a tool for inter-parliamentary information exchange, have probably relatively low overall awareness of each others' position on European issues without the help of either additional coordination (as coordinated tests of subsidiarity checks) or effective powers (obtained only after the entry into force of the Lisbon Treaty). Therefore, I also look on the

overall use of IPEX covering also the period after the entry into force of the early-warning mechanism.

2.5 Overall use of IPEX

Both empirical studies on the inter-parliamentary cooperation presented above show some increase in the exchange of information and the use of IPEX before mid-2009; however, that use was in fact quite limited both in terms of participation of national parliaments and in terms of amount and usability of information posted. Therefore, I decided to deviate from the overall-time frame of this study and look into overall the use of IPEX including the period after the entry into force of the Lisbon Treaty.

The assets of the IPEX database can be best evaluated by examining its overall use and its use in some relevant examples.

There are various types of information each parliamentary chamber can post on IPEX.

On each dossier, each parliamentary chamber can use simple icons to indicate

- (a) the progress of scrutiny, i.e. whether the scrutiny has started and is in progress or is already finished,
- (b) subsidiarity check in progress and possible subsidiarity concerns
- (c) important information to exchange
- (d) reasoned opinion in accordance with the Protocol No 2, stating why national parliament considers the draft not to be in compliance with the principle of subsidiarity.

Moreover, there is an icon to indicate the European Commission's response.

The data on the use of the IPEX by national parliaments / parliamentary chambers till July 2012 is summarised in Table 4.

Table 4 – Overall use of IPEX by national parliaments / parliamentary chambers

	<i>indicated use of IPEX in subsidiarity checks</i>	<i>subsidiarity issue</i>	<i>important information to exchange</i>	<i>reasoned opinion</i>	<i>response by the European Commission</i>
Austrian National Council	0	13	46	6	14
Austrian Federal Council	4	19	53	4	14
Belgian Senate	2	4	10	1	1
Belgian Chamber of Representatives	0	5	23	3	2
Bulgarian National Assembly	2	0	47	2	1
Cyprus House of Representatives	3	2	1	1	4
Czech Senate	4	8	131	1	41
Czech Chamber of Deputies	0	8	12	1	2
German Bundestag	1	5	62	2	10
German Bundesrat	5	47	122	7	29
Danish Parliament	0	14	22	5	15
Estonian Parliament	2	3	3	0	0
Spanish Cortes Generales	0	3	13	8	1
Finnish Parliament	0	0	0	2	2
French Senate	1	43	91	10	8
French National Assembly	3	5	7	1	1
Hellenic Parliament	4	7	28	0	12
Hungarian National Assembly	1	7	7	0	1
Irish Houses of Oireachtas	2	2	0	0	5
Italian Senate	1	37	97	3	41
Italian Chamber of Deputies	3	35	82	4	25
Lithuanian Parliament	3	8	43	3	3
Luxembourg Chamber of Deputies	0	9	16	10	9
Saeima Parliament of Latvia	4	5	8	1	0
Maltese House of Representatives	1	1	2	2	1
Dutch Senate	1*	13	54	7	9
Dutch House of Representatives	1*	17	49	7	7
Polish Senate	0	22	25	10	7
Polish Sejm	0	3	76	11	5
Portugese Assembleia da Republica	4	10	49	2	12
Romanian Senate	3*	2	3	1	2
Romanian Chamber of Deputies	3*	2	0	2	4
Swedish Parliament	3	45	157	27	66

Slovenian National Assembly	0	2	2	0	0
Slovenian National Council	0	0	0	0	0
Slovak National Council	1	8	24	4	1
UK House of Lords	0	8	14	2	17
UK House of Commons	0	3	14	7	1

*Both parliamentary chambers exercised the subsidiarity tests in common procedure.

Source: IPEX, available at <http://www.ipex.eu/IPEXL-WEB/home/home.do> (accessed 3 July 2012)

The amount of information posted on the IPEX website has increased over the years, especially with the Lisbon Treaty's entry into force, when national parliaments started posting information on possible subsidiarity issues and reasoned opinions.

However, the usefulness of the database in terms of finding specific information on proceedings and opinions of multiple or even majority of national parliaments on any issue of interest is still very limited and faces several challenges.

First, parliaments limit themselves to a great degree to the use of icons. Even the icon indicating that the national parliament has important information to exchange does not guarantee that IPEX contains any substantial document (opinion, position etc.). Only indication of a reasoned opinion is almost always accompanied by a corresponding document, the reasoned opinion itself. However, with the exception of Sweden with 27 reasoned opinions, no national parliament has had more than 11 reasoned opinions.

Second, there is often some delay between the national parliament's proceedings and posting the respective information on IPEX. Especially substantial information appears often with considerable delay. This can pose problems especially if national parliaments wanted to use the IPEX as an input source within the eight weeks time-limit of the early-warning mechanism.

Third, the language problem might be an issue. Even if substantial information is posted directly on IPEX, it often appears only in the official language of the parliament in question. As already mentioned, this was also the case of coordinated tests of subsidiarity, when many national parliaments posted information only in their national languages, i.e. used only original versions of documents. On the other hand, the number of courtesy translations has increased. For example, most of the reasoned opinions (used since the entry into force of the Lisbon Treaty) now available in IPEX¹⁰ are translated into English, with the exceptions of those originally in French, which is of course also a working language of European institutions (all the reasoned opinion by the French and Belgian parliamentary chambers and some of the reasoned opinion Luxembourg parliaments) and a couple of opinion by Spanish, Slovak and Bulgarian parliaments. The only parliament that neither uses a language that is also a working language of the European institutions nor has ever offered a translation of a reasoned opinion is the Bulgarian parliament (which has so far issued only two reasoned opinions). Spanish parliament offers English translations only on two reasoned opinion out of eight, but these are the newest opinions from 2012, which could suggest that the approach of the Spanish parliament in this regards has also changed.

Moreover, some parliaments, namely the German Bundesrat, Irish, Portuguese and Swedish parliaments sometimes post French translations alongside the English ones as well. However, time is again an issue, and translations are sometimes posted later than original documents.

¹⁰ on 3 July 2012, with the exception of seven reasoned opinions that are just indicated but not available at all.

All these past or ongoing shortcomings of IPEX raise questions about how often it is used by national parliaments to look up information on proceedings in other parliaments, and thus used for more than just posting the information. This is not possible to evaluate from the IPEX database itself, but the responses by national parliaments on the coordinated tests of subsidiarity checks indicate that national parliaments were interested especially in proceedings in countries that have national parliaments known for their active involvement in European affairs, such as the United Kingdom, Denmark or France. However, at the same time, these parliaments, with the exception of the French Senate, were not especially active in posting information on IPEX during subsidiarity tests or afterwards. This may mean that the information national parliaments are foremostly looking for is only rarely to be found.

On the other hand, the efforts national parliaments have put into building this system cannot be dismissed as non-effective. The number and availability of information has been increasing over time. Moreover, even if the specific information is not available on IPEX, the network of IPEX Correspondents can be used to obtain it. The IPEX contains contacts on IPEX Correspondent from every parliament or parliamentary chamber, so the information can be requested quickly and easily.

2.6 Conclusions

The data on the coordinated tests of subsidiarity checks and on the IPEX can be useful both in assessing the fulfilment of criteria of European-level legitimisation by national

parliaments as well as in evaluating the relevance of different incentives described in chapter 2.2.

First, the way these initiatives were launched suggests an emerging shared role perception among the national parliaments. Although both the COSAC and the Conference of Speakers are basically inter-parliamentary meetings, it is important to note that decisions on IPEX or coordinated tests were both made in the name of these respective institutions (“COSAC decided to carry out an experiment” (COSAC 2004)), not in the name of national parliaments, which shows that national parliaments meet first of the three criteria of European-level legitimisation.

Second, IPEX, including both the database itself and the network of IPEX correspondents (and other channels, such as the permanent representatives), gives national parliaments an excellent opportunity to be aware and informed of the scrutiny process or positions by other national parliaments.

National parliaments thus fulfil the first two criteria of serving as an important channel of legitimisation at the European level.

The data however do not offer much information on the third criterion, execution of coordinated effort to influence the European decision-making process. However, the development of inter-parliamentary cooperation can offer some insight into national parliaments’ and other institutions’ attitude towards such possibility.

As already shown, various references to national parliaments’ and COSAC’s role in the Treaties since the early 90s have acknowledged their role in the European integration. However, cooperation among national parliaments has not changed much in response to these documents as long as they were restricted only to declaratory nature. National

parliaments have reacted only when the drafted Constitutional Treaty promised them more than just recognition - some actual, even if very limited powers in the European legislative process. In reaction to the fact that the new rules can be effective only if a sufficient number of national parliaments participates, national parliaments immediately started devising means to enable such cooperation. The very development of IPEX and coordinated tests of subsidiarity checks are proof of that.

Other European-level incentives also do not seem to be as strong as formal powers granted by the Treaty. For example, as shown in Table 5, even if the Commission has encouraged dialogue with national parliaments at least since the Draft Constitutional Treaty, the number of opinions send to the Commission by national parliaments every year has remained roughly the same in 2005-2008, but almost doubled in 2009 when entry into force of the Lisbon Treaty became likely and again increased considerably in 2010. This again demonstrates that the best incentive or inter-parliamentary cooperation was the introduction of actual competencies at the European level.

Table 5 - Number of opinions received by the Commission from national parliaments

<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
124	112	149	136	250	387

sources :(European Commission 2011, 2009a and 2010)

Although country-specific incentives are not the main interest of this chapter, it is interesting to note that the amount of information national parliaments post on IPEX also does not correspond to the formal strength of national scrutiny system. The parliaments posting most information on IPEX are those of Austria, Germany, Italy,

Netherlands, Sweden, and Czech Senate, French Senate and Polish Sejm, i.e. both stronger and weaker parliaments (Buzogány 2010). Informal or factual influence also does not seem to correspond to the use of IPEX, as demonstrated for example by the House of Lords that is among the most influential in the EU (Cygan 2001). Even if the responses to questionnaires on coordinated tests showed that information on proceedings in the strongest parliaments is probably the most sought, it is not entirely clear what makes a national parliament / parliamentary chamber more active on IPEX. New Member States are somewhat less active, with the exception of the Czech Senate and both Polish chambers.

Even if European-level incentives have clearly been crucial for increasing inter-parliamentary cooperation, national parliaments cannot simply rely on the European institutions to encourage their cooperation. Although the role of national-parliaments and the need for inter-parliamentary cooperation has been acknowledged by other institutions for quite some time, this acknowledgement has been clearly reinforced by increased cooperation. Both the European Commission and European Parliament are good examples.

The Commission's first report on its relations with national parliaments in 2005 refers to the need to adjust to the new situation stating that "the Commission cannot remain indifferent to the representation of the national assemblies ... in Brussels", "it cannot ignore the extension of the paradigms of prior parliamentary examination since enlargement, nor can it afford not to exchange views with the national parliament". Moreover, it emphasises its wish "to ensure that this new national parliaments approach fully respects the institutional balance" (European Commission 2006b). This report was

drafted after the Constitutional Treaty failed to be ratified and the future of formal powers of national parliaments was unclear. However, as COSAC continued with the subsidiarity tests and the launch of IPEX, the Commission's approach changed the next year. The Barroso mechanism was launched and the report on relations in 2006 already claims that "the Barroso Commission has made its relations with the national parliaments a top priority" (European Commission 2007). The accommodating approach of the Commission while devising practical arrangements for the application of the Lisbon Treaty (e.g. respecting the summer recess) was also a reaction to the activities by national parliaments themselves.

The European parliament has also developed multiple communication channels and tools of cooperation with national parliaments. It participates both in COSAC and the Conference of Speakers, it organises various type of occasional common activities, such as joint parliamentary meetings, joint committee meetings, inter-parliamentary committee meetings, parliamentary seminars or visits. However, the European parliament has always preferred the emphasis of national parliaments' role in scrutinising and controlling their own governments. The EP's resolution on relations with national parliaments from 2002 defines national parliaments' role in regard to (a) their power vis-à-vis their respective governments, (b) exercise of responsibilities in constitutional matters and (c) closer, more effective cooperation with European Parliament. Moreover, while the resolution claims that "the European Parliament does not see itself as the exclusive representative of the citizens" and "the role of national parliaments is very important", it stresses that "the peoples of the Union are represented to the full by the European Parliament and the national parliaments, each in its own

realm, ...(the parliamentarisation of the Union must involve) the broadening of the European Parliament's powers vis-à-vis all the Union's decisions and the strengthening of the powers of the national parliaments vis-à-vis their respective governments" (European Parliament 2002). A similar resolution from 2009 notes the impending introduction of the early-warning mechanism, but, regarding the legitimisation role of national parliaments, it only repeats the latter statement from the 2002 resolution. Moreover, the only substantial appeals on the future of relations with national parliaments relate to strengthening national parliaments' "to hold national governments to account for their management of the spending of EU funds" and possible innovations by national parliaments, such as giving MEPs the right to be invited once a year to speak in plenary and to participate in meetings of European affairs committees on consultative basis (European Parliament 2009)

3 Comparing different models of parliamentary scrutiny through their EU-level manifestations

3.1 Models of Parliamentary scrutiny

Unlike the institutional provisions regarding the European institutions, the models of cooperation between national parliaments and governments differ considerably among the Member States. Designing such system is also one of the most important institutional and decision-making adaptations the new Member States have to undergo while joining the European Union to adapt.

Most of the existing literature on national models of parliamentary scrutiny is devoted to individual Member States. To a great degree it draws on formal rules, i.e. constitutional or other legal provisions shaping these systems, although the importance of practices and political culture is often acknowledged (Tans 2007).

First, there are papers dealing with and thus comparing limited (usually two to three) national parliaments at a time (Dimitrakopoulos 2001; Hansen and Scholl 2002; Hegeland and Neuhold 2002; Holzacker 2002).

Second, there are a few edited volumes that, apart from chapters on individual Members States, contain one or more chapters attempting to make comparison or explain variation among them (Auel and Benz 2006; Maurer and Wessels 2001;

Morgan and Tame 1996; O'Brennan and Raunio 2007; Tans, Zoethout, and Peters 2007). Comparisons and categorizations of national parliaments in the EU have been made based mostly on strength of formal rules, characteristics of domestic political systems etc. (Bergman 1997; Maurer and Wessels 2001; Buzogány 2010; Karlas 2011a). These usually include some ratings, ordering the national parliaments in most often in an ordinal scale¹¹ (usually containing five to six categories) from strongest to weakest parliaments.

Probably the most widely used ranking of national parliaments is the one by Maurer and Wessels (Maurer and Wessels 2001, 461–3) based on the contribution in their edited volume; it rates national parliaments from strong to weak: 1) strong Denmark, closely followed by Finland, Austria, and Sweden, 2) moderate Germany and Netherlands, followed by France and the United Kingdom, and finally, 3) weak Ireland, Benelux, Luxembourg, Italy, Spain, Portugal and Greece.

Kiiver (2006b, 43–62) in his overall comparative analysis uses of systems of parliamentary scrutiny uses five criteria to classify the systems of national parliamentary scrutiny: 1) the timing of the scrutiny (ex ante and ex post), 2) the relative centralization of the scrutiny (involvement of other committees), 3) the methods of government influencing (mandate-givers, systematic scrutinizers and informal influencers), 4) the legal basis for scrutiny (constitutional or lower), 5) the relative 'strength' of national parliaments at European scrutiny. Kiiver then rates national parliaments from strong to weak (based on the existing literature): 1) strong: Danish parliament, 2) strong or moderate: parliaments of Finland and Sweden, Austrian

¹¹ Or in a scale that can be easily transformed into an ordinal scale.

Nationalrat, German Bundesrat, 3) moderate: the Dutch parliament in matters of the third pillar, the UK Commons and the German Bundesrat, 4) moderate or weak: the Dutch parliament in non-third pillar matters, French parliament, 5) weak: the parliaments of Belgium, Luxembourg, Ireland, Portugal, Spain, Italy and Greece.

The first categorization that includes all 27 current members of the EU was made by Karlas (2011a, 96), who categorizes parliaments into six groups 1) very weak (Greece, Cyprus), 2) weak (Spain, Portugal, Malta, Luxembourg, Ireland, France, Belgium), 3) mostly weak (UK, Austria, Italy, Czech Republic, Bulgaria), 4) mostly strong (Netherlands, Latvia), 5) strong (Sweden, Slovenia, Slovakia, Romania, Poland, Germany, Hungary, Denmark) and 6) very strong (Lithuania, Finland, Estonia).

However, some literature shows that informal rules and everyday practices do not always correspond to these ratings. The most commonly acknowledged example is the parliament of the United Kingdom. According to V. Bogdanor “there is widespread agreement that the scrutiny procedures adopted by the Lords are amongst the most effective in the Community” (1996, 233). He also notes that the scrutiny of EU matters now forms a major part of the work of the House of Lords. Similarly, Cygan (2001, 111) notes that European Union Committee in the House of Lords is arguably among the most influential within the EU thank to its systematic and responsive approach. There are also examples of States such as Austria who are in fact less influential than would be expected based on their formal ratings (Pollak and Slominski 2003).¹²

¹² As shown in the third chapter of this dissertation, the same is true for Slovakia.

Semi-official COSAC categorisation also exists (COSAC 2005a; COSAC 2007). It defines two models that will be used in this dissertation as basic categories for the analysis. These models are the mandating and procedural systems.

The mandating system allows the parliament as a whole or the European Affairs Committee acting on behalf of the parliament do adopt negotiating positions more or less binding on the government; the government then takes and defends this position at the Council meetings as the official position of the Member State. Danish parliament was the first to introduce mandating system in 1973 (COSAC 2005a), thus allowing its European Affairs Committee to adopt on behalf of the Parliament as a whole negotiating positions politically binding on the government. Thanks to its prominence, the Danish model served as an example for other countries, e.g. Finland, Sweden, Austria, Latvia or Slovakia (see also Kiiver 2006b, 51–57; COSAC 2005a; COSAC 2007).

Of course, the model takes different forms in different Member States. In consequence, the capability of the parliament in question depends on several details, e.g. at which stage of the Council decision-making process the mandating process is applied (working groups, COEREPER, the ministerial level), how often / on how many proposals it is used or how binding the mandate is. Beyond the formal level, the frequency and efficiency of mandating may depend on political culture and traditions, including those related to federative or unitary form of the State, relations and party links between the government and the parliament or the Committee, and eventually personal characteristics of key persons, e.g. the chairman of the Committee. Various

forms of mandating model are used in Austria, Denmark, Finland, Greece, Latvia, Malta, Poland, Slovakia, Slovenia and Sweden.

The other model applied is the procedural one, where the process of examining the proposals does not depend on the individual Council meetings and the parliament does therefore not mandate its government; however, the positions of the parliament may also be binding on the government, although this is less common. This model is used in Belgium, Bulgaria, Cyprus, the Czech Republic, Germany, France, Ireland, Italy, Spain, Luxembourg, Portugal and the United Kingdom.

Some systems have features of both models, and are therefore more difficult to categorize. They are labelled as ‘hybrid’ models in this chapter¹³

Although, as in the case of Denmark, the mandating power is often associated with strength (and influences the formal ratings), neither the formal ratings nor the literature on more informal influence and everyday practices would justify any expectation of different levels of parliamentary activity of parliaments with different basic models scrutiny systems. On the other hand, the procedural differences between mandating and procedural system may indicate that timing of national parliamentary activities and its relation to the European activities will differ between these systems.

Based on this, I hypothesise that

H1 The level of activity of parliaments does not differ substantially between parliaments with mandating systems and of those with procedural systems.

¹³ Categorization used here is based on the COSAC reports. Of course, systems in some countries were somewhat reformed or redesigned during the 5 years we study here. In such cases, the categorization is based on careful analysis of responses by national parliaments for both reports, and chooses that category that fits best the system most of the time.

However, the parliaments with mandating systems of parliamentary scrutiny will time their activities with regard to the timing of the Council's activities. On the other hand, in the case the parliaments with of procedural systems, the timing of their activities should not be related to Council's activities.

Although there is far less literature on the national parliaments of the new Member States than on the old ones, it is continually growing (Fink-Hafner 2008; Vehar 2007; Łazowski 2007; Győri 2007; Szalay and Juhász-Tóth 2007; Stoykova 2007; or Pítrová and Coxová 2007). This literature shows that although the new Member States adopted mostly systems that give strong powers to national parliaments in European affairs, the short time that has passed since accession to the EU is a factor that influences parliamentary scrutiny in a negative way. For example, Łazowski (2007, 215) concluded on the Polish parliament: "The parliament has definite opportunities and tools to be a conscious actor in EU affairs. The experience so far have unfortunately proved that some of its chances have been wasted by the realities of everyday parliamentary work and fairly limited expertise and understanding of EU matters among deputies and senators. Unfortunately, this makes the Polish parliament more of an accidental hero than the effective actor that it has a real chance to be" In the same volume, E. Győri wrote on Hungary: "The gap between formal - legal and actual - political powers is considerable because at present there is no political will in Hungary to have the scrutiny model work properly; it ranks very low on the government's, parliament's and the parties' list of political priorities. De jure strength vis-à-vis de

facto weakness is the main characteristics of parliamentary control over EU issues in Hungary” (2007, 236)

New Member States thus must first find a way to adapt their constitutional orders to the reality of the European integration; this may take quite a long time and the models adopted in these countries might yet have to undergo a few adaptations. For example, the case of an old Member State, Germany, shows that its current scrutiny system has developed over a long period (Hansen and Scholl 2002).

Based on this, I hypothesise that,

H2 The parliaments of the new Member States are less active in European affairs than the parliaments of the old Member States.

The main indicator to test these hypotheses, parliamentary scrutiny reservations, is introduced in the next chapter.

3.2 Parliamentary scrutiny reservations

So far, the literature on systems of national parliamentary scrutiny is based mostly on the study on domestic rules and practices of national parliaments. However, with the growing activity of national parliaments and improving access to European documents, data from the European level can be used to contribute to the study of national parliaments. As already mentioned, the greatest advantage of this approach is that all

national parliaments can be studied at once using the same indicator formulated and operationalised using the same source of data, thus allowing for easier comparison of various parliaments / systems of parliaments.

Parliamentary scrutiny reservations (PSRs) are one of the tools available to parliaments in the decision-making process. While the scrutiny process in the parliament is in motion, the respective government may hold a PSR at the Council meeting. This means that it does not present its position until the scrutiny process at the parliament is finished and tries to postpone the decision-making process in the Council until the reserve is lifted. Although since the qualified majority has become the most common voting rule in the Council the use of a PSR cannot place a complete brake on the legislative process (Cygan 2007, 165), the Council traditionally respects the parliamentary scrutiny reserves, even if its rules of procedure do not mention them.¹⁴ In practice the decision-making process thus continues, and, by custom, the final adoption is delayed until all pending PSRs are lifted.

On the other hand, this instrument is sometimes embodied in legal acts in various Member States, and is used also by those countries that do not have formal rules on their use.

The first parliament to introduce this measure was the British House of Commons in 1980¹⁵. Nowadays, both chambers of British parliament have this rule¹⁶, that constrains ministers from giving agreement in the Council or European Council to legislative proposals (not including only final approval, but also such decisions as political

¹⁴ Although at the Convention on the Future of Europe, it has been suggested in included the PSR in Council's rules of procedure (see European Convention 2002)

¹⁵ Resolution of the House 30/10/

¹⁶ 1980As adopted / amended by the resolutions of the British House of Commons of 17 November 1998 and House of Lords of 6 December 1999.

agreements, common positions etc.) and certain other decisions of second and third pillars which are still subject to scrutiny in the European Scrutiny Committee or which are awaiting consideration by the House (i.e. have been recommended by the European Scrutiny Committee for consideration by the House). The minister may give agreement despite the fact that the scrutiny is still ongoing only under special circumstances and then justify such decision in front of the Committee. The alleged motivation for introducing the PSR mechanism was assurance of timely provision of documents by both government and the European Commission and of government's awareness of parliamentary deliberations (Cygan 2007, 166, 172–3).

France also has rules on using parliamentary scrutiny reserve, introduced by a Prime Minister's circular in 1994. It gives both parliamentary chambers a right to vote on a proposal before the Council voting, having, since 1999 (in relation to the protocol on the role of national parliaments adopted with the Amsterdam Treaty). It also has been formally introduced into Danish, Austrian and Dutch systems, some new Member States have also introduced it, either in formal or in informal way, including Estonia, Hungary, Lithuania, Poland, Czech Republic Bulgaria and Malta (see also Karlas 2011c).

However, it is important to note that the Council respects the reservation regardless of national rules, and the data presented in this chapter show that it has been used also by States that do not have formal provision on PSRs (Maurer 2008, 133). It is also clear that PSRs are used by parliaments with both procedural and mandating systems.

Of course, the mere fact that a Member State holds a parliamentary scrutiny reserve and that this reserve is recorded in the Council documents (see chapter on the data below)

does not by itself prove that a parliament of this State has greater power over its government; it is a tool to measure the level of activity of a national parliament, meaning that the parliament deals with the issue and wants the government to behave accordingly.

The use of the PSR may be influenced by various factors, especially the length and eventual deadlines for adoption of parliament's position according to the rules of the scrutiny process in the national parliament. It has also been noted that sometimes the Member States tries to give stronger weight to its position by imposing a PSR, indicating the salience of the issue for its parliament. (Maurer 2008; it has also been suggested that parliamentary approval can be used as a bargaining tool in Brussels, as mentioned by Dimitrakopoulos 2001, 401–11)

It has been claimed that while the PSR mechanisms “*works as a sword of Damodes... strengthening the parliament's potential in worst-case scenario of conflict between legislature and executive...[but] the logic underlying a reserve mechanism is a parliament which acts as 'supportive scrutiniser' of, rather than a systematic opponent of its government.* (Maurer 2008, 64). A government that would ignore the obligation to raise a PSR can be called to justify its actions in front of the national parliamentary committee (Cygan 2001).

Regardless of the motivation for any specific PSR, it seems clear that a frequent use of a PSR by national government in the Council points to a parliament active in European affairs that has some influence over its government.

Based on the relevance of PSRs as an indicator of national parliament's influence, the hypotheses can be specified as follows:

H1 The frequency of the use of PSRs by Member States does not differ substantially between Member States with mandating and those with procedural system of parliamentary scrutiny.

However, the Members with mandating systems of parliamentary scrutiny use the PSRs more often at the earlier stages of the Council decision-making, which reflects better timing of parliament's activities to the timing of the Council's activities. On the other hand, the States with procedural systems of parliamentary scrutiny use PSRs equally in all stages of the Council decision-making, as the timing of activities of their parliaments is not closely related to the timing of Council's activities.

H2 The new Member States held PSRs less frequently than the Old Member States.

3.3 Data and analysis of PSRs

In order to review the actual use of the parliamentary scrutiny reserves, I examined the period of five years started with the date of the Eastern Enlargement, i.e. from May 2004 until the May 2009.

Data on the use of PSRs are not easily accessible. The only type of documents that may include data on voting or positions of the Members of the Council, and therefore on the

use of PSRs as well, and are at the same time systematically stored and available through the register of Council documents¹⁷, are the minutes of Council meetings. However, these contain information only on the Council proceedings on ministerial level, which excludes the large part in the Council's internal decision-making process. On the other hand, data on its earlier stages – those of working groups and COREPER – may be acquired from other types of documents – reports from working groups to the COREPER, reports from COREPER to the Council, outcomes of proceedings of working groups, notes from Presidency etc. While these contain valuable information, they are not systematically registered as such in the Council's public register of documents. To gather the data on the use of PSRs in the given period, I used all the documents rendered by full text search of all Council documents from the given period containing the words “parliamentary scrutiny reservation”, executed in November 2008 and in August 2009. Nevertheless, in reality, the PSRs are probably used more often than recorded in our data set, as not every use of a PSR must be necessarily recorded in a Council document, or even if it is, probably not all such documents are publicly available.

Some cases of PSRs were excluded from the data set. First, I excluded all the cases where the decision making process started before May 2004, thus allowing for the possibility that some PSRs were recorded at the lower levels of the Council decision-making in earlier documents). Second, all the PSRs that were not attributable to specific Member States (i.e. the document States only that a Member State held a PSR or the

¹⁷ <http://www.consilium.europa.eu/documents/access-to-council-documents-public-register?lang=en>
(Accessed on 25/01/2012)

document is only partially accessible and the name of the Member State holding a PSR is deleted from the publicly available version) were excluded as well.

The data set includes following information: which State has raised the PSR, for what issue and at what stage of the internal Council proceedings a PSR was recorded (i.e. working group, Coreper, ministerial level). The data on Member States and their use of PSRs at different levels are summarised in the table 6.

Table 6 - Use of the PSRs in the period May 2004 – June 2009

	<i>scrutiny</i>	<i>WG</i>	<i>WG-</i>	<i>WG-</i>	<i>COR</i>	<i>COR-</i>	<i>C</i>	<i>allPSR</i>
	<i>system</i>		<i>COR</i>	<i>C</i>		<i>C</i>		
Austria	M	3	0	0	0	0	0	3
Denmark	M	138	46	6	47	2	0	239
Finland	M	2	0	0	1	0	0	3
Greece	M	0	0	0	1	0	0	1
Latvia	M	0	0	0	0	0	0	0
Malta	M	55	13	1	7	1	0	77
Poland	M	25	5	1	5	2	3	41
Sweden	M	6	3	3	2	1	0	15
Slovenia	M	6	1	0	4	0	0	11
Slovakia	M	1	0	0	0	0	0	1
Belgium	P	1	0	0	0	0	0	1
Bulgaria	P	0	0	0	0	0	0	0
Cyprus	P	0	0	0	0	0	0	0
Czech Republic	P	5	2	0	0	0	1	8
Germany	P	9	0	4	2	0	1	16
Spain	P	0	0	0	0	0	0	0

France	P	79	11	4	14	3	6	117
Ireland	P	9	0	4	1	2	2	18
Italy	P	0	2	1	1	1	0	5
Luxembourg	P	0	0	0	0	0	0	0
Portugal	P	1	0	0	1	0	0	2
UK	P	141	28	12	26	5	3	215
Estonia	H	1	0	0	1	0	1	3
Hungary	H	4	1	0	2	0	1	8
Lithuania	H	1	0	0	1	0	0	2
Netherlands	H	11	0	5	4	1	2	23
Romania	H	0	0	0	0	0	0	0
all		498	112	41	120	18	20	809

WG = PSR held only at the working group level, WG-COR = PSR held both at the working group and Coreper level, WG-C = PSR held at all levels, COR = PSR held only at the Coreper level, COR-C = PSR held on both Coreper and ministerial levels, C = PSR held at the Council level; M = mandating system, P = procedural system, H = hybrid system.

There have been 444 separate issues on which at least one identifiable Member States held at least one parliamentary scrutiny reserve, resulting in 809 PSRs.

To test the first hypothesis, I compared the number of PSRs held at different levels by both groups of the Member States.

There are 21 that have held PSRs. Nine of them have mandating systems and have held 391 PSRs, eight of them have procedural systems and have held 382 PSRs, and so no important difference can be attributed to the general nature of the systems in terms of overall use of parliamentary scrutiny reservations.

The States with mandating systems have held 371 PSRs at working levels of the Council only (e.g. working and / or COREPER), which is 37,1 per Member State. The

States with procedural systems have held 333 such PSRS, which is 27,75 per Member State. However, if only those States that have held at least one PSR are taken into account, the rate 41,2 PSR per Member State with mandating system, and 41,6 per Member States with procedural system.

The States with mandating systems have held only 20 PSRs that were not withdrawn before the ministerial level meeting, which is 2 per Member States. The States with procedural system have held 49 such PSRs, which is 4,08 per Member State. Again, if only those Member States that have held at least one PSR are taken into account, the ratio is 2,2 ministerial-level PSRs per Member State with mandating systems and 6,1 for Member States with procedural systems.

Three States with most PSRs are Denmark, United Kingdom and France. In their case there is also a difference in the number of PSRs hold at the ministerial level: only 8 out of 239 Danish PSRs were held at the ministerial level (3,35%), while in the case of the United Kingdom it was 20 out of 215 (9,3%) and in the case of France it was 13 out of 117 (11,11%).

This analysis shows that there is no significant difference between the States with mandating and the States with procedural systems in the overall number of PSRs held nor in the number of PSRs held solely on working levels. However, States with mandating systems seem to hold less PSRs at ministerial levels, which indeed suggest that they time their activities more closely to the timing of the Council in hopes of influencing the process at its earlier stages. The first hypothesis is thus partially confirmed, although the relatively small number of PSR held at ministerial level by both groups suggest that the difference is no as significant as expected.

The data also show that the activity of national parliaments is not related to the formal strength of its system; as out of the three States with most PSRs, only Denmark appears among strong parliaments in such categorizations; both France and the UK (and the next country, Malta) are rated as weaker in all available ratings.

To test the second hypothesis, I compared the number of PSRs held by old and new Member States. The old Member States have held 658 PSRs, i.e. 43,87 per Member State, or, if only those Member States that have held at least one PSR are taken into account, 50,6 PSRs per Member State. On the other hand, the new Member States have held only 151 PSRs, i.e. 12, 58 per Member State or 18, 88 per Member State if only States using PSRs are counted.

This clearly supports the second hypothesis on smaller activity of national parliaments from the new Member States.

3.4 Conclusions

The adoption of formal rules on parliamentary involvement in formulating and coordinating national positions on European policies is probably one of the most important institutional adjustments a State joining the EU must make. The rules differ considerably among the Member States, and national parliaments' powers have been analysed and categorised on their basis. As these categorisations have been based on formal rules mostly, this chapter looked at some manifestations of domestic level of

national parliamentary scrutiny apparent at the European level in order to assert how are is the practice of the scrutiny related to the formal rules.

The data on the use of parliamentary scrutiny reservations in the Council show no significant difference in level of activity between States with mandating and States with procedural systems. This would suggest that the formal distinction in power, especially the power to mandate, does not influence the level of activity of national parliaments in the scrutiny of European affairs. This is in line with the fact that among parliaments without mandating power there are also some parliaments known for their influence (such as the House of Lords).

On the other hand, the data suggest that States with mandating systems might have a greater chance in influencing their governments in time for the national position to play a role in the Council negotiations by being able to time their activities with greater regard for the Council's proceedings. However, the difference is smaller than expected, which further supports the findings that formal rules may play less significant role than informal practices.

These two findings also suggest while formal rules certainly influence the organisation of the scrutiny, they have much smaller impact on its result or parliament's influence. Moreover, even though the parliamentary scrutiny reserves were originated from the document-based / procedural systems, they have now spread to almost general use. This could once again be attributed to the multi-level nature of the European decision-making process, that enabled individual Member states (their parliaments and governments) to learn this tool from each other and also gave rise un unwritten, but

respected rule of accepting the parliamentary scrutiny reserve at the Council regardless the formal domestic rules of the Member State holding it.

The data also clearly confirmed that parliaments of the new Member States, regardless of the apparent strength of their formal systems, are less active than their more experienced counterparts from old Member States. However, as they gain experiences from their membership, one may expect also increase in their activities, and, possibly, influence.

4 Parliamentary scrutiny in the Czech Republic, Poland and Slovakia

4.1 In dept-analysis of parliamentary scrutiny in individual countries

As already mentioned, in the literature describing the systems of national parliamentary scrutiny, it is quite common to focus primarily on the formal rules. As a result, the question of designing a new system is also always addressed only in terms of factors influencing the formal rules, resulting in various hypotheses. The most well known is Padre's hypothesis based on a case study on Denmark. He suggests that the characteristics that have contributed to the strength of its parliament in European affairs are: a) a significant portion of the public and at least one party represented in parliament prefer the status quo to further integration (Euroscepticism), b) the frequency of minority governments and c) the preference by at least one party represented in parliament of having a policy veto through the oversight Committee to joining the government (Pahre 1997). More detailed summary of explanatory factors can also be found in Karlas (2011b). However, it has been shown that these hypotheses cannot be used for all or even the majority of Member States, and there is not strong correlation between any of the factors and the strength of national parliamentary control of EU affairs in the new Member States (Buzogány 2010; Karlas 2011b). It was

concluded that the most likely case is that they learn the best practices from the most successful old states' parliaments (Buzogány 2010).

Learning from old member states is often mentioned as the main mechanism in the recent literature (see e.g. Győri 2007; Vehar 2007; Raunio 2009), and it was also mentioned as an important factor by the interviewees (see below).

More importantly, it is widely acknowledged that the actual practice of national parliamentary scrutiny may differ from the simplified picture that can be derived from the formal (legal) rules (see Hegeland and Neuhold 2002; Pollak and Slominski 2003), and the parliaments may play a weaker or a stronger role (for example the House of Lords, formally weak, plays a significant role; see e.g. the conclusions of its own report, (House of Lords 2009))

So, what is the situation likely to be with the new member states? Some of the papers already published on the parliaments of the new member states show that national parliaments may be rather active in times before the accession, and then see their efforts as accomplished by the adoption of the general legal acts providing the rules for parliamentary scrutiny (see e.g. the case of Poland, Łazowski 2007). Other reasons for the system not working as well in practice as envisaged in the formal rules may be the lack of will to make the parliament stronger (Győri 2007; Pítrová and Coxová 2007) and the need for more time to learn how to implement the system (Szalay and Juhász-Tóth 2007).

Based on this, it can be expected that the national parliaments of the new Member States tend to have relatively strong formal rules at their disposal thanks to emulating the best practices of the old Member States, but may lack in their practical application because

(a) the governments are more active than the parliaments in shaping the day-to-day cooperation, as the national parliaments decrease their activity after the accession; and
(b) the parliaments require more time than the governments to learn how to work the process. In this chapter, I will examine these assumptions by studying both the formal arrangements of national parliamentary scrutiny in the three countries in question and practical working of these systems.

Question than arises how to assess the strength of parliamentary scrutiny systems. Traditionally used indicators (Bergman 1997; Maurer and Wessels 2001; Raunio 2005b) such as involvement of specialised committees, timing and scope of access to information, mandating power, are based solely or mostly on the formal arrangements. To assess the actual, i.e. working, not formal, strength of parliamentary scrutiny, I analyse following factors in this chapter:

(1) capacities, i.e. size and composition of the respective Chamber / Committee¹⁸ and assigned staff, way of processing the document workload etc.

(2) ability to independently filter the incoming documents and select the most important ones for closer scrutiny (based on the assumption that equal scrutiny of all documents represents too big a workload to be detailed scrutiny, see also Raunio (2005b, 321).

¹⁸ The term “Committee” is used throughout this dissertation for any parliamentary committee charged with European affairs in the respective parliament.

(3) access to and actual participation in the (executive) coordination mechanism created for forming national positions and channels of cooperation with executive, closely connected to the timing of parliamentary input in the course of the decision-making process. Close informal cooperation with ministries as a way for efficient scrutiny was suggested by Benz (2004), showing its importance in the case of Denmark. (Benz also identifies two additional ways of making the scrutiny efficient: direct contacts on the European level and making the government are negotiating positions public. However, these are clearly not common in any of the three cases studied here.).

All these factors influence the ability of a national parliament to make detailed and informed scrutiny producing results that can be delivered to the executive in time to influence its position at the early stages of the Council deliberations (i.e. working groups / Coreper) and the ability to actually influence the executive position.

This third chapter of the dissertation shows all the relevant aspects of both the general and formal rules on the one hand, as well as the working and informal rules on the other in order to test this hypothesis on the cases of the Czech Republic, Poland and Slovakia. The analysis is based, firstly, on formal rules (i.e. legal acts and other formal documents establishing the rules of the systems of scrutiny), secondly, on information on the work of Committees for European Affairs of the individual parliaments/chambers (or, in some cases, the plenums) gathered from such documents as agendas, minutes, decisions and other parliamentary documents of all three parliaments and, thirdly, on 23 semi-structured interviews with civil servants working

for both the legislative and executive bodies (to enable a comparison of different points of view on the same issues) conducted by the author in the period from November 2008 to April 2009 (see Appendix).

4.2 Case study of the Czech, Polish and Slovak parliaments

This chapter describes and analyses most important aspects of formal rules of national parliamentary scrutiny as defined in the previous chapter and their origins in all three countries.

4.2.1 Legal basis and origins

The Parliament of the Czech Republic consists of two chambers – the Chamber of Deputies and the Senate. The role of the Czech Parliament is based on Article 10b of the Czech Constitution which states that the government is to inform the Parliament on the obligations related to the membership of the Czech Republic in the international organisations to which the Czech Republic has passed some of its competences.

The parliamentary scrutiny is further regulated by the rules of procedures of both chambers (Czech Republic 2011; Czech Republic 2009). The rules of procedure were designed by the members of the Chamber of Deputies from multiple political parties. The system was designed after long preparations in the Committee for European Integration of the Chamber of Deputies that included studying the systems already applied in the old Member States. Although the interviewees did not indicate one specific system that would serve as a role model for the Czech system, they mentioned

having studied several types of systems, including the most prominent cases of Denmark and the United Kingdom, and of other countries such as France (Interviews 16-19). It was decided to give the Parliament moderate powers. The Chamber of Deputies was to have a stronger position than the Senate, thus reflecting its stronger role in the political system and its power of control over the government. (It is important to note that the rules of procedure of the Senate have to be approved also by the Chamber of Deputies.) While the proposal originated in the Chamber of Deputies, and was initially not welcomed by the executive, its principles were later accepted. This acceptance was also influenced by the ongoing discussion on the Treaty establishing a Constitution for Europe, which included discussion on strengthening the role of national parliaments (Výbor pro Evropské záležitosti PSP ČR 2005). The Parliament played an active role in designing the system, but the Chamber of Deputies had the leading role supported by the expert assistance of its analysis unit “Parlamentní institut.” One of the main concerns was the position of the Senate (desired to be weaker than that of the Chamber of Deputies), which slowed the discussion more than the actual Parliament-government relation (Interviews 16-17, 23).

The basic document laying down the rules of cooperation between the executive and the legislature in Poland is the *Act of 11 March 2004 on cooperation of the Council of Ministers¹⁹ with the Sejm and the Senate in matters related to the Republic of Poland's membership in the European Union*, amended on 28 July 2005 (amendments entered into force on 8 September 2005) (Poland 2005), implemented mainly by the rules of procedure of both chambers.

¹⁹ i.e. the Polish executive; I use the term Council of the European Union, Council of the EU or simply the Council for the EU body, and Council of Ministers for the Polish executive.

The act gives powers to the Sejm in more situations than to the Senate, and it also gives the Sejm stronger powers in the scrutiny of the European legislative process. The stronger position of the Sejm is supposed to reflect its stronger role according to the Polish constitution, notably Article 95. However, the Cooperation Act was amended (thus giving the Senate more possibilities to express its opinions on EU legislation) in 2005, following the judgement of the Polish Constitutional Court (for further details on the judgment, see Łazowski 2007). Another change that should reflect the Lisbon Treaty provisions is currently being discussed.

The Act was drafted by the top political figures of the time, including the chairman of the first Sejm EU Affairs Committee (Robert Smoleń), the chairman of the Sejm (Marek Borowski) and the viceminister for European Affairs (Jaroslaw Pietras); therefore, there were not any substantial disputes over its principles. On the other hand, it is important to note that the government would have preferred to have only one Committee in the Parliament to decrease its workload (necessity of attending two separate meetings, sometimes on the same issues), but that would have required a change in the Constitution, which was not feasible at the time. The Polish also studied “the Danish ideal” and the French system, where “there is a big chance for the National Assembly to discuss anything” but also visited all the other national parliaments (Interview 11).

The system of parliamentary scrutiny in the Slovak Republic has been designed according to the Danish model (Interviews 1 and 4). The proposal was prepared by MPs, and the strength of the Parliament’s role was strongly advocated by the Chairman of the Parliament, Pavol Hrušovský, who was also president of one of the coalition

parties, the Christian-Democratic Movement. The government, as well as some of the parliamentary parties, including another coalition party, the Slovak Democratic and Christian Union, opposed the proposal arguing that it gives the Parliament power to interfere with the competences of the executive and that the Parliament has neither the administrative nor the financial capabilities to carry out such strong powers. However, the proposal was later accepted with only some minor changes regarding the deadlines, giving the Parliament less time to adopt a position and loosening the deadline for the government to present its position on the proposal to the Parliament (Malová, Láštic, and Rybář 2005). It has a form of a constitutional act (Slovakia 2004a).

In all three countries, the cooperation between the executive and the legislature is further regulated by acts of a lower level in the hierarchy of legal acts. These rules have a substantial impact on the actual working of the systems of parliamentary scrutiny. However, these application rules were adopted only after the general rules analysed in the previous chapter were adopted, and thus, as this chapter shows, were influenced by the changes in activity of national parliaments. The application rules were often drafted by the executive officials with much lower involvement of the parliamentarians themselves.

In the case of the Czech Republic, the most important feature of the directive of the government regulating the government-Parliament cooperation in European affairs (Czech Republic 2006) is the fact that, unlike the rules of procedure of parliamentary chambers, it makes no distinction between the chambers (see the access to information).

In the case of Poland, the actual working of the parliamentary scrutiny has been strongly influenced by the structural organisation of the governmental coordination of European affairs. The law on the Committee for European Integration (Poland 2005), which regulates the executive coordination of European affairs, established an executive working body named the Office of the Committee for European Integration (Urząd Komitetu Integracji Europejskiej, UKIE), coordinating the works of all ministries and institutions regarding the European affairs, and also responsible for cooperation with the Parliament in the scope of the EU decision-making process. For the Parliament, this means that the civil servants employed in the Parliament preparing the works of the EU Affairs Committees did not interact directly with their counterparts in the individual ministries and other bodies, but with the UKIE's employees²⁰ This prevents them from creating a direct and working relationship with the people responsible for the coordination of the European legislative process in the respective ministries, making the whole process more formal and less flexible, one of the factors which may account for the prevailing importance of the legal rules.

In the Slovak Republic, the adoption of detailed rules was somehow problematic. The constitutional act from 2004 presupposes the adoption of detailed rules, which were proposed in two forms – a mechanism proposed by the government and the changes in the Parliament's rules of procedure already mentioned. The amendments to the rules of procedure were adopted a year after the accession of the Slovak Republic to the European Union, and the mechanism, which really lays down the detailed rules, remained in the form of a governmental decree, although this was supposed to be a

²⁰ At the end of 2009, the UKIE ceased to work and its functions were transferred to the Ministry of Foreign Affairs. However, this did not substantially change the nature of cooperation.

provisional solution at the beginning. In the end, it was the Ministry of Foreign Affairs who drafted the detailed rules, while the Parliament was satisfied with having the constitutional law (interviews, November 2008). The ‘Mechanism for creating positions on the legislative proposals of the European Commission in the Slovak Republic’ (Mechanism) was adopted in November 2004 (Slovakia 2004b) and slightly revised in October 2007 (Slovakia 2004b) and it takes the form of a guide for civil servants on the European decision-making process and the related procedures in the Slovak Republic. The Mechanism of 2004 established the details of the so called “silent procedure” (i.e. if a party to the decision-making process does not express its opinion in time, it may later change its position (e.g. raise a new objection) to the proposal only in specific justified cases). The Mechanism states that this “will prevent the situation when a Slovak ambassador at a COREPER meeting would have to express an opinion contradictory to the one presented before, because the Committee did not express its opinion at the earlier stage and adopted an instruction only later” (Slovakia 2004b, 2). This reflects the original apprehension felt by various ministry experts that the Parliament’s mandating power could render Slovakia inconsistent in its positions in the eyes of other partners (interviews with Slovak government and parliamentary officials, November 2008). On the other hand, it gives the members of the Committee and employees of the Parliament an opportunity to participate at coordinating meetings at the ministries and the government, which should allow the Committee access to all the information and to inform the government about possible parliamentary reservations. According to the Mechanism, this gives the Parliament enough possibilities to monitor the whole legislative process. The Mechanism also stated that, after a few months of

field-testing, the government would present a proposal for a law presupposed by the constitutional law. However, despite the fact that the constitutional law has been in force since August 2004 and the mechanism has been in use for several years and has even been slightly adjusted, the specialized law, apart from the rules of procedure of the Parliament, has never been adopted.

4.2.1.1 European affairs committee and involvement of specialised committees

All parliamentary chambers in question have a specialised Committee for European Affairs that deals with all European issues. Only the Czech Senate has in fact two specialised committees; the Committee on European Affairs deals with “first pillar” issues, the Committee on Foreign Affairs, Defence and Security deals with the matters within the scope of former second and third pillars.

All committees on European affairs of these three parliaments do have the possibility to ask other parliamentary committees to give their opinion on subjects discussed, but it does not occur very often. The only exception is the Committee of Polish Sejm, which, given its larger (over 40 members) and dual membership (its members are at the sometimes members of other committees), is thought to include enough expertise to be able to avoid delays that would be caused by involving other committees in the scrutiny of European legislative process. While all plena could discuss the European Affairs, this happens regularly only in the Czech Senate, as its Committees do not have the right to act in the name of whole chamber. In the other cases, the European affairs discussed in the plenum rather rarely, and such cases do not usually concern individual legislative

proposals, but other more complex or political issues such as Commission legislative plans, government's reports on the Polish membership, Presidency priorities and conclusions or, recently, energy and climate change package in the case of Polish Sejm, or the question of the recognition of Kosovo in the case of Slovakia.

4.2.1.2 Access to information

According to the government's decision form 2006, both Czech parliamentary chambers are to receive the legislative proposals immediately upon their receipt by the Czech government and the government's draft position within 10 days since it is decided which ministry is to be responsible for the proposed legislation, and in the cases where the respective Committee requests other information, within 14 days of such a request. Also, members of the government have to participate at the meetings of the respective Committees of both chambers if requested, and they send information on the meetings of the Council of the European Union to these Committees. Thus, despite the distinction made in the rules of procedure, these rules gave the Senate an equal chance to participate in the parliamentary scrutiny of European affairs.

The Polish Council of ministers is obliged to deliver to both chambers all documents related to the European law-making process. All the European documents shall be delivered to the Parliament immediately upon their receipt. The Council of Minister's draft positions shall be delivered within 14 days of their receipt and shall be accompanied by information and evaluation of the contents of the proposals of legislative acts. In both chambers, the competent organs (that is, according to their rules of procedure, the European Union Affairs Committees) may express their opinion on

legislative proposals within 21 days after the receipt of the Council of Minister's draft position, or, if the time limit specified by the Commission for expressing an opinion is less than 42 days, the Council of Ministers shall ensure that the Committees for European integration have at least two thirds of that period for expressing their opinion. If the European Affairs Committees do not express an opinion within that period, it is supposed that they do not have any comments on the proposal (Article 6 of the Cooperation Act).

In the course of the European legislative procedure, the Council of Ministers shall also inform the chambers about the progress achieved in the process and the positions taken by the Council of Ministers in it. Since the 2005 amendments, the European Union Affairs Committees may express their opinions on such positions within 21 days of their receipt (Article 8 of. the Cooperation Act).

Originally, according to Article 9 of the Cooperation Act, the Council of Ministers was to seek the opinion of the Sejm's European Union Affairs Committee prior to considering a legislative proposal in the Council of the European Union, and present information on the position it intended to take in the Council. However, the Council of Ministers was also allowed not to do this if the work of the EU bodies so required, but was obliged to explain the reasons and present the position taken in the Council afterwards. Since the 2005 amendments, the same obligation applies to the Senate's Committee. The Act of 2005 also obliged the executive to deliver to both Committees the agenda for the meeting of the Council before the meeting takes place, and, afterwards, report on the meeting.

In Slovakia, the coordination mechanism requires the Slovak Permanent representation to forward a legislative proposal to the government and the parliament immediately upon receipt, and no longer than a week later, to supplement it with an annotation of the legislative proposal. The ministry responsible then prepares a draft Slovak position and it has to forward it to the parliament. The constitutional law as well as the original mechanism required this to be done in a reasonable time period before presenting the position in Brussels, but the revised mechanism set the deadline for three weeks for the receipt of the proposal.

Of course, the fact that parliaments receive draft national positions from the government, which in most cases has much more staff and expertise, often means that parliaments' position is represented by a simple approval of the drafted government's position, or remarks too general to be clearly reflected.

4.2.1.3 Mandating power

The Czech government is obliged to take into account the opinion of the Committee/Chamber of Deputies while formulating its position on the proposal. Also, a member of the government is obliged to participate at the meeting of the Committee before the meeting of the Council of the European Union, if requested, and inform on the position to be taken by its representative in the Council. It also informs the Committee about nominations on certain European posts. Unlike in the Chamber of Deputies' Rules of Procedure, those of the Senate do not state any obligation for the government regarding the opinion or recommendation adopted by the Senate. Also, the

Committees cannot adopt a position in the name of the whole chamber, so the Senate as a whole regularly deals with European affairs.

While both chambers of the Polish parliament are to be informed and consulted on the European legislative process, only the Sejm's decisions are binding in a sense that they "shall constitute the basis for the Council of Ministers' position" (Article 10(1) of the Cooperation Act). Originally, this provision regarded opinions of the Sejm's Committee adopted on the first (after the delivery of a proposal) and last (before the Council of the European Union) stage; as the 2005 reform added the possibility to express the opinions in the course of the process, this was also added to the above mentioned provision.

The Council of Ministers also has the possibility not to take into account the Sejm's Committee's opinion. In that case, the member of the Council of Ministers is obliged to explain such action to the Committee (until 2005, any representative of the Council of Ministers could have done so).

The Constitutional law on cooperation between the parliament and the government obliges the government to submit to the Parliament the proposals of legislative acts and other acts of the EC/EU and proposals of the Slovak positions on those acts. The Parliament also has the right to adopt the positions of the Slovak Republic on the acts that are to be decided upon (Slovakia 2011) of the Parliament transfer this right to the Committee of the National Council of the Slovak republic on European Affairs, established in April 2004). Such positions are binding on members of the government. If the Parliament does not adopt any position or opinion within two weeks of its receipt of the proposal the of government's position, members of the government have to abide

by the original proposal of the position submitted by the government to the Parliament. Any deviations from the binding positions are possible only in necessary cases and in the interest of the Slovak Republic, and have to be justified; the Parliament is to be informed without delay. Detailed rules for the cooperation between the government and the Parliament shall be established by special law. Some provisions are contained in the Rules of Procedure of the Parliament, including the obligation for the government to deliver its draft position on proposals for legislative acts within three weeks of their receipt.

The above descriptions of formal rules illustrate clear differences in formal arrangement of parliamentary scrutiny in these three Member States. Buzogány's (2010) rating assesses the strength of Slovak and Polish parliament equally (0.67), Czech Republic rating being 0,3 (rating based on Raunio 2005b). Karlas (Karlas 2011a) rated Slovakia (6) slightly higher than Poland (5), the difference being attributed to strong formal mandating power of Slovak parliament. In turn, Poland received higher rating than Czech Republic (4) mainly thanks to the Polish rule of ex-post justification of the position held in Brussels.

As this chapter makes distinction among individual parliamentary chambers, the order of all five parliamentary chambers according to their strength, from the strongest to the weakest one (without weighting different factors and thus calculating the strength precisely on a scale) would be as follows: 1) Slovak parliament, 2) Polish Sejm, 3) Czech Chamber of Deputies, 4) Czech and Polish Senates.

Moreover, the analysis of the designing of these systems showed that their creators chose specific types of scrutiny, including procedures and powers of parliaments, with the expectation that this choice will have profound impact on the practice of the scrutiny, the strength and influence of the parliaments. In the next part, I examine this practice.

4.2.2 Day-to-day scrutiny and working practices

While all the above mentioned rules are important for the working of the parliamentary scrutiny systems, there are other influential factors arising from the working day-to-day routine of both the parliaments and the executives (although a few of them may be laid down by the formal rules, such as relations to other parliamentary committees and the plenum).

4.2.2.1 Capacities

First, the capacity of the parliament and, in particular, the working of the Committees is influenced by their composition, including its size, representation of different political parties, fluctuation of the Committee members and their previous experience, as well as the personality of the chairman of the Committee. The last point showed to be of particular importance.

In the Czech Republic, the work of the Senate was also strongly influenced and shaped by the first chair of its Committee on European Integration, Jiří Skalický (Interviews 17 and 18; also Výbor pro Evropské záležitosti PSP ČR (2005)), whereas the position of the chair of the Committee on European Affairs of the Chamber of Deputies has not

always been filled. It is also reflected in the higher frequency of meetings of the Senate's Committee for European Affairs (dealing only with the first pillar), which, since May 2004 until March 2009 (in the course of four parliamentary terms) held 120 meetings (approx. 2.6 meetings per month), while the Chamber of Deputies' Committee for European Affairs (two parliamentary terms) held 95 meetings (approx. 2 per month) Moreover, the Czech Members of the European Parliament may participate at the meetings of the respective Committees of both chambers.

In Poland, the work of the Sejm's Committee has also been strongly influenced by the chairperson at the time, influencing the work mostly by (not) convening the meetings, which have been less frequent in the 5th parliamentary term (the second from the accession). The work of the Committee was also strongly influenced by rather frequent parliamentary elections in the period after the accession, resulting in changes in chairmanship, composition and a shifting of the political interest to other areas (interview 11).

The composition of the Slovak Committee reflects the composition of the whole chamber. However, the political composition of the Committee has not always been overly important. The work of the Committee used to be less political and more expertise-oriented thanks to the fact that there were several members who served as ministers in post-accession government (as was the case of the previous term) which provided the Committee with some executive experience. However, according to the interviewees (interviews 1 and 4), the atmosphere has somewhat changed after the opposition parties linked their vote on the Lisbon treaty with the Press Act in early 2008.

4.2.2.2 Document processing

Second, the capability of the parliament to scrutinise proposed legislation, and the effectiveness of such scrutiny, is influenced by the way the parliament receives and organises legislative proposals and related documents, and by the way it selects those it wants to scrutinise in detail. All parliaments had to design ways to cope with the high amount of documents produced in the European legislative process. At the beginning, they depended on their governments to send them all the documents, as the Barroso mechanism was introduced only later. Neither chamber of the Czech Parliament uses the Barroso mechanism for the receipt of documents. The European documents are obtained through government channels. In both chambers, members of the Committees decide by a vote which legislative proposals will be only formally taken into account and which will be discussed.

Interestingly, unlike the Czechs and the Slovaks, the Sejm's European Union Division and Secretariat of the EU Affairs Committee uses the so-called Barroso mechanism. This is because the government only directly sends them its draft positions to the proposed acts, and the proposals themselves are accessible (and were before the introduction of the Barroso mechanism) only through an information system, using the Barroso mechanism proved more efficient and quicker. (Interviews 11-13). On the other hand, both Slovak and Czech parliamentary officials characterised the Barroso mechanism as ineffective, as it works in the form of e-mailed documents in multiple language mutations, where documents are difficult to identify without actually opening them, thus making their use time-consuming. (Interviews 4 and 19). This points to

better, i.e. easier to work with, way of receiving the documents in the Czech Republic and Slovakia than in Poland.

The staff of the Czech Chamber of Deputies Committee regularly prepares overviews on incoming documents, which are presented at the Committee meeting; the Deputies then select cases they want to scrutinise in more detail, and the analytical staff prepares more information on these documents.

In the Czech Senate, the selection of documents is done on the basis of computer-based filtering of the documents, reviewing of Commission working plan and close cooperation between the staff and the Chairman of the Committee.

The Slovak Committee also relies on the documentation forwarded by the government, and it chooses its priorities from the legislative plan of the Commission according to the perceived importance of the proposals and interests of the Committee members. Additionally, it scrutinises more closely those documents where salience is indicated by the government. The members of the Committee also divide among themselves individual portfolia (representing one or more ministries of the government). Interviewees from both countries characterised the Barroso mechanism as ineffective, as it works in the form of e-mailed documents in multiple language mutations, where documents are difficult to identify without actually opening them, thus making their use time-consuming.

In the Polish Sejm, the selection of the documents to be discussed is done in the first stage of the scrutiny process performed by rapporteurs. If at least one of the two co-rapporteurs requires discussion, the proposal is included in the deliberations of the Committee.

In the Polish Senate, the Committee's agenda is decided by the chairman, who, together with vice-chairmen, selects the rapporteurs (1 rapporteur per issue), who are advised by advisors of the staff specialised in different fields (but there are only 4 of them).

4.2.2.3 Working-level involvement and timing

A third important group of factors access to and participation in the national (executive) coordination mechanism closely connected with timing and its relation to the different stages of the European legislative process. Timing of the discussion on a legislative proposal in the parliament is important, as an early expressed opinion would allow the government to eventually incorporate it into its position in time to be able to present it to other delegations in the Council while the legislative proposal is still being discussed in detail and before any problematic issues are resolved.

In the Czech case, the rules of procedure of both chambers establish a parliamentary scrutiny reservation, which is, however, limited in the case of the Senate to the period of 35 days. However, given the fact that the proposal must pass through at least one Committee and through the plenum, this deadline is sometimes difficult to keep, and the government silently accepts the decision being taken later (sometimes the cause is the government's failure to deliver its position in time anyway). According to the directive of government, the government applies parliamentary scrutiny reserve if any of the chambers announces that it is yet to deal with the proposal in question.

In Poland, the meetings of the Sejm's Committee are usually convened at 1 to 4 days before the meeting of the Council to allow for the effectiveness of the participation of the Committee in the last stage of the scrutiny process. However, as the Council's

agenda is often finalised in the last days or even hours before the actual meeting, the Committee is often limited to check the government's positions post factum.

While the organisation of work gives the Sejm's Committee the possibility to influence the government's position at any stage of the European decision-making process, it does in fact not use this possibility to substantially change the government's position or to extensively control the process. For example, while the government sometimes uses the parliamentary scrutiny reservations in the Council deliberations when it is awaiting the Parliament's position, the Sejm is not aware of the fact that such a reservation is held and does not control if the government does so before the Sejm's Committee has adopted an opinion. Moreover, in the case of many of those proposals that are discussed in the Committee meetings (approx. 30% of the legislation), the final Committee's opinion is based or influenced by the information and positions presented by the government's representatives. Thus, the cooperation between the Sejm and the Council of Ministers often represents rather an opportunity for the government's representatives to have domestic support for their position, rather than for the Sejm to substantially influence the government's position., even if the Sejm usually manages to abide by the 21-day deadline (as does the Senate).

The lack of information on specific Council meetings (agenda etc.) well in advance has been mentioned by the interviewees from all of the studied countries, and is often perceived as unwillingness to share information by the parliamentary staff, while the ministerial staff sees such attitudes as incomprehension of the nature of European decision-making. As in the cases of the previous two countries, most interviewees from the Slovak executive see the obligation to cooperate with the Parliament often as an

unnecessary administrative burden. The working relationship and the discipline of ministries in forwarding its documents to the Parliament has improved over the years according to the interviewees from the parliamentary staff. However, this change is much more appreciated by them, as they see it as a great step forward, while the interviewed staff from one of the allegedly “best” ministries does not see any added value in doing so (Interviews 5-7). On the other hand, the government representatives also sometimes use the mandate from the parliament to support their position in front of other members of the EU. For example, the parliamentary support helps the government on maintaining its negative opinion on recognition of Kosovo (Interviews 1, 3, 5 and 2). Using parliamentary approval as a bargaining tool in Brussels is mentioned also in Dimitrakopoulos (2001, 410–11). The staff from the other two countries was also asked about this possibility; while the parliamentary staff acknowledged the possibility in theory, they could not cite any relevant example, and the executive staff either denied the possibility or refused to answer.

One of the most important obstacles to more effective cooperation in Slovakia seem to be the lack of cooperation in the early working stages of formulating the Slovak position. Moreover, the Committee usually concentrates on mandating the government before the meeting of the Council (i.e. ministerial level, and not in the earlier stages of the process. Also, as in the case of the Czech Republic and Poland, the executive officials see the deadlines for delivering documents to the parliament as too short, but the parliaments would strongly oppose any attempt to change them. Slovak parliamentary officials have the possibility to participate at the working-level

coordination meetings at the ministries, but, according to interviewees from both sides, they never do.

How small working or protocol adjustments may alter the flexibility of the scrutiny process is well illustrated by the Czech Senate. One of many important differences in the work of both Czech chambers is that the Senate's Committees often accept that the information is provided by governmental officials of lower rank (i.e. not necessarily the ministers or vice-ministers themselves), which allows for more flexibility and more specialised discussion (Interviews 16-19, 22-23).

As stated above, the powers of the Czech Chamber of Deputies are formally slightly stronger than those of the Senate – the government is obliged to take into account opinions of the Chamber of Deputies, and there is not any deadline for its deliberations that may evoke parliamentary scrutiny reserve. However, in practice, the Senate takes a more active part in the scrutiny of European affairs. A possible reason for this tendency may be, according to the interviewees, more freedom or time to choose an agenda of importance and weaker links to the government (Interviews 16-17, 23). The Senate's activities resulted in the change of the template for government instructions for its representatives at the Coreper, which, since 2006, includes a column on the state of discussions in the Parliament. The number of issues that the Senate's plenum decides upon increases every year, and the Senate also repeatedly concluded that the government increasingly reflects the opinions of the Senate; not doing so has become exceptional.²¹ This is probably also the result of the Senate's continuous effort to check

²¹ Senate's documents: 'Usnesení Senátu k návrhům legislativních aktů a komunikačním dokumentům EU v roce 2006: Předběžné vyhodnocení jejich dopadů na postoje vlády'. Kancelář Senátu Parlamentu ČR. Oddělení pro EU. 4.4.2007, 'Usnesení Senátu k návrhům legislativních aktů a komunikačním

to what degree the government respects its opinion and ask for explanation if it fails to do so. Thus the Senate managed to achieve a relatively strong position in the scrutiny of EU matters, despite the fact that its formal powers are rather weak. Also, one of the most interesting cases manifesting how far the parliamentary power may go includes the Senate's discussion on replacing the Convention on Europol by a Decision, which resulted in the visit of the Slovenian Minister of Home Affairs to the Senate; Slovenia holding the EU Presidency at the time. There, the Slovenian minister attempted to persuade the Czech senators to agree, and thus withdraw the last obstacle to this legislative change. (Interviews, 17 and 22) The Senate is also more active at the discussions on the working level of the Committee for the European Union, which is a governmental working body for the coordination of European affairs, of which the representatives of parliamentary chambers are associated members with a consultative voice (Interviews 17 and 24).

The differences in the attitudes of all five chambers in question are perhaps best illustrated by the responses of the parliamentary officials about what they see as the most important improvements in cooperation between their office and the executive, and what aspects of their cooperation they focus on most.

The Slovak parliamentary officials described how, at the beginning, the ministries did not send all the proper documents in time. As the Parliament kept reminding them, however, this improved substantially. Now the parliamentary official feels that "we have all we need" and "we mandate everything" (Interviews 2 and 4) (sic! This essentially means that the Parliament approves everything as presented by the

dokumentům EU v roce 2007: Předběžné vyhodnocení jejich dopadů na postoje vlády'. Kancelář Senátu Parlamentu ČR. Oddělení pro EU. 23.4.2008.

government.) The official was also asked to pinpoint a ministry with which cooperation is the best. When conducting interviews with the responsible officials of that ministry, the author was told that *“Yeah, they kept asking for documents. Now we send them everything... We’ve never got feedback, I don’t know what they do with it, and I think they just mark it as received”*. (Interview 6).

The official in the Polish Senate stated that they would prefer a greater say in European affairs, but they have to respect the reality of the Polish political system, which gives the Senate a small role. The Sejm’s officials blamed the small influence of their chamber on political turbulences, frequent government changes, and president – government power struggles in the first years after accession. These questions were more prominent and shifted the focus of the parliamentarians, and thus pushed the question of parliamentary scrutiny of European affairs aside (Interviews 11-13).

The smaller activity of the Czech Chamber of Deputies was also blamed on political problems (the respective Committee was missing a chairman) (Interview 18). On the other hand, the Senate’s officials said that they insisted on feedback on their comments on proposed government positions from the beginning, and that this, together with a careful selection of followed cases, led to better cooperation with the government and a greater influence of the chamber. Importantly, this view was shared by the interviewed government officials, who also saw cooperation with the Parliament as (sometimes) beneficial (Interviews 16, 17, 22 and 23). It was also the only case out of the five chambers where the views of both sides on mutual cooperation were similar or even the same.

4.3 Conclusions

The analysis of all three systems of parliamentary scrutiny shows substantial differences between the expected impact of the legal framework and the actual activity of parliaments/chambers/parliamentary Committees.

The general rules of the parliamentary systems in all three countries have been to some degree influenced by studying the systems of the most successful parliaments among the old Member States, especially Denmark. However, none have yet achieved the quality and effectiveness of those systems.

The evidence shows that all the parliaments concerned in this chapter focus on the design of formal provisions. Many application rules were then designed under the leading role of the executive.

Moreover, in the first years after the accession, the parliaments mostly focused on enforcing these formal rules, especially those regarding their access to documents. In general, the practice of receiving the proper documents in time from the executive improved, and the parliaments were, to a great degree, satisfied with that. There has been little or no evidence of focusing on their own capacities (improving the expertise, timing etc.). The only exception is the Czech Senate. This also illustrates well the irrelevance of formal rules for the influence of the parliaments in actual practice.

Legally, the Slovak Parliament is the strongest one, having shaped its system according to the famous Danish model and enjoying the constitutionally embedded power to mandate the government. However, it seems to perceive more the formal part of the

European decision-making process, which results in the prevalence of mandating the government only before the ministerial meetings of the Council, which, as probably everybody familiar with the European decision-making process would agree, is too late to influence the important stage of negotiations. The Slovak parliament exercises its mandating power only formally, without ever forcing the government to substantially change its position. On the other hand, the Czech Senate, which, along with the Polish Senate, have legally the most limited powers from all the chambers analysed in this chapter, succeeded, thanks to its persistence and systematic work, to become an increasingly important member of the internal process of formulating the Czech positions on the European agenda, whose opinions are expected and heard.

The difference can be clearly attributed to the degree of activity by national parliaments and their perceptions of what is achievable in cooperation with the executive. The Czech Senate achieved its position merely by its activity; the Slovak one lost it due to its lack thereof. However, it is difficult to explain the reasons for different levels of activity. While there are some exogenous factors described below, the reasons probably lay mostly on the personal level. After all, it is only a few people who run the process in each parliament.

In all cases, there is a strong influence of political changes changing the composition and chairmanship of the respective Committees, resulting in the changing of the scope of activity and, sometimes, the working atmosphere of the meetings.

The administrative working process is also very important. The lack of staff and expertise on the part of the parliaments often results in opinions of low added value for the executive, which then tends to perceive the whole process of parliamentary scrutiny

as an unworthy administrative burden. Both sides have some conflicting interests in the process, each eager to safeguard more time for itself within the limited period there is to prepare the national position. The executive organisation and coordination of EU affairs may also profoundly influence the possibilities of cooperation between the parliament and the executive, as manifested by the case of Poland. These problems could be probably alleviated by intensifying and broadening working relations, allowing the parliamentary representatives to participate, with a consultative voice, in the working process inside the ministries regarding the EU agenda. Both Czech and Slovak interviewees, who work in a system where direct contacts between the parliamentary and ministries' staff exists, agree that it would be formally very easy for the parliamentary staff to participate at the ministries' coordinating meetings, if they desired to do so. Such cooperation would probably increase demands on parliamentary staff, but would also render the whole process more flexible and effective. The fact that the Czech Senate actively uses its rather privileged access to the executive coordination system could be one of the key reasons for the difference between this chamber and the Slovak parliament, who practically ignores equally privileged opportunity to participate in such system.

Most of the obstacles to parliaments having a more important role could be overcome by their own initiative and activity. From those studied in this chapter, only the Czech Senate seemed to manage to achieve some degree of importance in the process of formulating national positions on European legislative proposals, though still not perceived and acknowledged in all cases or by all actors.

5 Conclusions and discussion

This dissertation presented and analysed different sources of data on activities of national parliaments at the European level (coordinated tests of subsidiarity checks, use of IPEX) and domestic level manifesting at the European level (parliamentary scrutiny reservations). It also presented detailed comparative analysis of the cases of national parliamentary scrutiny systems in the Czech Republic, Poland and Slovakia.

The research was based on new sources and types of data on national parliamentary activity. While this approach is new mostly because sources of such data were not available in the past, future research may follow with similar, but even richer databases. There are two reasons to expect this: First, the current trend is, not without a relation to the democratic deficit debate, to increase the transparency of the European decision-making, so more data can become available for example on the use of PSRs. Second, more data should also be available with the increasing cooperation among national parliaments. The data on the actual working of individual parliamentary scrutiny systems (Czech, Polish and Slovak) also approached the question from a new perspective, as they focused mostly on administrative and organisational aspects of every-day practice.

While conclusions for partial questions and hypotheses can be found in each chapter, broader conclusions can be drawn here using all the results of this research.

First, it would seem that the national parliaments indeed have both need and ability to act collectively. In chapter 1.2, I introduced three criteria to assess whether the national parliamentary channel of democratic legitimisation of European integration can work at the European level.

Based on the data presented in chapter two of this work, it can now be claimed that the national parliaments fulfil the first criterion and indeed perceive each other as sharing the same function within the integration process as manifested by collective efforts to introduce new means of cooperation to achieve possible collective action. This is further highlighted by the fact decision to launch these initiatives are made in the name of the fora for information exchange, e.g. COSAC and the Conference of Speakers.

National parliaments also fulfil the second criterion, as they, thanks to IPEX, network of IPEX correspondents and representatives in Brussels, have means to be and to certain degree are aware of scrutiny process or positions held by other members of the national parliamentary collective, and thus fulfil two of the three criteria stated in the introduction to this chapter.

The original wording of this conclusions claimed that national parliaments have so far failed to fulfil the third criterion, the ability to execute coordinated efforts to influence the European decision-making process. However, the recent first-time-ever use of the yellow card by national parliaments, an event that not so long ago seemed extremely unlikely, suggests that even this criterion might not be out of reach of national parliaments. Of course, this is still a limited success, and does not constitute the fulfilment of the third criterion. Questions could still be raised about the national parliaments' ability to legitimise the European Union together on the European level,

not just individually in their respective Member States. However, there is a discernible development in this area.

Second, the analysis of the parliamentary scrutiny reservations and of the case studies presented in the last chapter shows that while the formal rules of the parliamentary scrutiny system influence some organisational aspects of its practical working, they have little impact on the actual activity and influence of parliaments. There is no difference in the level of activity of national parliaments as manifested by the parliamentary scrutiny reservations between the parliaments with mandating and procedural systems. The choice of formal system also had little effect on actual influence and activity of Czech, Polish and Slovak parliaments.

Quite the contrary, the study of these cases shows that careful and systematic building of every-day capacities of a parliamentary chamber and the nature of communication between the parliament and the government have much greater impact of the parliament's "success" in the scrutiny of European affairs.

Third, although this dissertation made theoretical distinction between the European and national level of parliamentary activity, analysing both presents a clear opportunity to look for the link between the two. There is evidence that, in information-exchange and cooperation among national parliaments, the opinions and positions of national parliaments with greater influence on European affairs are of most interest to other national parliaments. On the other hand, these more influential parliaments do not always respond by offering most information. Both stronger (e.g. German, Swedish,

French) and weaker (e.g. Italian, Polish, Bulgarian) parliaments are among those active on IPEX. However, there is a clear link in cases of three parliaments studied in detail in this dissertation. The Czech Senate, the “winner” of the comparative analysis study, is among the most active in posting information on IPEX²². There also apparent difference between the Czech Senate and the almost inactive Czech Chamber of Deputies. Polish Sejm is also more active than the weaker Polish Senate.

Fourth, the matter of incentives for parliamentary cooperation and activity is also very interesting when comparing the results of the second chapter and third and fourth chapter of this dissertation. The second chapter clearly showed that European level incentives in form of acknowledging the national parliaments’ role help to induce inter-parliamentary cooperation. However, it also showed that the strongest incentive is coupling that acknowledgement with some actual powers, in this case especially the early warning mechanism. After the signing of the Constitutional Treaty that first suggested these powers, the European Commission started to monitor and report its relations with national parliaments, COSAC initiated tests of the new powers and the IPEX database was launched. However, even if national parliaments gradually started to use these opportunities, the substantial increase in communication towards the European level (i.e. the European Commission) or towards each other via IPEX occurred only when the entry into force of these new legal powers was more certain. The number of parliaments that participate and the level of their participation have

²² And, although this dissertation did not focus specifically on the parliaments’ relation with the Commission, it is also among the most active parliaments in sending letters to the European Commission. (see European Commission 2006b; European Commission 2009a; European Commission 2010; European Commission 2011)

increased over time. The general acceptance of parliamentary scrutiny reservations in the Council regardless the formal national rules on such reserve, as well as the relevance of learning in shaping national systems of parliamentary scrutiny also show that European-level factors are very important in the multi-level European environment, although more so on the European than on the national level.

This conclusion calls for question whether national level incentives should not analogically induce national level activity of a parliament. However, this would mean that the parliament with formally strongest powers (in the case presented here, the Slovak parliament) should be also the most active one, which is clearly not the case. The opposite reasoning, that small incentives, i.e. small powers result in smaller activity, could maybe work in the Polish case, where the Senate staff has openly acknowledged that their powers are smaller than Sejm's and there is nothing that can be done about it, but not in the Czech case. The role of incentives thus seems to work as an explanatory factor only at the European level.

Finally, it is time to go back to the original motivation not only for this research, but also for the development of the powers of national parliaments and, at least implicitly, for most of the existing research on national parliaments: the question of the democratic deficit.

As I stated at the beginning, I cannot offer any definitive answer to the question of national parliamentary contribution to the European legitimacy. However, this dissertation does offer some findings that would need to be a part of much larger set of findings that could be used as a basis for such answer.

It has been claimed that while the European Union does fulfil the conditions of the governance for the people and with some of people, this cannot make for the lack of government by and of then people (Schmidt 2006). Can this gap be filled with the help of national parliaments?

First, on the European level, there is a clear potential for national parliaments to contribute to the EU's legitimacy as a collective, but this potential is far from fulfilled. The national parliaments have helped to create an environment in which they have the possibilities to enter into the European decision-making process at the European level, and have reacted well to its development. However, they have yet to prove that they can effectively use this new opportunities to incite change in European decisions if they wish.

Second, on the individual / national level, it seems clear that the national parliamentary contribution to the European legitimacy can be assessed only for each parliament individually, and only with detailed knowledge of both formal and practical arrangements of scrutiny. Moreover, examples of parliaments that are able to play active role of if the formal arrangements do not presume it (such as the Czech Senate) can lead to understanding of factors that can help a parliament to play such role (such as broad access to the executive and its active use).

However, many questions remain open before the grand question of democratic deficit can be answered. To return to the famous contribution of Follesdal and Hix (2006): is there a public debate on European issues that would serve both as a venue for shaping the voters preferences and as a vessel carrying these preferences from voters to their representatives? Reasoning behind the strengthening of national parliaments has been

often based on claims that national parliaments are closer to voters than the European Parliament and enjoy greater legitimacy thanks to greater election turnout. But how much of this is related to European issues? What would be the relative weights of the European and national parliaments in European decision-making should they be based on their legitimisation potential defined through democratic input? These are the questions that must remain open for the moment.

Any research on national parliaments thus constitutes a part of the democratic deficit debate, but not even their sum is at the moment sufficient to answer its main question. Moreover, most of the existing research on national parliaments, including this one, answers only some of the questions posed in only one of the paradigms of the debate, the Vertical Democracy Paradigm. Indeed, research on national parliaments contributes to the understanding of vertical division of powers in the Union, and democratic checks existing within its vertical structure. However, if national parliaments do one day succeed in effectively acting as a collective at the European level, research on these activities can contribute to the arguments used within the Horizontal Democracy Paradigm. More detailed understanding of the debate on European issues, both on national and on European level could then also contribute to the arguments within other two paradigms, and thus lead to a clearer answer on the democratic deficit of the European Union.

Shrnutí

Tato disertace se věnuje otázce demokratického deficitu Evropské unie, obzvláště aspektu pravomocí národních parlamentů a jejich možností a schopností ovlivňovat evropský rozhodovací proces. Role národních parlamentů v evropské integraci se stala předmětem zájmu akademického výzkumu zejména díky prohlubování a rozšiřování Evropské integrace v posledních dvaceti letech. Vzhledem k rychlému vývoji však stále zůstává mnoho otázek ohledně jejich role, na něž je potřebné hledat odpovědi. Tyto otázky se týkají zejména role národních parlamentů přímo na evropské úrovni, ale i na úrovni národní. Druhá úroveň byla zkoumána méně, obzvláště v případě parlamentů členských států, jenž přistoupily k Evropské unii v roce 2004 a 2009. Tato disertace se zabývá některými aspekty působení všech národních parlamentů, detailnější studie je ale věnována případům České republiky, Polska a Slovenska.

Výzkumné otázky kladené v této disertaci se týkají třech hlavních oblastí, všechny jsou ale vázány na praktické aspekty působení národních parlamentů.

První oblast se týká role národních parlamentů na evropské úrovni a jejich příležitosti, schopnosti a ochoty vykonávat skutečnou kolektivní kontrolu evropského rozhodování na této úrovni. Hlavní otázky jsou následující: Jak funguje činnost národních parlamentů na evropské úrovni v praxi? Plní národní parlamenty kritéria kolektivní aktivity (jako podmínky pro jejich legitimizační roli) na evropské úrovni? Výzkum je založený na datech o koordinovaných testech kontroly subsidiarity a používání existujících koordinačních mechanismů, zejména databáze IPEX, a v menší míře na datech o jejich komunikaci s jinými institucemi, zejména Evropskou komisí.

Druhá a třetí oblast se vztahují na úroveň národní, tedy na roli, jež národní parlamenty hrají v evropském rozhodování prostřednictvím kontroly svých národních vlád.

Druhá oblast se týká všech národních parlamentů a srovnání národní parlamentní kontroly všech 27 členských států. Hlavní otázky se vztahují k rozdílům mezi parlamenty s rozdílnými typy parlamentní kontroly a mezi parlamenty starých a nových členských států. Výzkum je založený na kvantitativních datech o jednom z projevů parlamentní aktivity, jež lze získat s použitím jednoho zdroje dat pro všechny národní parlamenty. Touto proměnnou je používání tzv. výhrad parlamentního prozkoumání, které je přímým důsledkem parlamentních aktivit na národní úrovni.

Třetí oblast se vztahuje na případy parlamentního zkoumání a kontroly evropských záležitostí v třech nových členských zemích. Hlavní otázkou je, zda praxe tohoto parlamentního zkoumání evropských záležitostí odpovídá cílům nastavení formálních pravidel. Tato část výzkumu je založená na zkoumání oficiálních dokumentů (zákonů, oficiálních zpráv, parlamentních dokumentů apod.) a polo strukturovaných rozhovorů se státními úředníky z parlamentů i vládních orgánů dotčených zemí.

Celá práce je zasazená do rámce diskuse o demokratickém deficitu. Pojem demokratický deficit znamená, ve svém původním a nejjednodušším smyslu, oslabení legislativní moci a posílení moci exekutivní v procesu evropské integrace. Jinými slovy, exekutivy převzaly část legislativních pravomocí původně náležejících národním parlamentům, přičemž národní parlamenty nejsou plně schopny kontrolovat národní vlády při jejich výkonu těchto pravomocí v Radě. Diskuse o demokratickém deficitu proto představuje důležitý rámec pro zkoumání role národních parlamentů a první kapitola této disertace se proto věnuje některým aspektům této debaty s důrazem na

národní parlamenty. I když cílem této práce nejsou normativní či definitivní závěry k této debatě, je jejím cílem přispět k ní a k budoucímu výzkumu demokratického deficitu.

Základním teoretickým předpokladem této práce je, že národní parlamenty jsou nezávislí aktéři, jež činí rozhodnutí o svých krocích v mnohoúrovňovém prostředí, jenž spoluvytvářejí spolu s dalšími aktéry. Na evropské úrovni je tento přístup dále konceptualizován na základě pojmu mnohoúrovňového parlamentního pole (Crum a Fossum 2009), jenž umožňuje zahrnout do analýzy různé projevy parlamentního zapojení do evropských záležitostí včetně meziparlamentní spolupráce. Na základě tohoto přístupu jsou definována tři kritéria kolektivní aktivity národních parlamentů na evropské úrovni: (a) vnímání sdílené legitimizační funkce v rámci evropské integrace, (b) vzájemné povědomí o aktivitách a pozicích ostatních národních parlamentů a (c) schopnost koordinovaného postupu. Na národní úrovni se práce soustředí víc na specifitější faktory každodenní administrativní činnosti, které mohou mít na výslednou aktivitu parlamentu velký vliv, ale které by bylo téměř nemožné vysledovat na evropské úrovni. Tyto faktory zahrnují kapacity národních parlamentů, nezávislost na exekutivě v přístupu k informacím a přístup k exekutivnímu koordinačnímu systému evropských záležitostí. Ve všech případech je důraz kladen na empirická data odrážející praktické působení národních parlamentů.

Hlavní závěry jsou následovné:

Za prvé, pokud jde o evropskou úroveň, národní parlamenty plní první a druhé kritérium kolektivní aktivity. Plnění třetího kritéria nebylo potvrzeno, ale nedávné první použití žluté karty národními parlamenty ukazuje, že by mohlo být splněno v budoucnu.

Za druhé, pokud jde o národní úroveň, výsledky ukazují, že formální pravidla parlamentního zkoumání evropských záležitostí ovlivňují některé organizační aspekty jeho fungování, ale mají pouze malý vliv na skutečnou aktivitu a vliv parlamentů. Nebyl nalezen žádný rozdíl mezi úrovní aktivity parlamentů s mandátovým a procedurálním systémem parlamentního zkoumání. Volba formálních pravidel měla také malý vliv na aktivitu a vliv českého, polského a slovenského parlamentu. Naopak, zkoumání těchto tří případů ukazuje, že důsledné a systematické budování kapacit jednotlivých komor a povaha komunikace mezi parlamentem a vládou mají na „úspěch“ parlamentu v evropských záležitostech mnohem větší vliv.

Za třetí, podněty z evropské úrovně (jako např. uznání role parlamentů ve smlouvách) mají vliv na aktivitu národních parlamentů na evropské úrovni. Nejsilnějším podnětem je však doplnění tohoto uznání reálnými pravomocemi, tj. zejména kontrolou subsidiarity prostřednictvím mechanismu včasného varování. Role podnětů jako vysvětlujícího faktoru však zřejmě funguje pouze na evropské úrovni.

Závěrem lze říci, že národní parlamenty mají zjevný potenciál kolektivně přispět k evropské legitimitě, ale tento potenciál zatím není naplněn. Národní parlamenty se podílely na tvorbě prostředí, v němž mají možnosti vstupovat do evropského rozhodovacího procesu, a dobře reagovaly na vývoj tohoto prostředí. Zatím však nedokázaly, že jsou schopny skutečně využít těchto nových příležitostí k tomu, aby tento proces reálně ovlivňovaly. Pokud jde o individuální / národní úroveň, je zřejmé, že příspěvek jednotlivých parlamentů k evropské legitimitě lze posuzovat pouze na základě detailního poznání nejen formálních, ale i praktických aspektů parlamentního zkoumání evropských záležitostí.

References

Primary sources

- Conference of Speakers of the European Union Parliaments (2004) “Guidelines: Interparliamentary Cooperation in the European Union”, <http://www.ipex.eu/IPEXL-WEB/euspeakers/getspeakers.do?id=082dbcc5319ee5f60131ae26c80b043c> (Accessed 5 February 2012);
- (2008) “Guidelines for Interparliamentary Cooperation in the European Union”, <http://www.ipex.eu/IPEXL-WEB/euspeakers/getspeakers.do> (Accessed 5 February 2012);
- (2010) “The Stockholm Guidelines for the Conference of Speakers of EU Parliaments”, <http://www.ipex.eu/IPEXL-WEB/euspeakers/getspeakers.do> (Accessed 5 February 2012);
- COSAC (2004) “XXXII COSAC Conclusions, Tuesday 23 November 2004”, <http://www.cosac.eu/en/documents/contributions/> (Accessed 5 February 2012);
- (2005a) “Third Bi-annual Report: Developments in the European Union Procedures and Practices Relevant to Parliamentary Scrutiny”, <http://www.cosac.eu/subsidiarity-tests/> (Accessed 3 July 2012);
- (2005b) “Speech by Vice-President Wallström, COSAC Chairpersons Meeting, Luxembourg, 9 February 2005”, <http://www.cosac.eu/33-luxembourg-2005/meeting-of-the-chairpersons-of-cosac-8-9-february-2005-9-feb/> (Accessed 4 July 2012);
- (2007) “Eight Bi-annual Report: Developments in the European Union Procedures and Practices Relevant to Parliamentary Scrutiny”, <http://www.cosac.eu/subsidiarity-tests/> (Accessed 3 July 2012)

- Czech Republic (2006) “Směrnice Vlády o Postupu Při Zasílání Návrhů Legislativních Aktů ES/EU a Materiálů Evropské Komise Poslanecké Sněmovně a Senátu Parlamentu České Republiky”, Příloha č. 3 k usnesení vlády ze dne 7. června 2006 č. 680. [http://isap.vlada.cz/homepage2.nsf/pages/esd/\\$file/zasilani.pdf](http://isap.vlada.cz/homepage2.nsf/pages/esd/$file/zasilani.pdf) (Accessed 3 July 2012);
- (2009) “Zákon č. 107/1999 Sb. ze dne 11. května 1999 o Jednacím Řádu Senátu ve znění pozdějších předpisů”;
- (2011) “Zákon Č. 90/1995 Sb. ze dne 19. dubna 1995 o Jednacím Řádu Poslanecké Sněmovny ve znění pozdějších předpisů”;
- European Commission (2005) “Action Plan to Improve Communicating Europe by the Commission”, SEC(2005) 985 final, http://ec.europa.eu/dgs/communication/pdf/communication_com_en.pdf (Accessed 5 February 2012);
- (2006a) “White Paper on a European Communication Policy”, COM(2006) 35 final, http://europa.eu/documents/comm/white_papers/pdf/com2006_35_en.pdf (Accessed 5 February 2012);
- (2006b) “Annual Report 2005 on the Relations with the National Parliaments, Report from the Commission”, SEC(2006) 350 final, http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm, (Accessed 5 February 2012);
- (2007) “2006 Annual Report on Relations Between the Commission and National Parliaments”, SP (2007) 2202/04, http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm, (Accessed 5 February 2012);
- (2009a) “Annual Report 2008 on Relations Between the European Commission and National Parliaments”, COM(2009) 343 final, http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm, (Accessed 5 February 2012);

- (2009b) “Practical Arrangements for the Operation of the Subsidiarity Control Mechanism Under Protocol No 2 of the Treaty of Lisbon: Letter of President Barroso and Vice-president Wallström of 1 December 2009.” http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm, (Accessed 5 February 2012);
- (2010) “Annual Report 2009 on Relations Between the European Commission and National Parliaments”, COM(2010) 291 final, http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm, (Accessed 5 February 2012);
- (2011) “Annual Report 2010 on Relations Between the European Commission and National Parliaments”, COM(2011) 345 final, http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm, (Accessed 5 February 2012);
- European Convention (2002) “Final Report of Working Group IV on the Role of National Parliaments”. CONV 353/02. <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00353.en02.pdf> (Accessed 5 February 2012);
- European Parliament (2002) “European Parliament Resolution on Relations Between the European Parliament and the National Parliaments in European Integration (2001/2023/(INI))”, P5_TA(2002)0058, Official Journal C 284 E;
- (2009) “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”, P6_TA(2009)0388, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0388+0+DOC+XML+V0//EN> (Accessed 3 July 2012);
- European Union (1992) “Treaty on European Union”, Official Journal C 191.
- (1997) “Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Related Acts”, Official Journal C 340;

- (2001) “Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 Regarding Public Access to European Parliament, Council and Commission Documents”, Official Journal L 145;
- (2004) “Treaty Establishing a Constitution for Europe”, Official Journal C 310.
- (2007) “Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Signed At Lisbon, 13 December 2007”, Official Journal C 306;
- House of Lords (2009) “European Union Committee. Seventeenth Report: Codecision and National Parliamentary Scrutiny” Authority of the House of Lords, London, <http://www.publications.parliament.uk/pa/ld200809/ldselect/ldeucom/125/12502.htm> (Accessed 14 December 2010);
- Poland (2005) “The Law of 8 August 1996 on the Committee for European Integration”, Journal of Laws of 30 August 1996, as amended;
- Slovakia (2004a) “Ústavný Zákon SR č. 397/2004 z 24. júna 2004 o Spolupráci Národnej Rady SR a Vlády SR v Záležitostiach EÚ”;
- (2004b) “Mechanizmus Pri Tvorbe Stanovísk k Legislatívnym Návrhom Európskej Komisie v Podmienkach SR”, uznesenie vlády č.1120/2004;
- (2007) “Revidovaný mechanizmus tvorby stanovísk k návrhom aktov schvaľovaných Radou Európskej únie v podmienkach Slovenskej republiky”, uznesenie vlády SR č. 884/2007;
- (2011) “Zákon Národnej Rady Slovenskej Republiky č. 350/1996 Z. Z. o Rokovacom Poriadku Národnej Rady Slovenskej Republiky v znení neskorších predpisov”;
- Výbor pro Evropské záležitosti PSP ČR (2005) *Parlamentní Kontrola Agendy EU / Parliamentary Scrutiny of EU Affairs*, Praha: Poslanecká sněmovna ČR, www.psp.cz/home/vybory/VEZ/brozuravez.doc (Accessed 3 July 2012);

Secondary sources

- Auel, K., and Benz, A. (eds) (2006) *The Europeanisation of Parliamentary Democracy*. Abingdon, New York: Routledge;
- Bartovič, V. and Král, D (2012) *Český a Slovenský Parlament Po Lisabonské Smolouvě*, Praha: Europeum;
- Benz, A. (2004) “Path-Dependent Institutions and Strategic Veto Players: National Parliaments in the European Union”, *West European Politics* 27 (5): 875–900;
- Bergman, T. (1997) “National Parliaments and EU Affairs Committees: Notes on Empirical Variation and Competing Explanations”, *Journal of European Public Policy* 4 (3): 373–387;
- Blondel, J., Sinnott, R. and Svensson, P. (1998) *People and Parliament in the European Union: participation, democracy, and legitimacy*, Oxford, England; New York: Clarendon Press; Oxford University Press;
- Bogdanor, V. (1996) “Britain”, In Morgan, R. and Tame, C. (eds) *Parliaments and Parties: The European Parliament in the Political Life of Europe*, New York: St. Martin’s Press, 211-235;
- Bourdieu, P. (1989) “Social Space and Symbolic Power” *Sociological Theory* 7 (1): 14–25;
- Buzogány, A. (2010) “Learning from the Best. Inter-parliamentary Policy Learning and EU Parliamentary Scrutiny Design in the EU-10”, paper presented at 2010 ECPR Joint Sessions, Inter-parliamentary Relations in Europe, 22-27 March 2010, Muenster;
- Chrysoschoou, D. N., Stavridis, S. and Tsinisizelis, M.J. (1998) “European Democracy, Parliamentary Decline and the ‘democratic Deficit’ of the European Union”, *The Journal of Legislative Studies* 4 (3): 109–129;

- Cooper, I. (2006) “The Watchdogs of Subsidiarity: National Parliaments and the Logic of Arguing in the EU”, *Journal of Common Market Studies* 44 (2): 281–304;
- (2010) “A Virtual Third Chamber for the European Union? National Parliaments Under the Treaty of Lisbon”, paper presented at 2010 ECPR Joint Sessions, Inter-parliamentary Relations in Europe, 22-27 March 2010, Muenster;
- Crum, B. and Fossum, J.E. (2009) “The Multilevel Parliamentary Field: a Framework for Theorizing Representative Democracy in the EU”, *European Political Science Review* 1 (02): 249–271;
- Cygan, A. (2001) *National Parliaments in an Integrated Europe: an Anglo-German Perspective*, The Hague: Kluwer Law International;
- (2007) “Scrutiny of EU Legislation in the UK Parliament: The First Thirty Years....and Beyond?”, In O’Brennan, J. and Raunio, R. (eds) *National Parliaments Within the Enlarged European Union. From “Victims” of Integration to Competitive Actors?*, London, New York: Routledge, 163–177.
- Decker, F. (2002) “Governance Beyond the Nation-state. Reflections on the Democratic Deficit of the European Union”, *Journal of European Public Policy* 9 (2): 256–272;
- Delwit, P. and Poirier, P (2005) *Parlement puissant, électeurs absents?: les élections européennes de juin 2004*, Bruxelles: Ed. de l’Université de Bruxelles.
- Delwit, P., De Waele, J.-M. and Magonette, P. (1999) *À quoi sert le Parlement européen?: stratégies et pouvoirs d’une assemblée transnationale*. Bruxelles, Paris: Éd. Complexe;
- Dimitrakopoulos, D. G. (2001) “Incrementalism and Path Dependence: European Integration and Institutional Change in National Parliaments”, *Journal of Common Market Studies* 39 (3): 405–22;
- Falkner, G. (2000) “How Pervasive Are Euro-Politics? Effects of EU Membership on a New Member State” *Journal of Common Market Studies* 38 (2): 223–50;

- Fink-Hafner, D. (2008) “Ensuring Democratic Control over National Government in European Affairs - the Slovenian Experience”, In Barret, G. (ed) *National Parliaments and the European Union. The Constitutional Challenge for the Oireachtas and Other Member State Legislatures*, Dublin: Clarus Press, 393–414;
- Flinders, M. and Bache, I. (eds) (2004) *Multi-level Governance*. Oxford: Oxford University Press;
- Follesdal, A. and Hix, S. (2006) “Why There Is a Democratic Deficit in the EU: A Response to Majone and Moravcsik”, *Journal of Common Market Studies* 44 (3): 533–562;
- Fraga, A. (2006) “After the Convention: The Future Role of National Parliaments in the European Union (and the Day After... Nothing Will Happen).” In Auel, K., and Benz, A. (eds) *The Europeanisation of Parliamentary Democracy*. Abingdon, New York: Routledge, 188-205;
- Goetz, K. H., and Meyer-Sahling, J.H. (2008) “The Europeanisation of National Political Systems: Parliaments and Executives”, *Living Reviews in European Governance*, 3 (2), <http://www.livingreviews.org/lreg-2008-2> (Accessed February 1, 2012);
- Györi, E. (2007) “The Role of the Hungarian National Assembly in EU Policy-making After Accession to the Union: a Mute Witness or a True Controller.” In O’Brennan, J. and Raunio, T. (eds) *National Parliaments Within the Enlarged European Union*, New York NY: Routledge, 220–240.;
- Hansen, T.B., and Scholl, B. (2002) “Europeanization and Domestic Parliamentary Adaptation—A Comparative Analysis of the Bundestag and the House of Commons”, *European Integration Online Papers (EIoP)* 6 (15). <http://eiop.or.at/eiop/texte/2002-015a.htm> (Accessed 1 February 2012);
- Hegeland, H. and Neuhold, C. (2002) “Parliamentary Participation in EU Affairs in Austria, Finland and Sweden: Newcomers with Different Approaches.”

- Held, D. (1991) "Democracy, the Nation-state and the Global System", *Economy and Society* 20 (2): 138–172;
- Hix, S., Noury, A.G. and Roland, G. (2007) *Democratic Politics in the European Parliament*, Cambridge University Press;
- Hix, S. and Raunio, T. (2000) "Backbenchers Lear to Fight Back: European Integration and Parliamentary Government", In Goetz, K.H. and Hix, S. (eds) *Europeanised Politics? European Integration and National Political Systems*, 142–168;
- Holzhaecker, R. (2002) "National Parliamentary Scrutiny over EU Issues" *European Union Politics* 3 (4): 459;
- Jolly, M. E. (2003) "Democratic Deficit in the European Union - Four Concurrent Paradigms", paper presented at the EUSA Eighth Biennial International Conference 27-29 March 2003, Nashville, Tennessee;
- Karlas, J. (2011a) *Národní Parlamenty a Kontrola Evropských Záležitostí*. Praha: Karolinum.
- (2011b) "Parliamentary Control of EU Affairs in Central and Eastern Europe: Explaining the Variation", *Journal of European Public Policy* 18: 258–273;
- (2011c) "Národní Parlamenty a Kontrola Záležitostí EU: Typologická Perspektiva." *Central European Political Studies Review* 13 (4): 300–324.
- Katz, R. and Wessels, B. (eds) (1999) *The European Parliament, the National Parliaments, and European Integration*, New York: Oxford University Press;
- Kiiver, P. (2006a) *The National Parliaments in the European Union: a Critical View on EU Constitution-building*, The Hague: Kluwer Law Internat;
- Kiiver, P. (ed) (2006b) *National and Regional Parliaments in the European Constitutional Order*, Groningen: Europa Law Pub;

- Lahno, B. (2007) "Rational Choice and Rule-Following Behavior", *Rationality and Society* 19 (4): 425–450;
- Łazowski, A. (2007) "The Polish Parliament and EU Affairs: An Effective Actor or an Accidental Hero?", In O'Brennan, J. and Raunio, R. (eds) *National Parliaments Within the Enlarged European Union. From "Victims" of Integration to Competitive Actors?*, London, New York: Routledge, 203–219;
- Lord, C. (1998) *Democracy in the European Union*, Sheffield, England: Sheffield Academic Press;
- Mair, P. (2007) "Political Opposition and the European Union", *Government and Opposition* 42 (1): 1–17;
- Majone, G. (1998) "Europe's 'Democratic Deficit': The Question of Standards", *European Law Journal* 4 (1): 5–28;
- Malová, D., Láštic, E. and Rybář, M. (2005) *Slovensko Ako Nový Členský Štát Európskej Únie: Výzva z Periférie?*, Bratislava: Fridrich Erbert Stiftung;
- Mancini, F. G. (1998) "Europe: The Case for Statehood", *European Law Journal* 4 (1): 29–42;
- Marquand, D. (1979) *Parliament for Europe*, London: Jonathan Cape;
- Mather, J. (2001) "The European Parliament – a Model of Representative Democracy?", *West European Politics* 24 (1): 181–201;
- Maurer, A. (2008) "National Parliaments in the Architecture of Europe After the Constitutional Treaty", In Barret, G. (ed) *National Parliaments and the European Union. The Constitutional Challenge for the Oireachtas and Other Member State Legislatures*, Dublin: Clarus Press, 47–103;
- Maurer, A. and Wessels, W. (eds) (2001) *National Parliaments on Their Ways to Europe: Losers or Latecomers?*, Baden-Baden: Nomos;
- Moravcsik, A. (2002) "Reassessing Legitimacy in the European Union", *Journal of Common Market Studies* 40 (4): 603–624;

- Morgan, R. and Tame, C. (eds) (1996) *Parliaments and Parties: the European Parliament in the Political Life of Europe*, New York: St. Martin's Press;
- Neuhold, C. (2001) "The 'Legislative Backbone' Keeping the Institution Upright? The Role of European Parliament Committees in the EU Policy-Making Process", *European Integration Online Papers (EIoP)*, 5 (10), <http://eiop.or.at/eiop/texte/2001-010a.htm> (Accessed 14 December 2010);
- Neuhold, C. and de Ruiter, R. (2010) "Out of REACH? Parliamentary Control of EU Affairs in the Netherlands and the UK", *The Journal of Legislative Studies* 16 (1) (March): 57–72;
- O'Brennan, J. and Raunio, T. (eds) (2007) *National Parliaments Within the Enlarged European Union*, New York NY: Routledge;
- Olson, M. (1965) *The Logic of Collective Action: Public Goods and the Theory of Groups*. Cambridge: Harvard University Press;
- Pahre, R. (1997) "Endogenous Domestic Institutions in Two-Level Games and Parliamentary Oversight of the European Union", *Journal of Conflict Resolution* 41 (1): 147–174;
- Pernice, I. (2004) "The Role of National Parliaments in the European Union", Walter Hallstein Institut Paper 5/01, <http://www.whi-berlin.de/documents/whi-paper0501.pdf> (Accessed 16 October 2011);
- Peters, B.G., and Pierre, J. (2004) "Multi-Level Governance and Democracy: A Faustian Bargain?" Flinders, M. and Bache, I. (eds) *Multi-level Governance*, Oxford: Oxford University Press, 75-88;
- Pítrová, L. and Coxová, M. (2007) "Parliamentary Control of EU Decision-Making in the Czech Republic." In Tans, O., Zoethout, C. and Peters, J. (eds) *National Parliaments and European Democracy. A Bottom-up Approach to European Constitutionalism*, Groningen: Europa Law Publishing, 205–226;
- Pollak, J. and Slominski, P. (2003) "Influencing EU Politics? The Case of the Austrian Parliament", *Journal of Common Market Studies* 41 (4): 707–29;

- Raunio, T. (1999) "Always One Step Behind? National Legislatures and the European Union", *Government and Opposition* 34 (2): 180–202;
- (2005a) "Much Ado About Nothing? National Legislatures in the EU Constitutional Treaty", *European Integration Online Papers*, 9 (9), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=759064 (Accessed 19 June 2012);
- (2005b) "Holding Governments Accountable in European Affairs: Explaining Cross-national Variation", *The Journal of Legislative Studies* 11 (3/4): 319–342;
- (2009) "National Parliaments and European Integration: What We Know and Agenda for Future Research", *The Journal of Legislative Studies* 15 (4): 317–334;
- Rittberger, B. (2005) *Building Europe's parliament: democratic representation beyond the nation-state*, Oxford: Oxford Univ. Press;
- Scharpf, F. W. (1999) *Governing in Europe: effective and democratic?*, Oxford, New York: Oxford University Press;
- Scharpf, F. W. (2006) "Problem Solving Effectiveness and Democratic Accountability in the EU" *IHS Political Science Series* 107, http://aei.pitt.edu/6097/01/pw_107.pdf (Accessed 6 June 2012);
- Schmidt, V. A. (2004) "The European Union: Democratic Legitimacy in a Regional State?", *Journal of Common Market Studies* 42 (5): 975–997;
- (2006) *Democracy in Europe: the EU and national politics*, Oxford: Oxford University Press;
- Schmitter, P. C. (2000) *How to democratize the European Union-- and why bother?*, Lanham, MD: Rowman & Littlefield;
- Stoykova, P. (2007) "Parliamentary Involvement in the EU Accession Process: The Bulgarian Experience", In O'Brennan, J. and Raunio, R. (eds) *National Parliaments Within the Enlarged European Union. From "Victims" of Integration to Competitive Actors?*, London, New York: Routledge, 255–271;

- Szalay, K. and Juhász-Tóth, A. (2007) “Control of EU Decision-making in the Hungarian National Assembly: The Experience of a New Member State” In Tans, O., Zoethout, C. and Peters, J. (eds) *National Parliaments and European Democracy. A Bottom-up Approach to European Constitutionalism*, Groningen: Europa Law Publishing;
- Tans, O. (2007) “Introduction: National Parliaments and the European Union in Search of Common Ground”, In Tans, O., Zoethout, C. and Peters, J. (eds) *National Parliaments and European Democracy. A Bottom-up Approach to European Constitutionalism*, Groningen: Europa Law Publishing;
- Tans, O., Zoethout, C. and Peters, J. (eds) (2007) *National Parliaments and European Democracy. A Bottom-up Approach to European Constitutionalism*, Groningen: Europa law publishing;
- Vehar, P. (2007) “The National Assembly of the Republic of Slovenia and EU Affairs Before and After Accession.” In O’ Brennan, J. and Raunio, R. (eds) *National Parliaments Within the Enlarged European Union. From “Victims” of Integration to Competitive Actors?*, London, New York: Routledge, 241–254;
- Weiler, J.H.H., Haltern, U.R. and Mayer, F.C. (1995) “European Democracy and Its Critique”, *West European Politics* 18 (3): 4–39;
- Wessels, W., and Diedrichs, U. (1997) *A New Kind of Legitimacy for a New Kind of Parliament: The Evolution of the European Parliament*. ECSA-Austria;
- Wincott, D. (1998) “Does the European Union Pervert Democracy? Questions of Democracy in New Constitutionalist Thought on the Future of Europe”, *European Law Journal* 4 (4): 411–428;
- Woll, C. and Jacquot, S. (2010) “Using Europe: Strategic Action in Multi-level Politics”, *Comparative European Politics* 8 (1): 110–126;
- Zweifel, T. D. (2003) “Democratic Deficits in Comparison: Best (and Worst) Practices in European, US and Swiss Merger Regulation”, *Journal of Common Market Studies* 41 (3): 541–566;

Appendix

List of interviews

Pilot Interview 1 – national parliamentary representative, Brussels, May 2008

Pilot Interview 2 – national parliamentary representative, Brussels, June 2008

Interview 1 – Slovak executive official, 19.11.2008

Interview 2 – Slovak parliamentary official, 20.11.2008

Interview 3 – Slovak executive official, 20.11.2008

Interview 4 – Slovak parliamentary official, 21.11.2008

Interview 5 – Slovak executive official, 21.11.2008

Interview 6 – Slovak executive official, 21.11.2008

Interview 7 – Slovak executive official, 21.11.2008

Interview 8 – Slovak executive official, 24.11.2008

Interview 9 – Slovak executive official, 24.11.2008

Interview 10 – Slovak executive official, 26.11.2008

Interview 11 – Polish parliamentary official, 8.12.2008

Interview 12 – Polish parliamentary official, 8.12.2008

Interview 13 – Polish parliamentary official, 8.12.2008

Interview 15 – Polish executive official, 12.12.2008

Interview 16 – Czech parliamentary official, 14.11.2008

Interview 17 – Czech parliamentary official, 4.12.2008

Interview 18 – Czech parliamentary official, 27.1.2009

Interview 19 – Czech parliamentary official, 27.1.2009

Interview 20 – Czech government official, 27.1.2009

Interview 21 – Czech government official, 26.2.2009

Interview 22 – Czech government official, 2.3.2009

Interview 23 – Czech government official, 6.4.2009

Table 2a – Inter-parliamentary cooperation of national parliaments in the coordinated subsidiarity checks - detailed information

<i>national parliament</i>	<i>any attempt at cooperation with other np (NA for 1-3)</i>	<i>cooperation through permanent representatives</i>	<i>IPEX used to search for info on scrutiny in other np</i>	<i>cooperation with individual parliaments</i>
Austria Bundesrat	4,5,6, 8		4,5,6, 8	
Belgium Chamber of Representatives				
Belgium Senate	4,6		4,6	
Bulgaria	4,5,6,7,8		7,8	4,5,6
Cyprus	5,7,8	5	5,7,8	
Czech Republic Chamber of Deputies	5,6,8	5,6		8
Czech Republic Senate	5,6,7,8	5,6,7,8	5,6,7,8	
Denmark				
Estonia	7,8	7,8	7,8	
Finland				
France Assemblée nationale	4,6,7,8	6	4,6,8	
France - Senate	5,6	5	6	6
Germany Bundestag	6,8		6	6,8
Germany Bundesrat	4, 5,6,7,8		4,5,6,7,8	
Greece	4,5,6,8	8	4,5,6,8	4
Hungary	5,6,7,8	5,6,7,8	7	
Ireland	4,7,8	7,8	7,8	4,7
Italy Chamber of deputies	5,6,8		5,6,8	
Italy Senate	5,8		5	8
Latvia	5,6,7,8	6,7,8	5,6,7,8	
Lithuania	4,5,6,7,8	6,7,8	5,7,8	4
Luxembourg				
Malta	7		7	
Netherlands	5		5	
Poland Sejm				
Poland Senate				
Portugal	5,6,7,8	6	5,6,7,8	
Romania	5,7,8		5,7,8	

Slovakia	5,8	8	5
Slovenia National Assembly			
Slovenia National Council			
Sweden	4,6,7	4,6,7	4,6,7
Spain			
United Kingdom House of Commons			
United Kingdom House of Lords	5,6	5,6	

Parliaments that did not participate or submitted their reports very late are not included. The numbers indicate the number of the coordinated test as stated in the text. Data gathered from COSAC dossiers available at on coordinated test available at <http://www.cosac.eu/subsidiarity-tests/> (Accessed 3 July 2012)