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# **DRAFT REPORT**

on the implementation of the Treaty provisions concerning national  
parliaments  
(2016/2149(INI))

Committee on Constitutional Affairs

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# EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS

## Introduction

Eight years after the entry into force of the Treaty of Lisbon, the Committee on Constitutional Affairs (AFCO) considered necessary to draw up an own-initiative implementation report (INI) assessing “The implementation of the Treaty provisions concerning national parliaments”.

The goal of the report is to assess the use of current mechanisms for national parliaments’ participation in the European political process. Based on that assessment, the report then looks into possible improvements to those mechanisms, in order to bring national parliaments closer to the overall integration process. The report should also assess the political structured debate established between the European Commission and national parliaments.

## Fact-finding activities

The scrutiny tools and findings on the state of implementation carried out were the following:

- a Workshop with experts from the academic world on 20 March 2017, organised by the Policy Department C of DG IPOL, where a Study<sup>1</sup> and two Briefings<sup>2</sup> were presented and debated;
- an Interparliamentary Committee Meeting (ICM) held in 2 May 2017, where three experts presented studies on the subject matter of the report, allowing members of national parliaments to express their views as well as to engage in a dialogue with Members of the European Parliament<sup>3</sup>;
- written contributions from several national parliaments;
- fact-finding missions to the *Assembleia da República* on 21 February 2017, to the Danish *Folketing* on 22 and 23 May 2017 and to the Hellenic Parliament on 24 May 2017;
- an European Implementation Assessment<sup>4</sup> and a Survey<sup>5</sup> from the Ex-Post Evaluation Unit of DG EPRS, presented and discussed on 12 October 2017;
- a legal opinion from the European Parliaments legal services, on 27 October 2017.

## **I. The primary function of national parliaments: scrutinizing European politics by mandating their own governments, represented in the Council and in the European**

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<sup>1</sup> “The Role of National parliaments in the EU after Lisbon: Potentialities and Challenges”, by Prof. Dr. Olivier Rozenberg.

<sup>2</sup> “Subsidiarity as a Means to Enhance Cooperation between EU Institutions and National parliaments”, by Prof. Dr. Diane Fromage, and “The Legisprudential Role of National parliaments in the European Union”, by Prof. Dr. Luís Heleno Terrinha.

<sup>3</sup> “The interparliamentary cooperation at EU level”, by Carlo Casini, “Subsidiarity and National parliaments”, by Ludwik Dorn, and “Political structured dialogue and National parliaments”, by Prof. Dr. Ingolf Pernice.

<sup>4</sup> European Implementation Assessment “Working with national parliaments on EU affairs”, by Prof. Dr. Milan Remac, European Parliament 2017 (PE 603.271).

<sup>5</sup> Implementation in action briefing on the “Survey of permanent representatives of national parliaments in the European Parliament” (PE 610.992).

## Council

The Treaty of Lisbon became known as the Treaty of the Parliaments, precisely because it has considerably increased the powers of the European Parliament, while recognising national parliaments their own constitutional role within the European framework. These came to have an essential role in securing the democratic legitimacy of the Union, in promoting its pluralism and diversity and in granting its constitutional functioning.

As reflected in earlier reports and in art. 10(2) TFUE, it is evident that the core function of national parliaments remains the democratic scrutiny and monitoring of governmental activity in the Council and in the European Council. By supervising their governments' actions at national level, and the better and more effectively they do so, the greater will be their role in influencing EU's political and constitutional life. To this extent, it is of paramount importance that national parliaments come to compare best practices within the framework of COSAC and even spontaneously amongst themselves. It is equally crucial to improve and mobilise all means available to IPEX in order to increase the range, the speed and the efficiency of all existing information on European matters.

Given the recurrent complaint that national parliaments have been losing some of their power in budgetary matters due to the so-called "European semester", it might, perhaps, in full respect of the prerogative of self-organisation of each parliamentary chamber, be beneficial to envision the future adaptation of their relevant "rules of procedure". In fact, the establishment of a term (national trimester) which brings budget talks between governments and Commission forward and, the establishment of a follow-up parliamentary mechanism that allows for subsequent monitoring of the relation between Commission and Council, would grant a substantial increase to national parliaments' capacity of scrutiny in a matter that has historically been theirs.

## **II. The specific constitutional contribution of national parliaments to the European level: the creation of an European political sphere**

Furthermore, and by virtue of the wording and the spirit of the Treaty of Lisbon, national parliaments have increasingly been called on to act directly at European level, be it in interaction with the European Parliament, or in interaction with the European Commission. Except for matters related with the control of subsidiarity and information rights, national parliament's involvement in European affairs is nonetheless perceived as remaining limited.

If the Treaty of Lisbon calls on a more intimate relation between national parliaments and the European institutions, it is naturally because it expects their specific contribution further from that which its executives convey through their voice and vote in the Council and in the European Council. There is a true constitutional *differentia specifica* between the participation of national parliaments in the European life and the participation of national governments in the aforementioned Council and European Council. While governments represent a single political stance, reflected in the indivisibility of their vote, the national parliaments are precisely the expression of the plurality and internal diversity (without prejudice to the strict compliance with the will of the majority expressed within). The specific contribution that the national parliaments can bring to the European level is precisely this diversity of national visions (proportionately represented). However, little has been done to draw attention and give precedence to the irreplaceable constitutional function of national parliaments within the European life. The latter strongly contributes to the establishment of a true European political space and a true authentic public sphere. In fact, minority positions in a national parliament

might match a majority position in another, and the interaction between them reflects the emergence of an European political arena. Amongst others, the report aims to bridge this gap. Firstly, strongly encouraging the representation of internal plurality by the delegations of national parliaments, in all of its joint events, and in accordance with the political groupings' proportions. Secondly, allowing minority groupings that stand for a minority position to add their dissenting opinions to the reasoned opinions, without undermining the commitment of the adopted opinions to the will of the majority.

### **III. Aiming at a full interinstitutional cooperation: developing the European political sphere**

The creation of the European political arena is obviously strengthened by the reinforcement of all kinds of initiatives already in place. In fact, the ongoing cooperation between the EU institutions and national parliaments has improved considerably in the past decade. Firstly, the Barroso initiative, documented in annual reports on their relations, has undoubtedly fostered political dialogue between national parliaments and the Commission.

Secondly, any 'constitutional jealousy' that may have existed between the European Parliament and national parliaments has faded post-Lisbon (see articles 9 and 10 of Protocol No. 1 TFEU, on determining the organisation and promotion of effective and regular Interparliamentary cooperation within the Union).

While this cooperation is closely linked to the dialogue between national legislative branches themselves, there is still room for improvement<sup>1</sup>. First and foremost, efforts should be made to simplify the current framework of relations between the EU and national parliaments, including the Conference of Speakers of EU Parliaments, the COSAC, the Interparliamentary Conference on Stability, Economic Coordination and Governance in the EU, the Joint Parliamentary Scrutiny Group on Europol, the interparliamentary committee meetings and the joint parliamentary meetings, just to name a few. The development of a committee-based approach would be extremely beneficial in this regard<sup>2</sup>.

The same applies to the implementation of the Treaty provisions concerning the role of national parliaments in the areas of freedom, security and justice (see articles 70, 88 and 85 TFEU). At a time when these matters are all the more complex, the EU should call on all national parliaments, one of its major sources of democratic legitimacy, in order to ensure an active role in the monitoring of a future European Defence Union. Thus, the participation and active involvement of national parliaments seems to be crucial and truly indispensable.

To the same end, we shall call for the establishment of an "European week", which may take place simultaneously in the 27 national parliaments and which should be attended by Commissioners and Members of the European Parliament, debating European affairs with national parliamentarians. Such initiative would, moreover, be an optimal way to carry out the much-discussed idea of organizing national "democratic conventions" on the future of Europe. The "European week" would entail, once more without jeopardizing each parliament's sovereign prerogative, a reform of the "rules of procedure" of national parliaments and of the

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<sup>1</sup> See Prof. Dr Olivier Rozenberg's study "The Role of National parliaments in the EU after Lisbon: Potentialities and Challenges".

<sup>2</sup> See: Final report of the Fact finding Missions, 17 July 2017, PE608.137v01-00.

European Parliament.

#### **IV. The role of national parliaments with respect to the control of subsidiarity**

Aware that this is one of its most important constitutional powers, national parliaments are unanimous in their evaluation of certain throttling in the functioning of the EWS, which may trigger the yellow card or the orange card procedures. The first obstacle is the limited eight-week standstill period, which can only be altered with a Treaty reform and which should be increased once said reform occurs. There is, however, a technical question - with legal implications within the scope of the separation of powers - which might ease the burden of this obstacle. Indeed, the starting day to count the eight-week standstill period should not be left to the discretion of the Commission. Thus, as is the case with many national proceedings, a technical extension should be considered, in such a manner that the commencement of the eight-week period is not at the sole disposal of the Commission.

The second obstacle, yet just as importantly, relates to a narrow understanding of the principle of subsidiarity as provided for in article 5 TEU, which excludes the principle of conferral and the principle of proportionality. This is the argument with which the Commission more often refuses national parliaments the exercise of this power of control. Yet, legal doctrine has long drawn a distinction between subsidiarity *stricto sensu* and *lato sensu*, the latter comprising the three dimensions enunciated. Prior experience shows that it is extremely difficult to understand the precise boundary between the political dimension of subsidiarity and the legal dimension of proportionality. It being a fine line between politics and law, the Commission should exercise self-restraint, when referring to EWS, in the adoption of an overtly restrictive vision of the subsidiarity principle.

In this regard, and after the concession made in the framework of the British referendum process, there are no appeals from national parliaments for a future red card. Conversely, there is a strong movement, also documented in the EP's reports, for the creation of a green card, which awards national parliaments a sort of instrument within the field of legislative initiative. Such an innovation would necessarily have three limits: it cannot be a true legislative initiative, as this is a right exclusively reserved to the Commission (neither Parliament nor Council may initiate legislation); it cannot be used in relation to the repeal of existing EU law as it would otherwise act as a reverse red card and, finally, it should not incorporate any right to amendment European legislation (that would usurp powers assigned to the EP and Council by the Treaties). The idea is, therefore, most commendable, as it reflects the right understanding of subsidiarity, to the extent that it means that national parliaments recognize that some matters are of exclusive competence of the Union. At full deployment, it will be a right of proposal or suggestion that, similar to parallel mechanisms, could originate the obligation for a reasoned reply from the Commission in the event of refusal.

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the implementation of the Treaty provisions concerning national parliaments (2016/2149(INI))

*The European Parliament,*

- having regard to the Treaty on European Union (TEU), in particular Article 5 on the conferral of competences and subsidiarity, Article 10(1) on representative democracy, Article 10(2) on the representation of EU citizens, Article 12 on the role of national parliaments, Article 48(3) on the ordinary revision procedure and Article 48(7) (*passerelle clause*) thereof,
- having regard to Protocol No 1 on the role of national parliaments in the European Union annexed to the Treaty of Amsterdam and to Protocol No 2 on the application of the principles of subsidiary and proportionality annexed to the Treaty of Lisbon,
- having regard to its resolutions of 12 June 1997 on relations between the European Parliament and the national parliaments<sup>1</sup>, of 7 February 2002 on relations between the European Parliament and the national parliaments in European integration<sup>2</sup>, of 7 May 2009 on the development of the relations between the European Parliament and national parliaments under the Treaty of Lisbon<sup>3</sup> and of 16 April 2014 on relations between the European Parliament and the national parliaments<sup>4</sup>,
- having regard to its resolutions of 16 February 2017 on Improving the functioning of the European Union building on the potential of the Lisbon Treaty<sup>5</sup>, on Budgetary capacity for the euro area<sup>6</sup> and on Possible evolutions of and adjustments to the current institutional set-up of the European Union<sup>7</sup>,
- having regard to the Commission's annual reports on relations between the European Commission and national parliaments, in particular the report for 2014 of 2 July 2015 ([COM\(2015\)0316](#)), and for 2015 of 15 July 2016 (COM(2016)0471), and to its annual reports on subsidiarity and proportionality, in particular the reports for 2015 of 15 July 2016 ([COM\(2016\)0469](#)), and for 2016 of 30 June 2017 (COM(2017)0600),
- having regard to the annual reports of the European Parliament's Directorate for Relations with National Parliaments, in particular the 2016 Mid-term Report on Relations between the European Parliament and national parliaments,
- having regard to its resolution of 26 October 2017 on monitoring the application of EU law 2015<sup>8</sup>,

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<sup>1</sup> OJ C 200, 30.6.1997, p. 153.

<sup>2</sup> OJ C 284 E, 21.11.2002, p. 322.

<sup>3</sup> OJ C 212 E, 5.8.2010, p. 94.

<sup>4</sup> Texts adopted, P7\_TA(2014)0430.

<sup>5</sup> Texts adopted, P8\_TA(2017)0049.

<sup>6</sup> Texts adopted, P8\_TA(2017)0050.

<sup>7</sup> Texts adopted, P8\_TA(2017)0048.

<sup>8</sup> Texts adopted, P8\_TA(2017)0421.

- having regard to the Commission White Paper on the Future of Europe of 1 March 2017, and to the State of the Union address by the President of the Commission Jean-Claude Juncker of 13 September 2017, in which a roadmap was presented,
  - having regard to the Declaration entitled ‘Greater European Integration: The Way Forward’ by the Presidents of the *Camera dei Deputati* of Italy, the *Assemblée Nationale* of France, the *Bundestag* of Germany and the *Chambre des Députés* of Luxembourg, signed on 14 September 2015 and currently endorsed by 15 national parliamentary chambers in the EU,
  - having regard to the conclusions adopted by the Conference of Speakers of EU Parliaments (the EU Speakers’ Conference) at its meetings since the entry into force of the Treaty of Lisbon, in particular those held in Luxembourg in 2016 and Bratislava in 2017,
  - having regard to the contributions to and conclusions of the meetings of the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) since the entry into force of the Lisbon Treaty, in particular the meetings held in Valletta and Tallinn in 2017, and to COSAC’s biannual reports,
  - having regard to Rule 52 of its Rules of Procedure, and to Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,
- A. whereas national parliaments play an essential role in granting and completing the democratic legitimacy of the Union, thereby ensuring its good constitutional functioning (Article 12 TEU);
  - B. whereas the parliamentary accountability of national governments in European affairs is the cornerstone of the role of national parliaments in the current European Treaty framework;
  - C. whereas national parliaments often lament their limited involvement in Union affairs and wish to be more associated with the development of the European integration process;
  - D. whereas the inherent pluralism of national parliaments is remarkably beneficial to the Union, as the alignment of different political stances across the Member States strengthens and broadens cross-sectional debates at European level;
  - E. whereas the underrepresentation of parliamentary minorities in European affairs should be counterbalanced while fully respecting the majorities in each national parliament, and in accordance with the principle of proportionality;
  - F. whereas national parliaments should take part in any kind of revision of the European Treaties and have recently been called upon to play an active role in a series of EU democratic conventions;
  - G. whereas a European public sphere would be enforced by the establishment of a European Week, in which national parliamentary chambers would simultaneously

discuss European affairs in the presence of Commissioners and Members of the European Parliament;

- H. whereas the implementation of the right for national parliaments to scrutinise compliance with the principle of subsidiarity, on the basis of the so-called early warning system (EWS), has improved relations between the EU institutions and national parliaments;
- I. whereas national parliaments are sometimes critical of the EWS, claiming that its provisions are not easy to put into practice and lack a broad scope of application;
- J. whereas the implementation of the EWS could be greatly improved, as demonstrated by the limited usage of the yellow card procedure and the ineffectiveness of the orange card procedure;
- K. whereas the eight-week period laid down in Article 4 of Protocol No 1 has proven to be inadequate for timely monitoring of compliance with the principle of subsidiarity;
- L. whereas the EWS could be supplemented by further interinstitutional cooperation at an earlier stage of European legislative procedures, under which several Member States have taken informal initiatives by availing themselves of their right to present proposals and suggestions to the European Institutions;
- M. whereas national parliaments can, at any time, issue opinions within the framework of the political dialogue, mandate their governments to demand the formulation of legislative proposals via the Council, or, in accordance with Article 225 TFEU, simply call on Parliament to present proposals to the Commission;
- N. whereas the implementation of a red card procedure is not conceivable at this stage of the European integration process;
- O. whereas the comprehensive range of information rights provided for in the Treaty of Lisbon could be enhanced if national parliaments were given more resources and time to cope with the documents forwarded to them by the European Institutions;
- P. whereas the IPEX, a platform for continuous exchange of information among national parliaments and between national parliaments and the European institutions, should be further developed in accordance with its Digital Strategy, in which the European Parliament plays a major supporting role;
- Q. whereas interinstitutional cooperation has undoubtedly improved after the entry into force of the Treaty of Lisbon and of the so-called Barroso initiative;
- R. whereas national parliaments occasionally raise grievances about their relations with the European Union, claiming that they are highly complex and on occasion troublesome and inefficient;
- S. whereas national parliaments have relevant competencies in the areas of freedom, security and justice pursuant to Articles 70, 85 and 88 TFEU and should therefore have a say in the future of the Union's security and defence policy;

### *Scrutinising governmental activity in European affairs*

1. Welcomes the rights and obligations of national parliaments deriving from the Treaty of Lisbon; considers that their implementation has enhanced the role of national parliamentary chambers within the European constitutional framework, thus providing for the pluralism, democratic legitimacy and good functioning of the Union;
2. Acknowledges that national governments are democratically accountable to national parliaments pursuant to Article 10(2) TEU; takes the view that such accountability is the keystone of the role of national parliamentary chambers in the European Union;
3. Recalls that national parliaments should be granted enough time and powers to scrutinise the activity of national governments at European level, whether in the Council or in the European Council, in full compliance with the Member States' constitutions; believes that an exchange of best practices between national parliaments should be promoted in this respect;
4. Recommends that political calendars at national and European level should be better coordinated, by aligning the European Semester with the agendas of national parliaments, in order to coordinate economic policies, but without disregard for the powers of self-governance and the specific rules of procedure of each parliamentary chamber; suggests, therefore, the implementation of a national period for budgetary dialogue, during which national parliaments would be able to prepare the European Semester by mandating their own governments in their relations with the Commission and the Council;

### *Creating a European public sphere*

5. Notes that the alignment of different political stances across the Member States could strengthen and expand cross-sectional debates at European level; considers, therefore, that national parliamentary delegations acting before the European Institutions should consist of members from several political parties; stresses the relevance of the principle of proportionality in this regard;
6. Underlines the fact that the binding will of parliamentary majorities should be expressed in the opinions issued by national parliaments, within or outside the framework of the EWS; believes, however, that national parliamentary minorities could be given the possibility to express dissenting points of view, which would then be incorporated into the annexes to such opinions, while fully abiding by the principle of proportionality and in accordance with the rules of procedure of each parliamentary chamber;
7. Calls for the establishment of an annual European week, during which Members of the European Parliament and Commissioners would simultaneously stand before all national parliamentary assemblies in order to discuss the European agenda; undertakes to coordinate the implementation of a European week, possibly by reviewing its own rules of procedure in order to endorse the initiative, and encourages national parliaments to do the same;

### *Backing reform of the EWS*

8. Underlines the fact that the EWS has seldom been used since the entry into force of the Treaty of Lisbon, and believes that it could be reformed within the current constitutional framework;
9. Recalls that prior experience with the EWS has proven that drawing a line between the political dimension of the principle of subsidiarity and the legal dimension of the principle of proportionality is, on occasion, difficult and troublesome; calls on the Commission, therefore, to eschew an overly narrow interpretation of the principle of subsidiarity, and to make use of reasonable criteria of self-restraint while examining the reasoned opinions issued by national parliaments within the EWS;
10. Considers that the Commission should not be granted the discretion to give notice of the date on which a draft legislative act is transmitted to national parliaments; believes, accordingly, that the Commission should not have the competence to monitor the eight-week period within which national parliamentary chambers may issue reasoned opinions on compliance with the principle of subsidiarity; calls, therefore, for the implementation of a technical notification period within the EWS, in order to accommodate the time delay between the date on which the draft legislative acts are sent by the Commission and the date on which they are actually received by national parliamentary chambers;
11. Suggests the implementation of a procedure whereby national parliaments could submit reasoned opinions to the Commission with the aim of positively influencing its powers of legislative initiative, and whereby the Commission could either legislate in line with such opinions or issue a reasoned veto underlining its reasons for not doing so; points out that such a procedure cannot consist of a right to legislative initiative, or a right to withdraw or amend legislation, as it would otherwise subvert the Union method and violate the Treaties;

#### ***Implementing the right to information***

12. Reaffirms that Article 12 TEU and Protocol No 1 give national parliaments the right to receive information directly from the European institutions;
13. Stresses that national parliaments would better cope with the information sent to them either by virtue of the EWS, or under their right to information, if the IPEX platform was given the relevance of an *Agora*, or public forum, for a permanent dialogue among national parliaments and between these and the European institutions; resolves, therefore, to promote the use of the platform for the enhancement of political dialogue, and for flagging up subsidiarity concerns swiftly; undertakes to instruct the staff of national parliamentary chambers on how to work with the platform;

#### ***Envisaging better interinstitutional cooperation***

14. Welcomes the existing cooperation between the European Parliament and national parliaments in the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC), in the Interparliamentary Conference on Common Foreign and Security Policy (CFSP-IPC), and within the framework of Article 13 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union; stresses that such cooperation should be developed on the basis of the

principles of consensus, information-sharing and consultation, in order to exercise control over their respective administrations;

15. Reiterates, however, the need to simplify the current framework of relations between the Union and national parliaments, as evidenced by the disproportionate number of entities, bodies and meetings at present;
16. Points out that strengthening political and technical dialogue between parliamentary committees, both at national and at European level, would be a greatly productive step towards full interparliamentary cooperation; takes the view that additional budgetary resources should be allocated to the Committees of the European Parliament, with the aim of allowing rapporteurs to undertake missions in order to informally discuss with national parliamentary committees the content of their reports;
17. Acknowledges the relevance of the Interparliamentary Committee Meetings (ICM) established in Articles 9 and 10 of Protocol No 1; believes that better interinstitutional cooperation could be attained if the ICM were given more relevance by the Members of the European Parliament and were prepared in closer cooperation with national parliamentary chambers;
18. Recommends that national parliaments be involved in the foreseeable enhancement of the Common Security and Defence Policy; believes that such involvement should be settled in close cooperation with the European Parliament, namely through joint interparliamentary meetings between representatives from national parliaments and Members of the European Parliament and via a prolific political dialogue between a full-fledged Committee on Security and Defence in the European Parliament and the corresponding national parliamentary committees;
19. Considers that an enhanced political and legislative dialogue between and with national parliaments would favour compliance with the objectives set out in the inter-institutional agreement on better law-making;

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20. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.