National Parliaments as New Actors in the Decision-making Process at the European Level

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Abstract

National parliaments have two basic ways of influencing the outcomes of the European decision-making process. First, they influence national input legitimacy at the national level on European issues through influencing and controlling their respective national governments. Second, they influence national input legitimacy at the European level on European issues through directly entering into the European decision-making and interacting with the European institutions participating in it. To be able to make use of this second possibility, national parliaments have to devise instruments of cooperation and coordination and learn to use them effectively. The first steps have already been made: national parliaments exchange information on their scrutiny of European legislation and other activities through their permanent representatives in Brussels, the IPEX database and other channels. This article examines the cooperation, or, at least, information exchange among national parliaments on a number of legislative proposals - those chosen for coordinated tests of subsidiarity by national parliaments themselves, those most voted on in the Council of the European Union (EU) and those subjected to three readings in the co-decision procedure - discussed between May 2004 and the entry into force of the Lisbon Treaty. It shows that national parliaments face difficulties caused by the high costs of such cooperation, including the need for flexibility and speed of their own decision-making, as well as administrative costs, whilst they increasingly use the cooperation channels available to them.

Keywords

Democratic deficit; National parliaments; Subsidiarity check

THIS ARTICLE EXAMINES THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN decision-making process. It considers the ways in which national parliaments can influence the decision-making process at the European level and the possibilities for their cooperation and coordination. The calls for greater engagement of national parliaments have been related to the question of the democratic legitimacy of the European Union (EU) and reflected in various practical institutional developments, as well as in academic works. As the national parliaments are state-based and not European institutions, and until recently, had officially not been directly involved in European decision-making at the European level, they have so far influenced European decision-making only at the national level through the control or the mandating of actions by their national governments in the process. The impact of European decision-making on national parliaments and the importance of the systems of national parliamentary scrutiny for alleviating the so-called 'democratic deficit' have been acknowledged in the literature on national parliaments (e.g. Pahre 1997; Raunio 1999; Raunio and Hix 2000; Benz 2004; Kiiver 2006). The systems of

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many of the Member States are also well known (Dimitrakopoulos 2001; Falkner 2000; Cygan 2001; Hansen and Scholl 2002; Hegeland and Neuhold 2002; Holzhacker 2002; Pollak and Slominski 2003; Maurer and Wessels 2001; O'Brennan and Raunio 2007; Tans, Zoehout and Peters 2007). However, the role of national parliaments at the European level has been evolving much more slowly. National parliaments were mentioned for the first time in a protocol attached to the Maastricht Treaty and were given their first official rights and competences by the Lisbon Treaty. This resulted in some research on their European-level role, mostly focusing on legal aspects and the future prospects for the application of the early-warning subsidiarity control mechanism introduced by that treaty (for example, Raunio 2005; Fraga 2007; Cooper 2006; Louis 2008; Cooper 2010).

This article further develops this research. It focuses on the role of national parliaments at the European level by examining the coordinated tests of subsidiarity that the national parliaments organised in preparation for the entry into force of the Lisbon Treaty and the European channels and tools of cooperation of national parliaments, as well as their use in cases other than subsidiarity control. It adopts a rational choice-based approach analysing the national parliaments as actors seeking to maintain or increase their power in the decision-making process.

The article is organised as follows. The first section describes recent developments in the roles of national parliaments in the EU. The second section conceptualises the role of national parliaments in the European decision-making process and presents the hypothesis. The third section presents the data. The fourth section is dedicated to empirical evidence regarding the activities and cooperation of national parliaments in the cases of coordinated subsidiarity checks. The fifth section presents the empirical evidence on other selected cases, followed by a final conclusion, summing up the findings.

Recent developments in the roles of national parliaments in European integration

The importance of the role of national parliaments in European integration stems from the way the parliaments have been affected by it. The decision-making capacity of national parliaments has decreased and there has been a transfer of decision-making authority from the parliamentary level to the Member States' executives (Holzhacker 2002: 460; see also Katz and Wessels 1999: 11). At the same time, the importance of the role of national parliaments stems from the fact that they are directly elected and thus more strongly legitimised than most of the other organs and institutions (Kiiver 2006: 71). Kiiver (2006) goes on to explain this statement 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 2006: 71-80). We could add a third point 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.

The Treaties first recognised the role of national parliaments in declarations attached to the Maastricht Treaty (Declaration on the role of national Parliaments in the European Union, Declaration on the Conference of Parliaments, Official Journal C 191, 29 July 1992) and a protocol annexed to the Amsterdam Treaty (Protocol on the role of national parliaments in the European Union, Official Journal C 340, 10 November 1997). 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 unsuccessful Treaty establishing the Constitution for the European Union (Official Journal C 310, 16 December 2004), as well as the Lisbon Treaty (Official Journal 306 C, 17 December 2007), contain a Protocol on the role of national parliaments in the European Union and a Protocol on the application of the principles of subsidiarity and proportionality, introducing a tool allowing national parliaments to directly intervene in EU decision-making.

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 parliaments[1] 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'). 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.

Conceptualising the role of national parliaments in the EU

In relation to the levels at which national parliaments may act, and the channels of legitimacy, we may define two basic perspectives for examining national parliaments:

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

- 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.

- 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.

This article focuses primarily on the second perspective and the interconnection of the two levels.

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, Bache and Flinders 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 multi-level parliamentary field. 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 article reflects all these 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 European and inter-

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 described in the section on data.

The hypothesis underpinning this article is based on the rational-choice approach. This choice was prompted by the fact that, while most of the literature on the national parliaments and European integration is normative (*i.e.* it examines national parliaments as legitimising factors), much of the recent literature on European decision-making is closely related to rational choice (for example, Hosli 1995; Tsebelis and Garret 2000; Thomson *et al.* 2006). If we then take normative reasoning as the starting point for being interested in the increasing role of national parliaments, we should investigate that role using approaches that analyse the role of other actors in the European decision-making process. The basic rational-choice assumption is that actors seek to maintain and increase their influence in the decision-making process. Therefore, national parliaments should seek influence in European decision-making. Its multi-level nature should prompt them to attempt this at multiple levels, including the European level.

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 (two interviews with representatives of national parliaments to the EP, Brussels, May/June 2008; two interviews with staff of the Czech Parliament, January 2009). Therefore, even if there has not been any sufficient number of national parliaments criticising the compliance with the subsidiarity principle in any specific case yet, 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. These include:

- the establishment of the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC) in 1989, which serves as a forum for the exchange of information and as an organ of coordination (for example, also in the case of the coordinated test of subsidiarity (see below));[2]

- the practice of having parliamentary representatives stationed in Brussels (currently only two national parliaments – those of Spain and of Malta – do not have a permanent representative in Brussels);

- the creation of the IPEX website in 2004 following a Danish initiative in order to facilitate the exchange of information of parliamentary opinions on proposed European legislation and other dossiers; IPEX contains dossiers on all proposed European legislation and allows national parliaments to upload information on their scrutiny process and subsidiarity checks, including any documents the parliament has drafted or adopted in the process.

[2] It is important to note that this article does not consider COSAC an actor *per se*, but merely a forum allowing national parliaments to try to act collectively at the European level.

However, 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 than immediate gain.

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, we may 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.

The resulting hypothesis can therefore be formulated as follows: *national parliaments seek influence in European decision-making; therefore, they will increase their activities and pursue mutual coordination. The increase in these activities and cooperation may be hampered if the costs of such cooperation are too high, but the attempts at cooperation may continue even if there are no immediate gains.*

This article tests this hypothesis 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.

Data

The data used in this article to analyse the cooperation of national parliaments mostly reflects the use of IPEX and, in the case of the coordinated tests of subsidiarity, some other tools or channels of cooperation.

The coordinated tests of subsidiarity represent the first step, 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, and they have followed this practice ever since in expectation of such a system eventually becoming the everyday reality of European decision-making - as it did, since the last such test was completed just after the Lisbon Treaty entered into force. 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.

Other cases used for the analysis were chosen on the basis of some aspects of the specific decision-making processes. Extensive databases on the EU decision-making were created and used for the project, and the following criteria were used to pre-select other cases:

- 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).

- 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.

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

Cooperation of national parliaments in the coordinated tests of subsidiarity

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 the Hague in October 2004, in order to assess how the early-warning mechanism established in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitutional Treaty might work in practice.

There have been eight completed coordinated subsidiarity checks, the last of which was running when the Lisbon Treaty entered into force:

1) 3rd Railway package - test running between 1 March 2005 and 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, (but translation into nine languages was finished only by 6 November);

4) Proposal for the Framework Decision on Combating Terrorism – test running from 26 November 2007 until 21 January 2008, (the first test 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 – test running from 9 July 2008 until 4 September 2008;

6) Proposal for the Directive on standards of quality and safety of human organs intended for transplantation – test running 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 – test running from 20 July 2009 until 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 – test running from 21 October until 17 December 2009.

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 expertise[3], 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.

Two major challenges for national parliaments related to the subsidiarity checks can be identified, namely the compliance with the deadline and the further exchange of information and cooperation, apart from the fact that parliaments conduct a subsidiarity check on the same issue.

Complying with the deadline was the biggest problem that national parliaments faced when testing the early-warning mechanism on subsidiarity. During the first three tests, the deadline was set for six weeks. According to reports on these tests by COSAC and responses to questionnaires[4], 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

[3] 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.
[4] All the reports and questionnaires are available at http://www.cosac.eu/en/info/earlywarning/

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 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. Second, it was the short deadline, a problem often aggravated by the timing of subsidiarity checks during parliamentary recesses, as shown by a comparison between the fourth and fifth checks. On the other hand, the number of parliaments or parliamentary chambers capable of finishing the procedure in time seems to be rising despite such timings (see the last check), suggesting that parliaments are able to learn from previous cases and speed up their internal procedures. Improvements in timing of the individual scrutiny procedures in each parliament should allow parliaments to tackle the important issues of timing and effectiveness of mutual cooperation.

In theory, every parliament could carry out the check on its own without any interest in the proceedings of the others. However, parliaments have a better chance of achieving the required majority if they mutually communicate their opinions before the checks are over. The COSAC reports on the coordinated subsidiarity checks contain, since the fourth check,

data on cooperation, specifically the use of IPEX, but also other channels such as exchanging information via national parliaments' representatives in Brussels or through other bilateral contacts. Table 1 summarises the degree of parliaments' cooperation with other parliaments. 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 18 chambers cooperated in the last subsidiarity check.

Table 1: Cooperation of national parliaments in the coordinated subsidiarity checks

National parliament	Any attempt at cooperation with other nat. parliaments (NA for 1-3)	Cooperation through permanent representatives	IPEX used to search for info. on scrutiny in other nat. parliaments	Cooperation with individual parliaments
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 Assemblee 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 http://www.cosac.eu/en/info/earlywarning/

All types of cooperation mentioned are limited to only the exchange of information. Moreover, the use of the IPEX database usually does not prove useful. Member States often do not post any detailed information, or they post it too late for the others to consider. There are also linguistic challenges. Many national parliaments post 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, do not actively seek cooperation themselves. The countries whose proceedings are 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 seek information are often those with weaker scrutiny systems or those from the new Member States, which are also weaker in practice (such as those of Portugal, Slovakia, the Czech Republic, Poland, Romania (see for example, Maurer and Wessels 2001; O'Bernnan and Raunion 2007)).

Use of the IPEX database in other selected 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 2 shows a slight, but noticeable, increase in posting information on IPEX. More parliaments post at least some kind of information; for example, they use status icons or post links on the documents in their language). Similarly, more parliaments post 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 are also mostly the parliaments that have 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 (two interviews with national parliaments' representatives to the EP, Brussels, May/June 2008).

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 below) 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 2: Use of IPEX by individual parliaments or parliamentary chambers in other selected cases

Discussed in years	Dossier	Number of parl. posting any info.	Parliaments posting any info.	Number of parl. posting detailed opinions in EN, FR or DE	Parliaments posting detailed opinions
2004/05	COD/2003/175 (04/05)	3	DK Folkentigent, FR Senat, UK House of Commons	1	FR Senat
2004-06 3rdg	COD/2004/175	3	DK Folkentingent, IT Camera dei Deputati, SE Riksdagen	0	
2004-06 3rdg	COD/2004/218	2	IT Camera Dei Deputati, SE Riksdagen	1	DE Bundesrat
2004-09	COD/2004/209	1	SE Riksdagen	0	
2005/06	COD/2005/41 (05/06)	2	IT Camera dei Deputati, SE Riksdagen	0	
2005/06	COD/2005/43 (05/06)	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 Folkentigent, 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 Folkentigent, 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 Assemblee Nationale, FR Senat
2006/07	COD/2005/260	8	DK Folketingent, DE Bundestag, IT Camera dei Deputati, HU Országgyülés, PL Sejm, PL Senat, SL Drzavni Zbor, SE Riksdagen	4	CZ Senat, IR Oireachtais, UK House 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 Assemblee Nationale, FR Senat, 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	DE Bundesrat, IR Oireachtais, UK House of Commons
2007	CNS/2007/85	6	CS Snemovna, ES Senado, PL Sejm, PL Senat, SE Riksdagen, UK House of Commons	5	CS Senat, DE Bundesrat, FR Assemblee Nationale, IR Oireachtais, UK House of Lords
2007-08	COD/2007/113	6	CS Snemovna, DK Folkentingent, IT Camera dei Deputati, PL Sejm, PL Senat, SE Riksdagen	5	DE Bundesrat, FR Assemblee Nationale, IR Oireachtais, UK House of Commons, UK House of Lords

2007/09	COD/2007/94	19	CS Snemovna, CS Senat, DK Folkentingent, DE Bundesrat, ES Senado, FR Assemblee Nationale, FR Senat, IE Oireachtais, IT Camera dei Deputati, IT Senato, LT Seimas, HU Orszaggyules, ML Il-Kamra Tad-Deputati, PL Sejm, PL Senat, FI Eduskunta, SE Riksdagen, UK Commons, UK Lords	7	CS Senat, DE Bundesrat, FR Assemblee Nationale, FR Senat, IT Camera dei Deputati, IT Senato, UK Commons
2008	CNS/2008/144	7	CS Snemovna, DE Bundestag, ES Senado, PL Sejm, PL Senat, SK National Council, SE Riksdagen	4	FR Assemblee 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 Assemblee 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 Assemblee Nationale, IR Oireachtais, PL Sejm, UK House of Commons

Conclusion

The empirical results show that national parliaments do use the opportunity presented by the coordinated subsidiarity check and learn to use this process and coordinate their efforts, but with limited success, due to time constraints and costs of cooperation. Several specific conclusions may be drawn from the presented empirical evidence.

First, national parliaments do have problems complying with the deadline set for the subsidiarity checks, but prolonging the period from six to eight weeks did improve their capability to finish the process in time. However, while the time is now sufficient to complete the check itself, it is not enough to improve their ability to cooperate or coordinate with other national parliaments. Second, the timing of the subsidiarity check in the course of the parliamentary year has a substantial impact on that ability, and another actor, the Commission, has the ability to influence that timing by choosing the date for adopting the legislative proposal.

Third, the coordinated checks of subsidiarity prompted the national parliaments to introduce various channels of cooperation (COSAC, the IPEX website and IPEX correspondents, representatives of national parliaments, direct bilateral contacts), and these led to some increase of such cooperation, but many national parliaments often report it to be ineffective and not up-to-date. The cooperation is limited to the exchange of information. The costs of more effective cooperation would probably be too high. Information shared in time to serve as an input for other national parliaments would require speeding up the process in the parliament sharing the information, thereby creating the need for investing more resources in scrutiny – greater workload in a short time, a need for speedy translation services, meetings convened at unusual times, and so on. Fourth, despite the points made above, the coordinated test of the checks of subsidiarity served as a learning mechanism for the national parliaments. The experiences from the first few subsidiarity checks helped to improve the procedure as laid down in the Lisbon Treaty version, prolonging the period for the subsidiarity checks and establishing its beginning as the date when versions in all official languages are available.

Fifth, the use of IPEX in the other selected cases also suggests that the parliaments increasingly use the IPEX - the channel they created specifically for the exchange of information on their scrutiny of EU decision-making. At the same time, it is used mostly by the same parliaments or parliamentary chambers, and the information posted is usually not easily usable by others. Also, the number of parliaments or parliamentary chambers posting information on IPEX remains rather low. However, these parliaments persist in such cooperation, which can be interpreted as adherence to the coordination rule (Lahno 2007). Sixth, the parliaments that offer information are often those with strong powers in European affairs. On the other hand, the parliaments who seek information are almost exclusively those that are weaker and / or less experienced. While the second fact is a logical result of their need for more information, the actions of stronger parliaments can be attributed only to the support for future cooperation and adherence to the coordination rule. Seventh, there is also some limited evidence that incentives from the national level lead the national parliaments to attempt cooperation more often than incentives from the European level.

To sum up, some progress in cooperation among national parliaments can be seen. However, many improvements would be needed if national parliaments wanted their collective voice to make a substantial difference in European decision-making. Thus the high costs of cooperation seem to prevail over the national parliaments' desire to increase their influence.

Moreover, although such a scenario is rather unlikely, if national parliaments were able to effectively coordinate their efforts on national stages, they could be able to change or stop a legislative initiative in the Council via a sufficient number of their national governments.

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