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National parliaments as collective actor of European citizenship

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EXECUTIVE SUMMARY

The European Union (EU) has been contending with the issues of legitimacy and responsibility in regard to state integration for over half of its existence. The EU and its member states are therefore endeavouring to implement new innovative methods which could bring the EU closer to its citizens. EU citizenship and the existence of the European ombudsman, both of which emerged in the EU in the 1990s, serve as examples of such activities. One of the most recent efforts to bridge the gap between the EU and its citizens is through the collective involvement of national parliaments in the EU decision-making process. This report analyses national parliament participation in the decision-making of the EU and evaluates how the national parliaments as a collective actor have performed thus far. It explains the collective scrutiny mechanisms introduced by the Lisbon Treaty. After that, it provides an analysis of the methods and mechanisms that exist in EU member states for collective parliamentary scrutiny and in more details looks at the praxis of this oversight in 5 EU member states. The fifth part of the study is devoted to the analysis of how collective scrutiny has functioned since the Lisbon Treaty came into force (1 January 2010) up to the end of 2014 (31 December 2014). It is based on the author's own dataset of EU legislative items which were sent to national parliaments and their chambers for scrutiny during the analysed period. The last section is devoted to a final summary of the results. Part of the conclusion is also a sub-chapter dealing with the dimension of policy advising. Its goal is to provide a recommendation for the future role of national parliaments as a collective actor in European integration. In this sense, the results of this study claims that this role should be strengthened. First, it would seem to be more appropriate if the role of national parliaments could also be enriched by the opportunity to enter the process in a positive way. Additionally, it would be beneficial if the parliaments could comment on a wider range of problems in the context of legislative proposal oversight. First, it seems that they have already adopted this approach (in that the Commission is obliged to at least respond to comments which do not adhere to the rigid definition of subsidiarity), and second, this relaxation of the definition will likely increase the motivation of parliaments to actually comment on the legislation.

Key words: Early Warning Mechanism, European Union, EU legislation, Oversight, Subsidiarity

1. INTRODUCTION

The European Union (EU) has been contending with the issues of legitimacy and responsibility in regard to state integration for over half of its existence. In terms of its decision-making structure, these debates have predominantly occurred in the European Parliament (EP). The introduction of direct elections in 1979 was important for democratising and legitimising membership in the European Communities. In recent years, the EU has intervened in a great number of political, social and economic areas which are salient for EU member state citizens. This has led to the simultaneous weakening of support for European integration by citizens. The EU and its member states are therefore endeavouring to implement new innovative methods which could bring the EU closer to its citizens. EU citizenship and the existence of the European ombudsman, both of which emerged in the EU in the 1990s, serve as examples of such activities. One of the most recent efforts to bridge the gap between the EU and its citizens is through the collective involvement of national parliaments in the EU decision-making process. Introduced into EU primary law by the Lisbon Treaty, this new role of national parliaments was the result of a several decade-long process. This report analyses national parliament participation in the decision-making of the EU and evaluates how the national parliaments as a collective actor have performed thus far. It represents one of the first comprehensive studies of this phenomenon.

European integration can be optimistically regarded as a new opportunity for national parliaments as they are better able to represent citizen interests. The EU itself often uses this argument to defend the need for a greater involvement of national representative bodies. Nevertheless, this is not a very common view. On the contrary, in recent years national parliaments are predominantly perceived as the main institutional victims of European integration. This victim frame is the result of the recent interest which political science has paid to the role of national parliaments and parliamentarianism in the context of European integration. This interest is logical in light of the political reality. The increased role of national parliaments in the EU has become dynamic since the early 1990s, although the seeds of parliamentary oversight could be seen as early as the 1970s. The enactment of the Lisbon Treaty in December 2009 made this new level of participation explicit. In addition, parliamentarianism is often associated with democratic deficit in the EU and the lack of legitimacy of European integration. These problems have been examined in EU integration research since the late 1980s.

In their analysis of the relationship between national parliaments and the EU, a number of publications have focused on the perception of national parliaments as victims of European integration. Some of this research has focused on the strength and effectiveness of oversight tools which parliaments have vis a vis their executives, the analysis of coordination mechanisms, and research dealing with the formal rights provided to national parliaments by EU primary law. In this context, the above mentioned pessimism is probably justified. Whether as entire parliaments, or as their chambers, the national legislatures are at a disadvantage as individual actors in the European integration process. There are many reasons for this, including the limited capacity of parliaments, insufficient expertise in EU affairs, and the primary interest of their members in

national political issues. Additionally, there is no effective channel¹ through which national parliaments can directly influence the EU political system. The question is: What options do national parliaments have when acting as collective players? Until now, only limited attention has been devoted to this actorness, while the actual cooperation between national parliaments at the European level has been increasing since the early 1990s. National parliaments working in cooperation have also acquired specific instruments as a consequence of the adoption of the Lisbon Treaty.

The report is divided into several sections. The first one summarizes existing research on the role of national parliaments in European integration. This part also contains the methods and hypotheses. Next section explains the collective scrutiny mechanisms introduced by the Lisbon Treaty. Following part of the report provides a brief description of the methods and mechanisms that exist in EU member states for collective parliamentary scrutiny. Next, individual chambers are classified on the basis of identified parameters. As substantial differences exist among chambers and parliaments of EU member states, for the presentation of various mechanisms five model cases are analysed in detail, each illustrating a different form of collective oversight. The fifth part of the study is devoted to the analysis of how collective scrutiny has functioned since the Lisbon Treaty came into force (1 January 2010) up to the end of 2014 (31 December 2014). It is based on the author's own dataset of EU legislative items which were sent to national parliaments and their chambers for scrutiny during the analysed period. The last section is devoted to a final summary of the results. Part of the conclusion is also a sub-chapter dealing with the dimension of *policy advising*. Its goal is to provide a recommendation for the future role of national parliaments as a collective actor in European integration.

¹ In the sense of an institution that would represent the interests of national parliaments in the same way as, for example, the Council of the EU represents the interests of the executives, or the European Committee of the Regions represents the interests of regional and local self-governing bodies.

2. REFLECTIONS ON RESEARCH AND RESEARCH QUESTIONS

Most broadly, national parliaments and EU parliamentarisation are examined in the context of a) the legitimacy of European integration and the presence/absence of a democratic deficit in the EU and b) the phenomenon of Europeanisation. Because of the nature of national parliaments and EU parliamentarisation, these phenomena mingle and are difficult to separate. Debates on both legitimacy-democratisation and Europeanisation deal with the transfer of political power and with the ability of different levels of the EU political system to work with this power in a reasonable way. Beginning as early as the 1990s, EU democratisation has been considered to be desirable, whereas the role of national parliaments and EU parliamentarisation are both seen as important elements of the standard version of democratic deficit. Under this conceptualization of a democratic deficit, the EU is criticised for deficiencies in EP and European elections and for decreasing the importance of national representative bodies in the European integration in favour of the executive (Hix, Høyland 2011: 132–133). The so-called de-parliamentarisation is the most discussed phenomenon related to national parliaments.

De-parliamentarisation can be defined as the process in which European integration leads to a weakening or loss of parliamentary control over the executive. This happens through constitutional changes, as well as through the political process of European integration. European integration is seen as the process of the adoption of European legislation with a limited opportunity for national parliament involvement. Firstly, national parliaments are presented as the victims of European integration in important EU theories. For example, Moravcsik (1998) states that European integration strengthens national governments at the expense of their parliaments as the parliaments, unlike the governments, do not have access to relevant information.

Additionally, several works of empirical research, have confirmed the theoretical assumptions. In their research overview of the Europeanisation of EU member states' political systems, Goetz and Meyer-Sahling (2008) identified three trends: the de-parliamentarisation, the bureaucratisation of national politics and the politicisation of the EU, and the centralisation of European national politics accompanied by the strengthening of regional administrations in the member states. More specifically, Rometsch and Wessels (1996) and Wessels, Maurer and Mittag (2003) identified the strengthening role of the prime minister, the central role of the government in relation to governance, a high level of European administration coordination, and a weak involvement by the parliaments throughout the EU member states. Kassim, Peters and Wright came to the same conclusion in their analysis of the coordination mechanisms of EU affairs in the EU member states: the role of the parliaments is weak and the ability to control European legislation is low. Even if we accept O'Brennan and Raunio's (2007: 8) claim that the pessimistic arguments which blame the destruction of the golden era of parliamentarianism on European integration are based on unrealistic assumptions, the decrease of parliamentary power *vis a vis* other actors and institutions in the decision making process seems indisputable.

Extensive research has been carried out in the analysis of the individual oversight of the national parliaments in the area of EU affairs. The importance of this analysis continues to grow as European integration evolves (Winzen 2012). With a certain amount of simplification, the existing studies can be categorised into descriptive texts, which primarily describe the methods of oversight and execution, and the texts which attempt to explain

the setting and implementation of the oversight. There are frequent attempts to interconnect both perspectives in collective monographs in order to achieve more theoretical and abstract explanations.

Studies which have focused on the EU 15 countries (e.g. Auel 2006; Pollak, Slominski 2003) tend to predominate in the descriptive research; literature dedicated to eastern enlargement states is less common and generally targets the formal scrutiny environment (e.g. O'Brennan, Raunio 2007, Kietz 2006). There are far more studies explaining the differences of the power of scrutiny in the old member states (e.g. Raunio 2005, Saalfeld 2005) than in new member states (Karlas 2011a, Kietz 2006). Other theoretical work follows this geographical division. In 2011, Karlas (2011b) published the first complex mapping of the entire EU. Only two studies explain individual oversight across the EU (Hamerlyová 2007, Karlas 2011b).

The existing research has provided several possible explanations for what determines the power of individual oversight. Length of membership is considered the strongest factor for explaining the power of oversight (e.g. Hamerly 2007; Kietz 2006; Saalfeld 2005). Other studies proved broader empirical validity for public Euroscepticism (Raunio 2005, Bergman 2000), the general power of parliament (Karlas 2011a; Raunio 2005; Kietz 2006), and the frequency of minority (Bergmann 1997; Saalfeld 2005) and coalition governments (e.g. Saalfeld 2005). The most complex study, Karlas (2011b), confirmed that the necessary condition for strong individual oversight is either date of accession (length of EU membership) or the strong authority of parliament. According to Karlas, the power of individual oversight is generally more dependent on the preceding institutional patterns than on the distribution of interest among the national political system (Karlas 2011b: 190-191).

There is also interesting research focused on the mutual relations between EU parliamentarianism and the development of national parliaments. Winzen et al (2012) point out that the development of the authority of the national parliaments and the EP paralleled and that national parliaments are able to respond flexibly to the presence of the EP. In a later study, Winzen et al (2014) found that the composition of a national parliament (in terms of attitude towards European integration) directly influences the attitude of the parliament to the EP authority. National parliaments which operate in more pro-European systems tend to create less strict monitoring mechanisms of the European integration processes.

In contrast with the above mentioned topics, research focused solely on the collective activities of national parliaments is more sporadic. The existing studies mainly focus on limited topics and were prompted by the Early Warning Mechanism (EWS) introduced in the first version of Constitutional Treaty and later implemented by the Lisbon Treaty. In this line of research, the theoretical works prevail over the studies which analyse how collective oversight and communication actually work. In addition, the complex analytical studies of the early warnings were primarily theoretical (Kiiver 2012).

Before the EWS came into force, studies differed on its potential significance. From a purely empirical perspective, it was thought that EWS would have a minimal effect on secondary EU legislation, and the palette of arguments was colourful. Kiiver (2008) supposed that, within the EU political system, the EWS would serve

more as a signal to the Commission than as a warning to the individual states that important legislation was being drafted in the EU. Raunio (2010) pointed to the generally low significance of the subsidiarity for the parliaments, the intricacy of inter-parliamentary communication/coordination, and to the different logic of domestic parliamentary work. Besides the setting and the real implications of the system of EWS, its ability to act as watchdog of subsidiarity, i.e. making the EC submit truly necessary legislative proposals, also provoked doubts. Cooper (2006) pointed to the absence of the proportionality principle as a motive for submitting a reasoned opinion; he believed this was intended to weaken the arguments made to convince the Commission of the objections of the parliaments. Van Kresbergen and Verbeek (2007) noted the ambiguity of the definition of subsidiarity and the lack of acceptance of the term as an EU norm.

Another phenomenon seen in the context of the EWS is the increase in power of parliamentary administration. This happens when the duties of parliamentary members are transferred to the administration due to the increase in their work load. Högenauer and Neuhold (2013) identify four types of administrative involvement in the review of EU legislation. They claim that the introduction of the EWS strengthened the advisory role of the administration due to the increased volume of documents to be reviewed by the parliaments as well as to the low level of importance attributed by the deputies to the EU affairs.

Several expectations were expressed in relation to the general motivation of parliaments to submit reasoned opinions. Within a delegation or constitutional frame, i.e. one which relies on the political knowledge of instruments or with the capacity of deputies, it is probable that reasoned opinions would be submitted by the parliaments that do not decide in plenary, or by delegates who control European legislation in sectoral committees. The motivation to submit a reasoned opinion is lower for parliaments where a strong mandate tradition exists (Christiansen, Högenauer, Neuhold 2014). On the contrary, in a cultural frame (Auel 2005), the willingness to submit a reasoned opinion is based on the parliamentary tradition of the given body. This is influenced both by the orientation of the deputies and by their expectations of how the parliament is supposed to function. So the traditional relations between the opposition and coalition, executive and legislature and, last but not least, the public attitude to the EU, play a role. (Wessels 2005; Auel, Benz 2005) The negotiation frame shifts the expectations from the macro level to the micro level and supposes that the submission of a reasoned opinion is carried out because of media pressure or the political exigency of the reviewed bill.

Last but not least, the EWS was examined in the context of discussions on legitimacy. Expert expectations were not unambiguous, and the debate varied from slightly positive expectations (e.g. Barrett 2008; Maurer 2008; Kiiver 2012) to scepticism (Fraga 2005; Raunio 2007). Based on an analysis of “testing for subsidiarity”, and an analysis of IPEX database use, Knutelska (2013) came to the conclusion that both the subsidiarity test and the use of the IPEX database strengthen the collective action of national parliaments and can contribute to the greater legitimacy of the EU.

Analyses of how the EWS or the testing of subsidiarity function are comparatively rare. When analysing the subsidiarity testing, Knutelska (2011) pointed to several factors which limit the cooperation of parliaments – the time allotted for the review, the timing of the start of the review process, and the quality of coordination.

Research on the application of the EWS focuses mainly on the circumstances of successful early warnings; the first early warning, applied to the Monti II regulation in October 2012, attracted the most attention, primarily from the legal arena (Fabbrini, Granat 2012; Goldoni 2014). There are so far only two studies on the application of the EWS which deal with a large number of cases, done by Gattermann and Heffler (2013, 2015). In their analyses, they covered the period from 1. 1. 2010 to 31. 5. 2013, and focused on the factors which influence the ability of a parliament or its chamber to submit a reasoned opinion. Their study identified the level of conflict over the EU affairs policy in the given state and the saliency of the legislation as the key determinants of opinion submission. In both cases it is more likely that the parliament would submit a reasoned opinion. Chambers with a minority government where the revision of European legislation is within the competence of a particular sectoral committee were both more active in submitting opinions. Economic recession in a given country had a negative effect on opinion submission, as well.

A more theoretical attempt to examine the EWS was made by Cooper (2012). He claims that the EWS transforms national parliaments into a “virtual chamber”, thus transforming the present role of parliaments and parliamentarianism in European integration. This “virtual chamber” is able to fulfil all classical parliamentary functions – to influence the legislation, and to represent and create an environment for public debate.

Kiiver’s (2012: 135–139) attempt to categorise national parliaments according to their use of the EWS also attempts an empirical line of research. Kiiver proposes the introduction of a typology comprised of four categories. The first category is that of the so-called Literalists, considered by Kiiver to be those parliaments who argue for a literal application of the EWS in relation to the principle of subsidiarity. The second category is the so-called *Pseudo-co-legislators* who, according to Kiiver, are those parliaments which see the EWS as a chance to influence an EC legislative proposal – their argumentation relates exclusively to the assessment of the subsidiarity principle. The third category is that of the so called *Pre-empters* who intentionally do not use the EWS, as they believe that it has no ability to change anything. Instead, the parliaments belonging to this category focus on the control of their governments and employ political dialogue. And finally, the last category is comprised of the so called *Absentees*. These are the parliaments which do not use the EWS because of their low interest in European integration.

The summary of the existing research indicates that the research of collective behaviour of EU national parliaments is fragmented, and rather than a comprehensive analysis, only the analysis of partial topics has been carried out. The main variables and expectations which influence the promotion of collective cooperation by national parliaments can be derived from the existing research. In the context of thus-far completed collective activities, these variables are the settings in which **mechanisms are implemented by the parliaments** (time limits), **inner parliamentary and chamber capacities to process legislation** (number of staff) and **the setting of the review process** (role of the specific committees in the monitoring and submission of a reasoned opinion). From a research perspective, the implementation of the oversight and communication mechanisms, as well as factors that are relevant to the individual oversight level, are interesting. These factors are the **length**

of EU membership of the country, the level of Euroscepticism and internal political factors (authority of the parliament, existence of minority governments). In order to take all these variables into account, the report will answer following research questions:

- 1. Which of the factors that have been identified as important predictors of parliamentary involvement into the EU affairs by existing research influence a parliament/chamber willingness to participate in the EWS?*
- 2. How important role do these predictors play in affecting a parliament/chamber willingness to participate in the EWS?*

Before providing answer to these main research questions, the report analyses mechanisms of collective oversight in EU member states and illustrates these mechanisms on five case studies where process of collective oversight is described in details. The purpose of this part is to identify to which extent is the collective oversight designed as an uniform mechanism, how its implementation differs across EU member states and what consequences come from these differences.

2.1 METHODS USED AND ANALYSED DATA

When it comes to the methods used, the report combines descriptive comparison and statistical analysis. Description and subsequent comparison is used for analysis of tools that parliaments use for EU legislation oversight. To explain the factors influencing the willingness of parliaments to apply the mechanisms of collective collaboration, the statistical method of binary logistic regression is used. The purpose of the binary logistic regression is to provide in brief the probability of change of the value of the independent variable or variables for the change in value of the binary dependent variable (Field 2009: 264-315). Logistic regression was chosen because the nature of one of the dependent variables is based only on two values – the parliament either applies the instrument of collective collaboration or it does not. The logistic regression method is used in the explanatory part of the study.

Regarding data, the first part, focusing on a description and summary of the parameters of collective collaboration in the EU and the chosen member states, is based on official parliamentary and chamber documents, entries in the IPEX database, interviews with the actors responsible for the execution of collective oversight in the parliaments, and on questionnaires. The second part, analysing the collective oversight practice of the national parliaments and their chambers, works with a dataset formed on the basis of the data available in the IPEX database.

3. TREATY OF LISBON AND NEW MECHANISMS OF THE COLLECTIVE OVERSIGHT OF EUROPEAN INTEGRATION BY NATIONAL PARLIAMENTS

Unlike the Constitutional Treaty, the *Treaty of Lisbon* is not a completely new document, but rather is the revision of pre-existing versions of primary law – the Treaty of Lisbon revised the Treaty on European Union (TEU) and renamed it the Treaty on the Functioning of the European Union (TFEU). The EU also reverted to the traditional process of primary law revision. This took place in intergovernmental conferences which excluded national parliaments from active participation in shaping the treaty.

From the content perspective, the Treaty of Lisbon strengthened the role of national parliaments as collective actors to its thus-far highest level. Their role in European integration was first mentioned in the primary law in article 12 of TEU, and this signified a clear qualitative change. What is more, national parliaments are repeatedly mentioned in the body of the treaty as both the recipients and providers of information (for overview see Kiiver 2011: 537-538). The wording “on the role of national parliaments” and “protocol on the application of the principles of subsidiarity and proportionality” remained from the content (and logic) of the Protocols from the Constitutional Treaty. The control mechanism of the principles of subsidiarity and proportionality was specified, introducing a differentiation between the institutions which assess possible infringements of either of the principles.

The protocol on the role of national parliaments in articles 1 and 2 defines the nature of the documents to be sent to the national parliaments. These documents are not exclusively the legislative acts² (Article 2 of the Protocol on the role of national parliaments), but also include EC consultation documents (Article 1 of the Protocol on the role of the national parliaments). Each legislative draft must be accessible in all official EU languages, and national parliaments are allowed 8 weeks to prepare their opinions (Article 4 of the Protocol on the role of national parliaments). There is an exception in the case when the European Council decides to launch the simplified revision procedure provided for in Article 48 of the Treaty on European Union. In this case, the period to submit an opinion is extended to six months (Article 6 of the Protocol on the role of national parliaments). Articles 6 and 10 of the Protocol on the role of national parliaments deal with inter-parliamentary cooperation, and its wording, particularly in relation to COSAC, maintains the content of the preceding primary law.

The second protocol, i.e. *Protocol on the application of the principles of subsidiarity and proportionality*, focuses on the practical implementation of oversight. It deals with the process of transmission of the proposals from the EU level (Article 4 of the Protocol on the role of national parliaments), defines the subsidiarity justification in legislative proposals (Article 5 of the Protocol on the role on national parliaments), and, most importantly, describes the rules of early warning. So the mechanism itself functions on the amount of dissent

² “Draft legislative acts” also include the initiatives from the EP, requests from the Court of Justice, initiatives from a group of Member States, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a European legislative act.

by the national parliaments. The well-established analogy for this is the use of penalty cards issued during football matches. Yellow or orange cards can be issued; the weight of dissent correlates to the upper limit of 56 votes available in the system, representing twice the current number of 28 member states. Each national parliament has two votes which are divided on the basis of each national parliamentary system; the possibility of consulting with regional parliaments³ as established in the Constitutional Treaty remained (Article 6 of the Protocol on role of national parliaments). In a bicameral parliament, each chamber has one vote. A minimum of one third of all possible votes (19 votes) results in the issuing of the yellow card. But when a proposal belongs in the domain of the former third pillar, the threshold is lowered to one quarter (14 votes). In the event that the issuer of a proposal, usually the Commission, receives a yellow card, it must review the proposal and decide whether to continue pursuing it, amend it or withdraw it. When the decision is made to pursue a proposal, a reasoned decision is given. The wording which provides the Commission with opportunity but not obligation is considered to be problematic from the point of view of the parliaments, as it creates an asymmetrical situation where the Commission assesses its own proposal but is not obliged to change it.

An orange card is issued when the simple majority of parliamentary votes express dissent. Again, the Commission may decide to maintain, amend or withdraw the proposal. If the Commission decides for the first option, it then forwards its own reasoned opinion to the EP and the Council. Based on the reasoned opinions of the national parliaments and the reasoned opinion of the Commission, both legislatures then consider whether an infringement of the subsidiarity principle has taken place. The Council requires that 55% of its members agree that a proposal has violated the principle of subsidiarity, and the EP decides by the majority of votes cast. When both institutions confirm an infringement of the subsidiarity principle, the legislative proposal is halted.

An orange card, when compared with the less strong yellow card, can be issued when the threshold of a simple majority is passed (at least 28 votes). This is innovative in comparison with the Constitutional Treaty. If there is EC interest in keeping the original wording of a proposal, the Council and the EP rule on the infringement of the subsidiarity principle. But, of course, the Commission makes an effort to not provoke any conflicts and to not let affairs proceed to legal action. Also, with regard to the Commission's increasingly vocal promotion of transparency, the Commission considers the EWS, in accordance with its name, to be a pre-emptive instrument for building consensus and listening to the national parliaments before the issuance of any card.

Concerning the competence of national parliaments, the Treaty of Lisbon also adopted a red card mechanism from the Constitutional Treaty allowing national parliaments to veto a simplified revision of primary law. Such a

³ At present there are 8 EU countries in which the regional parliaments have legislative powers. These countries are Austria, Belgium, Finland, Germany, Italy, Portugal, Spain and Great Britain (Committee of Regions 2013). So far the involvement of the regional parliaments in the EWS is rather small (Boronska 2013). Belgium employed one of the few submissions of a reasoned opinion procedure in May 2013 (IPEX 2013).

revision may happen either in terms of a change in EU Council decision making or in a change of EU legislation adoption.⁴

The last option provided by the Treaty of Lisbon in the *Protocol on the application of the principles of subsidiarity and proportionality* (and one which exceeds the framework of collective collaboration) is the possibility of lodging an appeal to the European Court of Justice on the grounds of a violation of the subsidiarity principle. The action is taken ex-post, which means after the legislation enters in force, and there is no need for any form of collective collaboration to take the action (Article 8 of the Protocol on application of the principles of subsidiarity and proportionality).

Although the *Treaty of Lisbon* is sometimes called a “Treaty of Parliaments,” the definition of the roles and positions of the national parliaments have not been universally accepted. Kiiver (2011), for example, has concerns about the ambiguity of all the substantial elements of the EWS: the absence of a clear definition of the actors eligible to submit reasoned opinions, the ambiguity of the time frame, the implementation of subsidiarity oversight into the law making process, and primarily, a persistently unclear definition of subsidiarity which allows parliaments to interpret it in many ways. Also, several reform initiatives have emerged in relation to the EWS (Kiiver 2012: 146-147). All of them are inherently based on the revision of the existing mechanism. The first initiative proposes a revision of the vote count needed for issuing a yellow card,⁵ the second initiative proposes expanding the scope of reasons to submit a reasoned opinion on issues of infringement of legality and proportionality, the third initiative proposes extending the time period to more than the current eight weeks, and the fourth initiative proposes a stricter assessment of an issued card.⁶

⁴ As in the case of the Constitutional Treaty, it was a shift from unanimity to qualified majority, and a shift from special legislative procedure to the standard procedure.

⁵ The proposals to lower the threshold to 25% or to change the threshold mechanism to a mechanism used to establish a blocking minority in the Council of the EU, can serve as an example.

⁶ In this context it mainly means automatic assessment of the subsidiarity infringement not by the Commission but by the EP and Council of EU or, when assessing controversial issues, by the European Council.

4. SCRUTINY AND COMMUNICATION MECHANISMS IN EU MEMBER STATES

4.1 COLLECTIVE SCRUTINY DELIBERATION IN THE EU MEMBER STATES

Although the process of collective scrutiny of European legislation is intended to be a single mechanism, its foundation is in no way regulated. Usually each parliament regulates its own process through its own procedural rules. Therefore, with regard to the submission of a reasoned opinion, there are a variety of differences among the EU countries' parliaments. Three basic parameters have been identified, however: the opinion adoption procedure, the nature of the actors involved, and the form of opinion submission. A basic overview of the variations among member state chambers and parliaments is provided in table 5. The overview reflects the situation at the end of November 2014.

Table 1: Overview of the adoption procedure, actors involved and the form of reasoned opinion submission in EU member state parliaments/chambers.

Parliament/Chamber	Decision procedure	Actors	Form
Nationalrat (AT)	Decision of committee	Sub-committee for EU	Letter
Bundesrat (AT)	Decision of committee	Committee for EU ⁷	Letter
Senat* (BE)	Decision in plenary session	Sectoral committee ⁸ Bureaucratic apparatus Plenary session	Official text and report
Chambres des Représentants (BE)	Decision of sectoral committee with a possible plenary vote	Bureaucratic apparatus Sectoral committee Plenary session Regional parliament	Report
Narodno Sabranie (BG)	Decision in plenary session	Sectoral committee Committee for EU Plenary session	Report and accompanying letter
Vouli ton Antiproponon (CY)	Decision of committee	Committee for EU	Report
Poslanecká sněmovna (CZ)	Decision of committee, decision in plenary session upon the request of the committee chairperson	Committee for EU Sectoral committee Plenary session	Resolution and accompanying letter
Senát* (CZ)	Decision in plenary session	Committee for EU Plenary session	Resolution
Folketings (DK)	Joint decision of committee for EU and sectoral committee	Sectoral committee Committee for EU	Letter

⁷ For the purposes of the table, the Committee for EU is any committee with competence over European integration administration. The specific names of these committees vary among the parliaments.

⁸ The term sectoral committee means a specific sectoral committee which deals with the topics and issues of a specific policy.

Tweede Kamer (NL)	Decision in plenary session	Committee for EU Plenary session	Letter
Eerste Kamer (NL)	Decision in plenary session	Committee for EU Plenary session	Letter
Riikogu (EE)	Decision in plenary session	Committee for EU Plenary session	Resolution and accompanying letter
Eduskunta (FI)	Decision in plenary session	Grand committee Plenary session	Resolution, report and accompanying letter
Assemblée nationale (FR)	Decision of sectoral committee with possible plenary decision	Committee for EU Member of Chamber Sectoral committee Plenary session	Letter
Sénat* (FR)	Decision of sectoral committee with possible plenary decision	Committee for EU Member of Senate Sectoral committee Plenary session	Letter and report
Bundestag (DE)	Plenary decision or decision of authorised Committee for EU	Committee for EU Sectoral committee Plenary session	Resolution, report and accompanying letter
Bundesrat* (DE)	Plenary decision or decision of authorised Committee for EU	Committee for EU Sectoral committee Plenary session	Resolution and accompanying letter
Voulli ton Ellinon (EL)	Joint decision of committee for EU and sectoral committee	Sectoral committee Committee for EU	Report
Országgyűlés (HU)	Decision in plenary session	Committee for EU Plenary session	Resolution
Dalí (IE)	Decision in plenary session	Committee for EU Plenary session	Report and resolution
Senát* (IE)	Decision in plenary session	Committee for EU Plenary session	Report and resolution
Camera dei Deputati (IT)	Decision of committee with a possibility of plenary decision	Committee for EU Plenary session	Report and accompanying letter
Senato della Repubblica* (IT)	Decision of committee with a possibility of plenary decision	Committee for EU Sectoral committee Plenary session	Report and accompanying letter
Saeima (LV)	Decision of Committee for EU	Committee for EU Sectoral committee	Report and accompanying letter
Seimas (LT)	Decision in plenary session	Committee for EU Member of Seimas Political faction Sectoral committee Government Plenary session	Extract of committee report, accompanying letter, plenary resolution
Chambre des Députés (LU)	Plenary decision or decision of presidium	Sectoral committee Presidium Plenary session	Resolution
Kamra tad-Deputati (MT)	Decision of presidium	Committee for EU Presidium Bureaucratic body	Report and accompanying letter
Sejm (PL)	Decision in plenary session	Committee for EU Plenary session	Resolution, report and accompanying letter

Senát* (PL)	Decision in plenary session	Committee for EU Plenary session	Resolution, report and accompanying letter
Assembleia da República (PT)	Decision in plenary session	Committee for EU Sectoral committee Plenary session	Resolution, sectoral committee report, accompanying letter
Camera Deputatilor (RO)	Decision of presidium or plenary	Committee for EU Sectoral committee Presidium	Letter
Senatul* (RO)	Decision of presidium	Bureaucratic body Committee for EU Sectoral committee Presidium	Letter
Národná rada (SK)	Decision of Committee for EU	Committee for EU Sectoral committee	Resolution
Državni sbor (SI)	Decision of Committee for EU with possibility of plenary	Committee for EU Sectoral committee Plenary session	Resolution, committee report and accompanying letter
Državni svet* (SI) ⁹	-	.	.
Cortes Generales (ES) ¹⁰	Decision of Committee for EU with possibility of plenary	Committee for EU Political groups Group of members of the Common committee for EU Plenary session	Report and accompanying letter
Riksdag (SE)	Decision in plenary session	Sectoral committee Plenary session	Report and accompanying letter
House of Commons (UK)	Decision in plenary session	Committee for EU Plenary session	Report and accompanying letter
House of Lords* (UK)	Decision in plenary session	Committee for EU Member of House Plenary session	Report and accompanying letter
Hrvatski sabor (HR)	Decision of Committee for EU	Committee for EU Member of Sabor Parliamentary committee Political group Government	Report

Source: author, based on European Parliament 2013 and rules of procedure of the parliaments. Marked chambers (*) are lower chambers of parliament.

With respect to the first criterion, the submission procedure of a reasoned opinion, parliaments are predominantly divided into those who submit a reasoned opinion by committee decision and those who submit a reasoned opinion by plenary decision. There are also cases which employ both methods – committee

⁹ In Slovenia, the lower chamber has both votes. The Upper chamber does not participate in the monitoring procedure.

¹⁰ Although Spain has a bicameral parliament, a single common committee for the EU monitors European legislation.

decision is considered to be standard but under certain specific circumstances¹¹ the plenary session may decide.¹² The third mode is a decision by a chamber presidium; this is used, for example, by the Romanian parliament.

There is great diversity among the chambers in terms of the involvement of specific actors and the related nature of the decision making process. In this context, parliaments can be differentiated in several ways. First, the parliaments differ in whether the monitoring procedure is unequivocal or whether it permits exceptions. A typical deviation is the possibility of the ad hoc involvement of the actors, either in the formulation or submission of an opinion. The second differentiating element is the number of actors involved by default in the opinion making – in this context, two approaches can be identified: an exclusive approach, where there is a single body assigned to the revision which later may or may not vote on the decision; and an inclusive approach, which provides more actors with the opportunity to be involved, while a decision making authority still exists. Whereas the inclusive process does not limit the number of actors, in an exclusive approach there can be a maximum two actors in the entire decision making process. That is also why there are such differences between the chambers in the inclusive process – while although most commonly characterized by the involvement of the committee for the EU, the sectoral committee, and the plenary, the presence of other actors is not uncommon. For example, in the upper chamber of the parliament of the Great Britain, the submission of a reasoned opinion can be initiated by two individual members of the House, in the Spanish parliament, it can be two political factions or 2/5ths of the joint committee for the EU. The Belgian lower chamber allows the involvement of regional parliaments as well as the involvement of the parliamentary administration. In Lithuania, the government is also consulted during the process of drafting an opinion.

The third identified parameter is the complexity of the submission format of a reasoned opinion. In this context it is possible to distinguish between a simple form, i.e. a compact document such as a letter of resolution, and a complex form, when a parliament communicates their opinions using more than one document – typically a

¹¹ In the Belgian lower chamber, 1/3 of votes are required to verify the legislation. In the Czech Chamber of deputies and in the French lower chamber only the chairperson of the Committee for the EU can request a decision. On the contrary, in the French senate the chairperson of the Senate or faction asks to move the decision to the plenary. In Italy, several conditions exist. In the Italian lower chamber it is the government, one fifth of the EU committee members or 1/10 of the members of the chamber who can request a plenary vote; in the Senate it is the government or one third of the committee. In Luxembourg, if the 8 week time period does not allow a call of the plenary session, the decision-taking is transferred to the presidium. The Slovenian lower chamber votes as whole if recommended to do so by the Committee for the EU. In Spain, the proposal is transferred to the plenary of one or both chambers upon the request of one of the chambers. In the Romanian lower chamber, there is no defined condition for presenting the proposal in the plenary.

¹² The opposite procedure is applied by German parliament. Both Bundestag and Bundesrat, where the plenary voting is a rule, may in exceptional cases authorise the Committee for the EU to make the decision.

combination of a resolution or decision and an accompanying letter. But it is also not exceptional for a parliament to communicate its opinion using three documents.

The overview on the deliberation environment of a subsidiarity review shows that parliaments are difficult to generalise. For example, the intuitive assumption that there is a single setting for bicameral parliaments does not apply – the different positions of the Czech Chamber of deputies and Czech Senate, and the different values obtained for the Romanian parliament may serve as examples. It is also impossible to draw a clear line between upper and lower chambers saying that the lower chambers are more flexible than upper chambers. In both groups of chambers, there are those who conduct high levels (Slovenia for lower chambers, and France, for example, for upper chambers) and low levels (Slovakia for lower chambers, the Czech Republic for upper chambers) of deliberation.

4.2 INDIVIDUAL CASE STUDIES

Individual case studies focus on the detailed analysis of five selected cases. The analysed samples were created based on several criteria: the length of participation in European integration (the founding members versus the members who joined during the evolution of European integration), type of political system (presidential vs. parliamentary), type of parliamentary system (unicameral vs. bicameral parliament), type of polity of the country (centralised states vs. decentralised states), level of participation in the key societal policies (states fully participating vs. counties applying various exceptions, mainly related to the project of common currency) and, last but not least, the setting of deliberation process identified in previous section (weak, medium, high). The aim of the selection was to cover the maximum variety while maintaining a reasonable level of description – for this reason the geographic criterion, for example, which would require the inclusion of i.e. the Baltic region or South Europe, was not taken into the consideration.

Table 2: Overview of the analysed countries

Country	Accession to EU	Political system	Parliament	Polity	Participation	Deliberation ¹³
Great Britain	1973	Parliamentary	Bicameral	Decentralised	Incomplete	Medium
Federal Republic of Germany	founding member	Parliamentary	Bicameral	Decentralised	Full	Low
France	founding member	Presidential	Bicameral	Centralised	Full	Low
Czech Republic	2004	Parliamentary	Bicameral	Centralised	Incomplete	Medium
Sweden	1995	Parliamentary	Unicameral	Centralised	Incomplete	High

¹³ For bicameral parliaments, procedural efficiency was calculated for the both chambers.

4.2.1 GREAT BRITAIN

Great Britain has participated in European integration since the first enlargement of the European community in 1973. The country does not participate in all of the common policies – for example, it is not a part of the Schengen system and has secured an opt-out from the obligation to adopt the common currency. The British parliamentary system consists of two chambers. The lower chamber (*House of Commons*) is elected by a single ballot majority while the *House of Lords*, the upper chamber, is based on a system of delegates. Although the country is formally designated as a unitary state, the polity of Great Britain is decentralised. In the previous chapter, the general deliberative setting of collective oversight and communication was described as medium, and the House of Lords can be described as the stronger of the two chambers.

Several traditional characteristics can be identified in the British political system which significantly influence the setting and functioning of parliamentary oversight. First, Britain's strong parliamentary tradition results in substantial parliamentary authority across the political system (Huff – Smith 2015: 313). The second substantial feature of British politics is its (at the very least) reserved relation to European integration. After all, the term Euroscepticism has British origins; it was coined to describe the attitude of the British media toward European integration (Taggart 1998). European integration is traditionally considered by the majority of British politicians and the public to be an external and, to a large extent, forced phenomenon. The circumspect attitude toward European integration pervades the process of parliamentary oversight, which is executed in a very detailed way.¹⁴ In actual fact, the British parliament can deal with all EU documents. Last but not least, the long stable polity of Great Britain has, during recent decades, undergone a dynamic development in which particular segments of the country have been granted significant authority – Northern Ireland, Wales and Scotland have already gained their regional parliaments and in 2014, Scotland even held a referendum on independence. This non-stabilised polity development has a direct impact on the implementation of collective parliamentary oversight – as British regional parliaments gain legislative powers, they also become involved in the EWS.

The monitoring of European legislation and the process of collective oversight differ in both chambers; however, in both cases it can be classified as a document system (Huff, Smith 2015: 313). With regard to the influence on the government, the more substantial role is played by the lower chamber where the oversight process starts when a legislative proposal is received from the EU. Within 10 days, the government sends an explanatory opinion which includes an assessment of the subsidiarity principle to the lower chamber. The lower chamber has not created a specific procedure to assess subsidiarity¹⁵ and uses a common assessment procedure for European legislative. Here, the key role is played by the *European Scrutiny Committee*. Its

¹⁴ Both chambers can, during the subsidiarity review process for example, raise an objection forestalling the British government from formulating and enforcing its general position for negotiating in the Council of EU and its levels (Committee of Regions 2013: 93-94).

¹⁵ The establishment of a specific procedure was requested in 2009 in the report by the European Scrutiny Committee.

competence is to assess the level of seriousness for Great Britain of the documents received from the EU. The European Scrutiny Committee submits the received documents to the so-called European committees.¹⁶ Also, sectoral committee opinions may be requested for the preparation of reasoned opinions. This role is informal, however, and depends on the level of involvement of the individual committee members or, as the case may be, the involvement of the committees. The European Scrutiny Committee usually sends the legislative proposals to the sectoral committees but rarely asks for their opinion. The European Scrutiny Committee decides whether to call for a debate on the analysed proposal either in the European committee or in the plenary. The submission of a reasoned opinion is always decided upon in the plenary session.

In the Lower chamber, as with the House of Lords, the role of the administration is important in the early planning process. Administrative sections sort the documents by level of significance and scrutiny required (Huff, Smith 2015: 320). In the Lower chamber there are eight employees – two clerical workers, four policy experts and two lawyers who are dedicated to the subsidiarity control itself (e-mail from Sarah Davies, 10 May 2015).

The review of European legislation is one of the key activities of the House of Lords (Urbanová 2011: 8-9). The primary role in the upper chamber is played by the European Union Committee whose competences are very broad in the area of European administration. In terms of collective oversight and cooperation, the task of the European Union Committee is to provide recommendations for the submission of reasoned opinions decided in plenary. The European Union Committee also coordinates the activity of the six sub-committees focused on monitoring EU activity in special policy areas.¹⁷ The subsidiarity review is, in practice, carried out by these sub-committees – if they conclude that the principle has been infringed upon, they prepare a report outlining the infringement of the subsidiarity principle on which the proposal for a reasoned opinion is based. The sub-committees act based on the recommendations of the chairperson of the European Union Committee who analyses, in turn based on the recommendation of the parliamentary administration, the explanatory opinions of the government and identifies the potentially problematic proposals.

The activity of the involved committees and sub-committees in the House of Lords is supported by 24 administrative employees. When a decision to prepare a reasoned opinion is made, its wording is first

¹⁶ Committee A focuses on issues of energy, climate change, environment, food and rural areas, transportation, local administration and forestry. Committee B deals with the administration of employment and pensions, the Treasury, foreign affairs and the Commonwealth. Finally, Committee C deals with the administration of entrepreneurship, innovations, development, education, culture, youth and sport.

¹⁷ These committees are the EU Economic and Financial Affairs Sub-Committee; the EU Internal Market Sub-Committee which also scrutinises EU proposals on Infrastructure and Employment; the EU External Affairs Sub-Committee; the EU Energy and Environment Sub-Committee which also scrutinises EU proposals on agriculture, fisheries, the environment and energy; the EU Justice Sub-Committee which also scrutinizes EU proposals; the EU's institutions, agencies and other bodies and consumer protection; and the EU Home Affairs Sub-Committee which also scrutinizes EU proposals on health and education.

proposed by 3 administrative workers from the relevant sub-committees and two legal advisers. In the process of formulating an opinion, the primary role is played by the legal adviser. In the second phase, once an opinion is approved by the European Union Committee, two additional administrative workers and the chamber representative to the EU become involved in the process. In terms of administrative support, there are eight employees involved in the creation of one reasoned opinion (e-mail from Luke Hussey, 7 May 2015).

Although the requirements to establish a joint committee for the EU¹⁸ were heard several times during an attempt to modernise British parliament, both chambers operate independently from each other. Therefore the coordination and communication during the submission of reasoned opinions is informal and is not based on any official mechanism or obligation (Huff, Smith 2015: 322).

In Britain, the regional assemblies of the individual parts of the country are also given the opportunity to participate in the oversight process, although they predominantly serve in an advisory capacity. Their parliaments may ask the British parliament to submit a reasoned opinion, but the final decision is not in their competence. Any clear and universal coordination mechanism is absent throughout the entire system; communication between the central parliament and the regions is ad hoc. Among the parliaments of Wales, Northern Ireland and Scotland there are quite significant differences concerning the question of early warning, in particular regarding their involvement (Boronska 2013). None of the regional parliaments have established a committee specifically focused on the review of subsidiarity, nor are any special administrative staff assigned to execute this activity. There are also differences in procedure. Whereas the parliaments of Wales and Scotland have a special procedure for the subsidiarity review,¹⁹ the assembly of Northern Ireland analyses subsidiarity on an ad hoc basis.²⁰ In identifying relevant legislative proposals, the administration plays the primary role in both parliaments (Committee of Regions 2013: 95-97).

Table 3: Activity of British parliament in subsidiarity control

Year	Chamber	Subsidiarity reviews	Reasoned opinions
2010	House of Commons	79	1
	House of Lords	50	2
2011	House of Commons	146	3
	House of Lords	127	1
2012	House of Commons	79	3

¹⁸ For example in 2005 (Committee of Regions 2013: 94).

¹⁹ In Wales the procedure is regulated by the Rules of procedure, articles 21.9.–21.11. (National Assembly of Wales 2014: 88–89), in Scotland it is Chapter 10A of Standing Orders of the Scottish Parliament (The Scottish Parliament 2014: 147-148).

²⁰ In Northern Ireland the latest amendment of Standing order was in November 2014

	House of Lords	69	2
2013	House of Commons	130	6
	House of Lords	26	3
2014	House of Commons	38	1
	House of Lords	4	0

Source: author

The table 3 summarises the activity of both chambers of parliament in subsidiarity control during the period from 2010 to 2014. It can be seen from the table that the House of Commons is the more active British chamber, both in the number of reviews executed and number of reasoned opinions submitted. The House of Lords, on the contrary, is a less active chamber, both in Britain as well as in comparison with the chambers of other EU member states; a decrease in interest is particularly apparent during the most recent years analysed. While the findings may seem to question the current perception that the upper chamber of British parliament serves as the expert on European affairs, it must also be noted that subsidiarity control is only a small part of EU affairs. And as Huff and Smith (2015: 322–323) state, the House of Lords focuses much more on the political dialogue with the EC than on subsidiarity control.

4.2.2 FEDERAL REPUBLIC OF GERMANY

The Federal Republic of Germany (DE) is a founding member state which fully participates in all key EU policies. The country has a bicameral parliament where the directly elected Federal parliament (*Bundestag*) serves as the lower chamber and the delegated Federal council (*Bundesrat*) operates as the upper chamber. From a polity perspective, the German system can be designated as decentralised. The general deliberation environment on issues of oversight was identified in the previous chapter as weak. From a strictly formal perspective, German parliamentary power is considered to be strong although rarely applied. (Sprungk 2010: 2)

The backdrop for relations among the key institutional actors of German politics is seated in the combination of the legislative environment and common practice. The first component is based in law, specifically, the Basic Law for the Federal Republic of Germany which serves as the constitution of the country, the 2009 Act on the Responsibility for Integration in Matters concerning the European Union (*Integrationsverantwortungsgesetz*) as well as two 1993 acts, one of which regulates the interactions of the federal government and the Bundestag in EU affairs (*Gesetz über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union*)²¹ and the other which regulates the relations of the federation and its bodies toward the EU (*Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union*).²² The ruling procedures of both chambers were amended,²³ giving an explicit legal basis for the monitoring of EU legislation and exercising subsidiarity control.

²¹ The latest amendment of the law was in 2013.

²² The latest amendment of the law was in 2010

The monitoring of European legislation²⁴ takes place in both chambers in similar although not identical ways. The first step involves information about new EU legislation. Deputies receive the texts of the legislative proposals both from the EU and from federal government ministries. The document from the federal government always contains comments on the principle of subsidiarity. At the same time, parliamentary administrators individually monitor the EC legislative initiatives and identify those which may possibly be relevant to the subsidiarity principle. They also monitor the activity of parliamentary chambers of other EU member countries for the potential submission of a reasoned opinion. This phase is identical for both *Bundestag* and *Bundesrat*. The next steps differ.

In the *Bundestag*, the second phase assesses proposals which require a more detailed analysis of the subsidiarity principle. The competent body in this task is the Council of Elders (*Ältestenrat*); at the same time, they also decide which sectoral committee is going to be responsible for the analysis of the proposal. The sectoral committee then decides either to analyse the subsidiarity principle in more detail or it prepares a recommendation for the plenary meeting. A detailed analysis of subsidiarity indicates the suspicion of an infringement of the principle and the committee asks other actors for their input (for example, parliamentary factions or chambers of other member states). Also, other sectoral committees may be asked for an opinion. If the responsible committee decides in favour of the submission of a reasoned opinion it must consult with the Committee for European Affairs. Based on the recommendation of the responsible committee, the *Bundestag* plenary decides whether to submit the reasoned opinion. The reasoned opinion is then administratively disseminated to the relevant actors, the most important of which is the federal government. The *Bundestag* expects the government to present its rationale for the submission of the reasoned opinion in the Council of the EU. The European Commission is rarely the direct recipient of the reasoned opinion. (Mastenbroek, et al 2014)

The *Bundestag* administration is considered to be one of the most effective and powerful in the EU – it employs in total about 2,800 employees. (Höing 2015: 199) At least 11 employees are assigned to subsidiarity control itself and this number can grow ad hoc; the employees of the administration of other committees or employees working for party factions can be also involved in the control. (E-mail from Birgit v. Pflug, 12 May 2015)

The *Bundesrat*'s position, after having received a legislative proposal, is flexibly negotiated. The proposals are distributed to all *Bundesrat* members, and any number of committees can participate in the subsidiarity analysis; the Committee for the EU is always the committee responsible (in the *Bundestag* responsibility is assigned to a selected sectoral committee). Its position is therefore always presented in plenary, where the

²³ Articles 93, 93a a 93b of the Ruling procedures of *Bundestag*.

²⁴ The monitoring of EU legislation in the German parliament has two parts. The first focuses on the scrutiny of the subsidiarity principle, the second on forming the political response to the presented legislation (Committee of Regions 2013: 47).

submission of a reasoned opinion is decided upon. The plenary decides by weighted votes of representatives of the federal states. The opinion is again usually forwarded to the federal government and not directly to the nexus of the EU. The presidium of the *Bundesrat* is responsible for communicating its opinion to the relevant actors. Also, the representative bodies of the individual federal states have the opportunity to be involved in the oversight process, but their involvement up to this point is very weak, as the dominant role is played by the executive of the individual states in the German political system. (Boronska 2013)

Although the subsidiarity control in the *Bundesrat* is executed, in the strictest sense, in the individual federal states, it is administratively assisted by six employees. These are three high ranking officials (head of the committee administration and two committee heads), one intermediate official who takes care of documentation, and two clerical workers who serve as assistants. (E-mail from Andreas Veit, 15 May 2015)

With regard to inter-chamber cooperation, there is no formal provision in Germany which regulates the relation between *Bundestag* and *Bundesrat*. Nevertheless, there is an informal practice of sharing opinions and attitudes among the chambers, especially when one chamber is considering the submission of a reasoned opinion. (Committee of Regions 2013: 49) The behaviour patterns of both chambers during the subsidiarity control are different. Höing (2015: 201) explains this fact mainly by the existence of different majorities in both chambers.

The oversight practice in Germany can in fact be explained by two factors. The first is related to the nature of the German political system, often described as a system of highly disciplined and loyal political parties – in particular in relation to the government. This phenomenon weakens the whole scrutiny function of the parliament, as the government can usually rely on a stable and faithful parliamentary majority. In Germany, Parliament's oversight and influence on the EU related administration is not perceived as an ideal instrument for promoting the European interests of the German parliament – the direct influence on the federal government and its participation in the Council of the EU are considered to be both efficient and useful.

Aiming the control on the domestic institutions is not only caused by the tradition of the German system but also by the long-term positive and conflict-free relation²⁵ of German mainstream political parties to European integration. Both on the right and the left side of the political spectrum, European integration is considered to be good and this results in the generally accepted perception of Germany as the key actor responsible for the development of the EU. European institutions and European legislation are not perceived to be an external threat to German statehood.

²⁵ The reasons for this perception are mainly historical, and although the attitude of German politics to European integration becomes more critical – particularly in the 21st century – the foundation and comparatively decent success of the Eurosceptic Alliance for Germany (AfD) in the parliamentary elections in 2014 can serve as an example – a major change which would cause a turnaround of the German course cannot be expected in the foreseeable future.

Table 4: Activity of German parliament in subsidiarity control

Year	Chamber	Subsidiarity reviews carried out	Reasoned opinions submitted
2010	Bundestag	86	1
	Bundesrat	66	1
2011	Bundestag	86	1
	Bundesrat	136	4
2012	Bundestag	58	1
	Bundesrat	64	2
2013	Bundestag	129	0
	Bundesrat	112	3
2014	Bundestag	41	0
	Bundesrat	33	0

Source: author

As for the German parliamentary activities summarised in table 4, it is not possible to determine which chamber is more active. Whereas during the first years the Bundesrat was more active, during the second phase the trend reversed and the Bundestag is more involved. With regard to the ratio of received legislative proposals, both chambers are among the most active in the EU. But the large number of initiated reviews does not lead to an equally high number of reasoned opinions. The first reason for this is that German parliamentary oversight of the EU is generally directed toward the government (and not directly to the EU institutions or parliaments of EU member countries). The second reason is that German deputies perceive the submission of a reasoned opinion more as a political tool than as an instrument of law. (Höing 2015: 202)

4.2.3 FRANCE

Of the selected sample countries, France is a founding EU member state which participates in on all fundamental integration activities. France and Germany are considered to be the movers and shakers in the expansion of European integration. France's political representation is traditionally considered to be pro-European. The country has a bicameral parliament. The lower chamber takes the form of a national assembly (*Assemblée Nationale*) and it is elected in through a two-round majority system. The Senate (*Sénat*) is the main chamber and is formed indirectly by electoral colleges in the individual departments. France is traditionally considered a strongly centralised unitary state; the regions have no formal role in the process of collective oversight. Among the political systems of EU member countries, France is unique for its system which grants more power to the executive – in particular the president – at the expense of the parliament. It is therefore no surprise that in the domain of European integration, the authority of the French parliament is generally considered to be weak. (Rizzuto 2004)

The process of collective oversight is part of the French constitution. Article 88(6) obliges both the National assembly and the Senate to carry out this function. Both chambers are informed about the European legislative

proposals by the government. Both chambers are regulated by similar procedural rules²⁶ on forming a reasoned opinion and scrutinizing the European legislation process. (Thomas, Tacea 2015: 181) A proposal to submit a reasoned opinion can be suggested by any member of the National assembly or Senate. The proposal is then accepted by the Commission for European affairs²⁷ of the respective chamber. If the Commission approves the reasoned opinion, the proposal is forwarded to a sectoral committee. If the sectoral committee does not respond within 30 days the decision of the Commission for European affairs is considered final and the reasoned opinion is forwarded to the President of the EP, the President of the EC, and the Presidency of the Council of the EU and copied to the French government. The only difference between the chambers is that within the Senate there exists a working group which exclusively assesses the subsidiarity principle in the documents. The group always meets prior to the meeting of the Commission for European affairs and exclusively assesses the compliance with or infringement of this principle. In the National assembly, on the other hand, the pre-selection is made by the Commission for European affairs which can choose to initiate a subsidiarity analysis.

The role of the administration is similar in both chambers and is crucial in the selection of documents to be analysed more deeply. According to Thomas and Tacea (2015: 179–180), the administration does not rely on its own expertise during this process, which would be independent of the political preferences of the chambers. The administration does, however, closely cooperate with the members of parliament and is able to predetermine politically sensitive issues for the deputies/senators. There are nine employees dedicated to subsidiarity in the National assembly (e-mail from Marion Muscat, 12 May 2015); in the Senate there are 10 employees involved in subsidiarity and one of them serves as coordinator. (E-mail from David Mahe, 18 May 2015)

The French parliament generally considers a reasoned opinion to be an obstacle to integration, one which obstructs constructive participation, (Thomas, Tacea 2015: 183) and it focuses more on the oversight of its own government than on the collective oversight of proposed European legislation. Lower levels of interest in both chambers of the French parliament is also apparent in table 5, which summarises its recent activity in the collective oversight process. In France, the Senate is the more active of the two chambers and it submits more reasoned opinions. But according to Thomas and Tacea, (2015: 183) the greater involvement of the Senate does not mean it has greater interest in EU related administration; it is, rather, an instrument used by the Senate to consolidate its position in the French bicameralism.

²⁶ Articles 151.2.–151.10 in case of National assembly.

²⁷ Until 2008, each chamber of French parliament was permitted to have only six committees and there were no full committees dedicated to European integration.

Table 5: Activity of French parliament in subsidiarity control

Year	Chamber	Subsidiarity reviews carried out	Reasoned opinions submitted
2010	Assemblée nationale	23	0
	Sénat	15	3
2011	Assemblée nationale	9	1
	Sénat	36	6
2012	Assemblée nationale	8	0
	Sénat	17	7
2013	Assemblée nationale	11	2
	Sénat	25	5
2014	Assemblée nationale	5	0
	Sénat	1	1

Source: author

4.2.4 CZECH REPUBLIC

The Czech Republic joined the EU during the most massive enlargement wave in 2004. The Czech Republic participates in the all fundamental policies of the EU, with the exception of its absence in the Eurozone. The country has a bicameral elected parliament. The Chamber of deputies, the lower chamber, is elected in a system of proportional representation. The Senate is elected in a two-round majority system in single-mandate districts. Although the Czech Republic is divided into regions with their own regional councils, it is a unitary state. Regional councils do not have legislative authority and, as such, do not participate in the scrutiny of EU legislation.

From the perspective of the legislative setting, the constitution obliges the government to inform both chambers of parliament about European affairs. The competences and mutual relations are not legislatively governed in any other way; the rules of procedure of both chambers, amended after the adoption of the Treaty of Lisbon to be able to process the EWS, define the method of parliamentary oversight of EU legislation. Nevertheless, a system of intensive informal communication exists among the administrative constituents of the chambers dedicated to European integration.²⁸

The oversight process for EU administration is different in each of the chambers. In the Chamber of deputies, European documents are referred by the government to the Committee on European affairs. Based on the

²⁸ The administrative workers are in regular contact both through the governmental Committee for the European Union, with weekly working meetings, and through telephone and e-mail communication. They inform each other about controversial issues and strive to act in such a way that the parliament, when monitoring subsidiarity, outwardly acts in a unified way. (Interview with Jiří Kaustky, 13 March 2015, interview with Filip Ficner, 13 March 2015)

overview compiled by the Parliamentary institute,²⁹ the Committee chooses proposals which need to be further dealt with, and acknowledges others. When a proposal is chosen there is a specific correspondent who deals with it, and an employee of the Parliamentary institute³⁰ prepares an analysis which assesses any infringement of the subsidiarity principle. The initiative to carry out a subsidiarity analysis comes exclusively from the employees of the Parliamentary institute, either based on their own analysis or based on the initiative of other parliament. (Interview with Filip Ficner, 13 March 2015) The reasoned opinion is constructed based on the combination of the opinions of the expert and the correspondent; the government is also involved in the process through its representative who expresses the opinion of the government during the discussion of the proposal. Based on its decision, the Committee on European affairs can also refer the proposal to the corresponding sectoral committee³¹ or plenary. When a proposal is not referred to plenary, the Committee on European affairs alone makes the decision; this is also considered a plenary decision.³² The actor predominantly responsible for the submission of a reasoned opinion is the Committee on European affairs; the plenary may also participate in the decision making. The recipients of the reasoned opinion or resolution are the government and EC, or in some cases, a sectoral committee.

The Senate, as the upper chamber, debates the European documents in 2 committees; these are the Committee for European affairs and the Committee for foreign affairs, defence and security. The process as such starts in the Department for the European Union of the Senate Chancellery.³³ The relevant proposals are, based on regular weekly monitoring, selected by the chair of the Department for the European Union, the chair of the Committee for European affairs and the adviser of the Committee for European affairs.³⁴ The role of the

²⁹ The Parliamentary institute is an analytical department of the Chamber of deputies.

³⁰ Specifically, the Department for EU affairs. Seven employees run its administration. All of them deal with subsidiarity control, and each employee focuses on specific policies. If a proposal is found to be problematic then an analysis of the subsidiarity is carried out by three or four employees. Controversial cases of subsidiarity assessment are always coordinated by the Head of Department for EU affairs. (Interview with Filip Ficner, 13 March 2015)

³¹ Sectoral committees only rarely deal with European legislation (Urbanová 2011: 7). According to the Head of Department for EU affairs this happened only once during the many years of his career; the sectoral committees regard the forwarding from the Committee on European affairs with displeasure (Interview with Filip Ficner, 13 March 2015).

³² The Committee on European affairs consists of 15 members, its composition copies the composition of the Chamber of deputies. Therefore the possible individual decisions of the Committee are considered to be the legitimate decisions of the whole Chamber of deputies.

³³ There are 7 employees running the activities of the Department for the European Union, the expert adviser of the Committee for EU is outside of its structure.

³⁴ Through the electronic system EU Extranet there are about 40,000 documents sent per year to the Senate. Several hundred documents – for example 706 documents in 2014 – are selected as relevant for the Committee for European Union. The Committee for the European Union usually debates less than 10% of

Committee for European affairs is therefore general; in regard to European integration it deals with the documents which it considers to be important. The Committee for foreign affairs, defence and security deals with proposals related to the Common Foreign and Security Policy of the EU. According to the Rules of procedure of the Senate of PCR (Section 12 of the Rules of Procedure of the Senate of PCR), both of the committees may request the opinion of the sectoral committees. The assessment of subsidiarity infringement is made by employees of the Department for the European Union – upon whose expert advice the adviser of the Committee for European Union deals with the assessment. The role of the adviser is to make the arguments comprehensible for the political representatives and at the same time comply with the terminological requirements and requirements of the EC. (Interview with Jiří Kautsky, 13 March 2015) The final resolution of both committees must always be confirmed by the Senate plenary. The plenary also decides on the submission of the reasoned opinion. The recipients of the reasoned opinion are the government and EU institutions.

Both chambers of parliament have their own representative to the EU. Their roles in monitoring the subsidiarity are similar – they collect information and transfer it to the national level. In this way they substantially increase the effectiveness of the process. Relying on the information from IPEX is often inefficient, with respect to the parliamentary cycle and the meeting frequency of the committees concerned, and it is not possible to secure the relevant information in such a fashion. (Interview with Jiří Kautsky, 13 March 2015, interview with Filip Ficner from 13 March 2015)

The upper chamber of the Czech representative body, in terms of its current state, is categorized as the more active of the two chambers (Hrabálek, Strelkov 2012: 9); this is illustrated in table 12. Especially up to 2010, when the Civic Democratic Party (ODS) held a strong position in the Senate, there were, at the very least, reservations about European integration. The second chamber was similar to the British parliament – it regarded European integration as an external process which was necessary to control. The Chamber of Deputies and its members, however, have traditionally regarded European integration as insignificant. For example, the chairmanship of the Committee for European affairs is not, in comparison to the other committees, considered by political parties to be important³⁵ or prestigious. Subsidiarity control is, de facto, a

them – 53 documents were debated in 2014 and only 23 of them were legislative proposals. The selection of specific proposals is to a large extent incidental; one reason for this may be that the proposal was related to a proposal which was previously found to be problematic.

³⁵ The situation after the elections to the Chamber of deputies, when the chairmanship of the Committee for European affairs was a part of the coalition negotiations passed by the Christian and Democratic Union – Czechoslovak People's Party (KDU-ČSL), can serve as an example. In the words of Committee Chairman Ondřej Benešík, the party was the only one that had regarded the committee as important and cared enormously for it. (Interview with Ondřej Benešík, 21 May 2014) According to the employees of the administration, the situation changed for the better during the electoral term 2013 – 2017; in particular, an informal agreement of the political parties was established in the Chamber of deputies that now the committee must be completely and respectably appointed. (Interview with Filip Ficner, 13 March 2015)

matter for parliamentary administration in the Czech parliament. If deputies and senators take it into account at all, they consider subsidiarity control to be an obstacle to Commission's activities and not as an instrument which can improve the quality of legislative proposals. (Interview with Filip Ficner, 13 March 2015, interview with Jiří Kautsky from 13 March 2015)

Table 6: Activity of Czech parliament in subsidiarity control

Year	Chamber	Subsidiarity reviews carried out	Reasoned opinions submitted
2010	Poslanecká sněmovna	74	1
	Senát	22	1
2011	Poslanecká sněmovna	40	0
	Senát	59	0
2012	Poslanecká sněmovna	24	2
	Senát	35	0
2013	Poslanecká sněmovna	45	0
	Senát	50	2
2014	Poslanecká sněmovna	34	0
	Senát	14	1

Source: author

4.2.5 SWEDEN

Among the analysed countries, Sweden has medium-term experience with EU membership. The country does not participate in all key EU activities – they have opt-outed from the Common Foreign and Security Policy and do not participate in the Eurozone.³⁶ Sweden has a unicameral parliament (*Riksdag*), elected through a system of proportional representation; it can be categorized as a centralised country. Although Sweden is divided into 20 regions, the regions have no authority in the process of parliamentary oversight of European integration. The Swedish system, in terms of its deliberation processes on collective scrutiny, can be designated as strong.

European integration is traditionally considered to be an external matter in Swedish politics – coordination and oversight of the European administration was the responsibility of the ministry for foreign affairs for a long time after accession; it was subsequently transferred under the auspices of the Prime Minister's Office, indicating the domestication of European integration, as the country progressed toward EU membership. The government is traditionally considered the executor of Swedish politics, and the parliament is expected to carry out thorough supervision. The strong position of the parliament is also legislatively regulated and manifests

³⁶ Whereas the CFSP opt-outs are contractually regulated and based on the neutral status of Sweden, the absence in the Eurozone is caused by the political aversion of the country to the project of common currency – in comparison with, for example, Great Britain or Denmark, Sweden has no official opt-out negotiated.

itself in many other aspects of European policy.³⁷ The formal role of the parliament accentuates the self-perception of its members – the EWS is perceived as a safeguard against the undesirable supranational growth of European integration and as way to protect Swedish national interests. (Mastenbroek et al 2014: 100)

The Swedish system of collective parliamentary oversight can be considered very complex. Sectoral committees, the Committee for European affairs,³⁸ the President of Parliament, the Committee for constitutional matters and the plenary are involved. There is also an important function of administration which, for example, ensures communication between the parliament and its representative in Brussels. Despite this complexity, the oversight process itself is unambiguous and does not allow any alternative application. In the first phase of oversight (after receiving the legislation³⁹), the administration decides which corresponding sectoral committee has competence over the domain of the proposal and will analyse it. During its first meeting, the committee decides whether an opinion of another sectoral committee or government is needed to carry out the analysis. In the second round of negotiation, the responsible sectoral committee, based on the opinion of consulted committees or the government, decides on the submission of a reasoned opinion. The impulse to submit the opinion has to be given from at least 5 members of the committee; the committee decides by a majority of deputies. The third phase is the decision in plenary, when the responsible committee introduces the proposal of the reasoned opinion and presents the arguments justifying its submission. The parliament decides on the submission of the reasoned opinion, officially addressed to the Commission (and copied to the government) by a majority of the deputies.

The intensive involvement of the political actors also corresponds with the involvement level of the Riksdag administration. Just as sectoral committees are involved in the subsidiarity control, their administrations also have this competence; therefore, a total of 115 administrative employees may theoretically be involved in the subsidiarity control. Usually, however, the issue is handled by five employees – one employee from the responsible committee who usually informs the committee members, the head of the secretariat who is responsible for the quality of the analysis, and three employees dealing with the technical aspects of the subsidiarity control, for example preparing materials or documentation. (E-mail from Jakob Nyström, 8 May 2015) The role of committee employees is identical; the employees of the Committee for EU differ in the fact that they do not execute the control, but they make decisions on the distribution of legislative proposals among the individual committees. (Hageland 2015: 431)

³⁷ For example, since 2007 the Riksdag is obliged to analyse all Green and White books of the EC or other strategic documents of the EU. (Hageland 2015: 426-432)

³⁸ The members of the Committee for European affairs are also members of one of the sectoral committees.

³⁹ With the exception of the delegated acts and legislation where the EC has exclusive authority, the Riksdag analyses all legislation and only the deputies can decide which proposals may infringe the subsidiarity principle and therefore have to be analysed more in detail. (Mastenbroek et al 2014: 95)

To date, the Swedish parliament is the most active EU parliament/chamber in the execution of the subsidiarity control. The overview of its activity is summarised in table 7. It is apparent that the Swedish parliament reviews all EU legislation and is comparatively critical on issues of subsidiarity, as in the three analysed years infringement was found in more than 10% of the cases reviewed. There are several reasons for this. The first is the already mentioned Swedish political attitude toward European integration. The second reason can be seen in the intensive involvement of the sectoral committees which endow the oversight process with sufficient expertise and speed. This relates to the above mentioned extensive administrative capacity of Swedish parliament – the involvement of the sectoral committees logically leads to the involvement of their administration and this makes the oversight process faster and more effective.

Table 7: Activity of Swedish parliament in subsidiarity control

Year	Subsidiarity reviews	Reasoned opinions
2010	85	4
2011	150	18
2012	79	13
2013	133	14
2014	44	1

Source: author

5 ANALYSIS OF COLLECTIVE COOPERATION OF NATIONAL PARLIAMENTS

5.1 DATASET AND VARIABLES.

The initial data used for statistical analysis was dataset compiled by the author on the basis of two sources. The first and primary source was the IPEX database which tracks the activities of parliaments on the European agenda. IPEX contains information about whether a chamber or parliament began monitoring a legislative act, whether an oversight process was completed, whether it was accompanied by the provision of additional information for use by other parliaments, and whether oversight led to some further action – typically the initiation of political dialogue with the Commission or the submission of a reasoned opinion. Thus IPEX can be used to track all of the documents submitted by chambers and parliaments and the specific steps that were taken for subsidiarity control. For the period January 2010 - December 2014 there were 498 documents. In addition, a list of these documents was obtained from a European Commission staff member from the General Secretariat of the Commission who is responsible for communication with national parliaments. This list serves as the second authoritative basis for the creation of the dataset.

Statistical analyses looked at binary dependent variable “Use of Collective Scrutiny”. Value 1 indicates that a parliament initiated scrutiny, completed the oversight of a proposal or uploaded further information for its partners. Value 0 is used when a parliament did not initiate oversight of a proposal and did not provide any additional information. The variable “Use of Collective Scrutiny” monitors whether a parliament engages in the collective scrutiny process.

The analyses work with a series of independent variables. The “Public Euroscepticism” independent variable was operationalised by data from Eurobarometer measurements. Specifically, it began with the question “Do you trust the European Union?” This is not altogether standard operationalisation because the research into Euroscepticism prefers questions asked about a country’s EU membership (Carey 2002, Eichenberg – Dalton 2007, Kuhn 2011 Hakverdian et al 2013), or evaluates the benefits resulting from membership or assessing the deepening of European integration (Boomgaarden – Freire 2009). However, Eurobarometer stopped asking questions regarding membership in 2012. On the other hand, the question assessing trust in the EU is present in all surveys across the analysed periods. The indicator of the rate of public Euroscepticism in member states is the percentage of respondents who responded to the question with a negative answer. The values of the independent variable were adjusted each time a new Eurobarometr was issued.

The “Party Euroscepticism” independent variable was operationalised using the calculation of the rate of Euroscepticism in a given parliament. Based on literature dealing with party Euroscepticism, parties represented in parliaments and houses were classified as hard Eurosceptic (Value 2), soft Eurosceptic (Value 1) and other (Value 0). The Euroscepticism of a chamber was then calculated as a ratio of Eurosceptic members to all chamber members multiplied by the coefficient of the given type of Euroscepticism. An altogether hard Eurosceptic chamber or parliament therefore is assigned Value 2 and an altogether Eurooptimistic parliament has Value 0. The variable for each chamber was re-calculated after each election to a chamber.

The “Length of Membership” independent variable is operationalised by the length of a country’s EU membership, whereas the value of the variable logically changed every year. The calculation of the variable is based on Value 0, which includes the first calendar year of membership, regardless of the month of the given country’s accession to the EU. Then each following year the value of the independent variable rises linearly.

The “Discourse Quality Index” independent variable is based upon the analysis carried out in Chapter 4. 1. The purpose of this variable is to take into account differences regarding the degree and scope of deliberation of EU legislation in parliaments. The variable consists of four values on a scale of 0–3 which rates the process effectiveness of oversight. Value 0 represents the highest and 3 the lowest value. This independent variable is constant for the entire dataset and does not take into account the changes which may have occurred in individual parliaments and houses between 2010–2014.

Table 8: Point values for evaluation of deliberation during subsidiarity review.

Parameter	Description and explanation	Value
Opinion making procedure	Single actor	0
	Presence of more actors increases the legitimacy of the decision	1
Actors involved in the opinion making process	Maximum two actors, one formulates the opinion, the second decides when necessary.	0
	More than three actors: increase of content assessment quality	1
Form of decision	Single comprehensive document	0
	Complex documentation: greater scope and richness of argumentation	1

Source: author

Based on the identified parameters, parliaments can be classified in regard to the level of deliberation they apply when processing European legislation and, when applicable, submitting reasoned opinions. The comparison of the parliaments is built upon the presumption that the higher level of deliberation during a subsidiarity review, the higher the motivation of parliaments to communicate with partners in other EU states will be. The benefit resulting from the involvement of a wider spectrum of actors is that a parliament is able to perform a more high quality review of more legislative proposals; the division of labour among more actors contributes to the efficiency and speed of the whole process, as the burden is not borne by a single body. Table 6 shows the point values and descriptions of deliberation during the subsidiarity review. The output of the scoring is a four point 0-3 linear scale where 0 represents the maximum level of deliberation and 3 the minimum level.

The “Administrative Capacity” independent variable is calculated as a ratio of a chamber’s or parliament’s administrative employees dealing with EU affairs to the total number of parliament members. This conversion

uses standardised data because the administrative capacity of parliaments depend on their size. The data on the number of administrative employees was obtained either through personal interviews with the heads of the relevant sections or via e-mail communication.

The analyses of collective parliamentary oversight of EU legislation also take into account alternative explanations which have not been identified by up to date research. The first of these control variables focuses on whether or not a Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) meeting took place during a scrutiny period. Cooper (2013) points out that the coordination of the ongoing COSAC session played an important role in passing the first yellow card. The “COSAC” binary variable therefore gains Value 1 if a COSAC meeting took place during the scrutiny period. Value 0 is assigned when a meeting did not take place during this period. Both plenary sessions and sessions of the chairpersons of the European committees of national parliaments are counted as COSAC meetings.

The second control variable reflects the fact that two different traditions of individual parliamentary oversight of European integration in EU member states exist. The mandate based tradition concentrates on parliamentary oversight of national governments. The document based tradition focuses on the parliamentary oversight of materials which come from the EU. The difference in both traditions is reflected by the “Oversight Tradition” independent variable, where Value 1 equals mandate based oversight and Value 0 equals document based oversight. National parliaments and their chambers were classified according to the Karlas analysis (2012)⁴⁰.

The third control variable takes into account the effect of the economic situation in EU member states. Countries are coded according to the decline/growth of GDP by the “GDP” binary variable, where Value 1 indicates a decline of GDP (and that a given country was in a recession) and Value 0 indicates a growth of GDP. Data for the GDP variable comes from the Eurostat and were changed with each new calendar year.

The fourth control variable takes into account the rate of consensuality of the political system (“Consensuality Rate” variable). In this context the analysis adopts the consensuality index which Karlas (2011) created for his study based on Roberts’ (2004) data. The Karlas index, in which Value 1 reflects the lowest rate of consensuality and value 10 the highest, considers the number of effective parties, types of government, length of government, rate of proportionality of the election system and rate of corporatism. As Karlas does not work with Roberts’ data on Croatia, Cyprus and Malta, the additional data on these three countries was added.

The fifth control variable “Bicamerality” indicates whether the given chamber is an upper (Value 1) or lower chamber (Value 0). The purpose of this variable is to take into account whether the involvement of upper chambers in collective scrutiny is higher than that of lower chambers. Unicameral parliaments are classified by

⁴⁰ Based on the analysis of the legislation (Act on the Cooperation of the Croatian Parliament and Government of the Republic of Croatia in European Affairs NN81/13, especially Article 8) Croatia was added (Value 1). This is not found in the Karlas overview.

this independent variable with Value 0. It is assumed that the upper chambers will be more active than the lower chambers in collective scrutiny.

The sixth control variable “Competence Rate” considers the division of competences between the EU and member states. It separates submitted legislative proposals into three categories – exclusive EU competence as the highest category of EU competences, shared competences as the medium category and supporting and non-legislative activity as the lowest. Submitted proposals were classified according to the responsible EP committee. Sector policies (and therefore also the relevant EP committees) were divided into competence categories according to the relevant provisions of the Treaty of Lisbon. Table 17 summarises their division.

Values of the “Competence Rate” independent variable remained constant for the entire analysis because there was no legal modification in the division of competences between the EU and its Member States according to EU primary law in the given period. The assumption that lies behind this variable is that national parliaments should focus on those proposals where EU competences are either both supplementary and supporting, or they should target those proposals where the competences of the EU and Member States are shared.

The “Type of Legislation” binary independent variable was used as the seventh control variable. This enables the consideration of the effect of EU powers. Value 1 shows that a proposal was in the form of a directive; theoretically this means greater freedom for member states. Value 0 indicates that a proposal was a regulation/decision. This is generally considered to be a stricter and more specific form of European legislation. The assumption behind this variable is that proposals which provide Member States with more freedom will be looked upon by parliaments with greater interest than cases of regulation/decision.

5.2 PROBABILITY OF THE USE OF THE IPEX DATABASE

Using binary logistic regression, the statistical analysis focused on independent variables affecting the probability that a parliament will use the IPEX database. The “IPEX Use” dependent variable acquires two values which are “not used” (0) and “used” (1). Influence of the independent variables is controlled by seven alternative explanations. This specifically concerns control variables (“Competence Rate”, “Type of Legislation”, “Consensuality Index”, “COSAC”, “Bicamerality”, “Oversight Tradition” and “GDP”). The overview tables contain coefficient B and its standard error, odds ratio $\text{Exp}(B)$ and its upper and lower confidence intervals as values which are standardly reported in binary logistic regression (Field 2009: 294). The coefficient Nagelkerke R^2 is also used in individual models to express the rate of accuracy of the model. In other words, Nagelkerke R^2 expresses how large a segment of reality the model is able to explain.

The “IPEX Use” dependent variable, which indicates use of IPEX, contains a total of 19,025 items, of which 8,321 have Value 1 and 10,704 have Value 0. Table 9 provides an overview of the input into collective oversight by individual parliaments and their chambers. Besides the obvious division of actors of collective scrutiny into the more active and the more passive, it can be seen from the table that the approaches of upper and lower chambers in bicameral states do not differ much. Usually either both chambers are active (an example being

the Polish parliament or both chambers of the German parliament), or both chambers are more passive (for example, the Dutch parliament). In the case of the Irish and Spanish parliaments, the values for both chambers are stated simultaneously because in the real execution of collective oversight, both chambers of both countries act in compliance.

Table 9: Overview of the Involvement of National Parliaments and Chambers in Collective Oversight

Parliament/House	Not used	Used	Used (%)
Nationalrat (AT)	388	110	22,1
Bundesrat* (AT)	384	104	20,9
Senat* (BE)	274	224	45,0
Chambres des Representants (BE)	347	151	30,3
Narodno Sabranie (BG)	457	41	8,2
Vouli ton Antiproposon (CY)	485	13	2,6
Poslanecká sněmovna (CZ)	281	217	43,6
Senát* (CZ)	318	180	36,1
Folketings (DK)	463	25	5,0
Tweede Kamer (NL)	423	65	13,0
Eerste Kamer (NL)	389	109	21,9
Riikogu (EE)	491	7	1,4
Eduskunta (FI)	26	472	94,8
Assemblée nationale (FR)	442	56	11,2
Sénat* (FR)	404	94	18,9
Bundestag (DE)	98	400	80,3
Bundesrat* (DE)	87	411	82,5
Voulli ton Ellinon (EL)	460	28	5,6
Országgyűlés (HU)	466	22	4,4
Camera dei Deputati (IT)	412	76	15,3
Senato della Repubblica* (IT)	126	372	74,7
Parlament (LV)	492	6	1,2
Seimas (LT)	231	267	53,6
Chambre des Députés (LU)	454	44	8,8
Kamra tad-Deputati (MT)	253	245	49,2
Sejm (PL)	4	494	99,2
Senát* (PL)	13	485	97,4
Assembleia da República (PT)	64	434	87,1
Camera Deputatilor (RO)	240	258	51,8
Senatul* (RO)	333	165	33,1
Národná rada (SK)	125	373	74,9
Državni sabor (SI)	309	189	37,9
Državni svet* (SI)	497	1	0,2
Cortes Generales (ES)	12	486	97,6
Riksdag (SE)	7	491	98,6
House of Commons (UK)	26	472	94,8
House of Lords* (UK)	222	276	55,4

Hrvatski sabot (HI)	38	64	62,7
Houses of Oireachtas (IE)	163	335	67,3

Source: author. Chambers marked with * are upper chambers.

The analysis in the model included all independent variables as well as all control variables. Results are summarized in Table 10.

Table 10: Model Summary

	B	SE	Exp(B)	Lower	Upper
Constant	-2.64	.10	.07		
Length of EU Membership	-.01***	.00	.99	.98	.99
Administrative Capacity	5.50***	.31	244.90	132.24	453.54
Discourse Quality Index	.62***	.02	1.85	1.78	1.93
Public Euroscepticism	.02***	.00	1.03	1.02	1.03
Party Euroscepticism	1.26***	.10	3.53	2.92	4.27
COSAC	-.12***	.03	.88	.83	.94
GDP	-.22***	.04	.80	.74	.88
Bicamerality	.26***	.04	1.30	1.21	1.40
Oversight Tradition	.39***	.04	1.48	1.37	1.60
Type of Legislation	.12***	.03	1.13	1.06	1.21
Consensuality Index	-.03***	.01	.97	.96	.99
EU Competences	.04	.03	1.04	.99	1.10
***p<0.01, Nagelkerke R ² = .13.					

Source: author.

As shown in Table 10, the willingness of parliaments to become involved in collective scrutiny requires a comprehensive explanation. In terms of the overall comparison of the effect of individual independent variables, “Administrative Capacity” appears to be the strongest predictor of the probability of parliament to be involved. Its robust effect is logical. With the relatively large number of proposals which parliaments receive from the Commission, extensive administration is necessary because members themselves usually do not possess sufficient ability and erudition when it comes to EU legislation. However it must also be pointed out that the effect of “Administrative Capacity” needs to be interpreted in units of its possible change. With the exception of Sweden, which because of its large administration is considered to be an *outlier*, the differences between individual states are a matter of hundredths of units and the entire variable has to be interpreted in this context.

Another strong positive predictor is the “Discourse Quality Index” variable. Its considerable effect can also be explained quite logically. With the high number of submitted proposals it is evident that those parliaments which, for example, use sector committees when conducting subsidiarity checks are more able to ensure quality expertise. Their capacity to examine the meritorious aspects of a proposal is higher than if the entire scrutiny is carried out by an EU affairs committee.

Both variables dealing with Euroscepticism also show a positive effect (in the sense of the increased probability of involvement in collective scrutiny). This conclusion is also logical and predictable. National parliaments understand collective oversight to be supervision over a multinational authority, and so it is not surprising that a greater probability of involvement in collective scrutiny exists in countries where there is a higher value of either public or party Euroscepticism, or where there are simultaneously high values of both Euroscepticism.

The variable “Length of EU Membership” makes a relatively weak contribution to the overall explanation of parliament and chamber involvement. Overall contribution of this variable is the lowest of all independent variables in explaining the dependent variable.

Regarding the influence of control variables, the “EU Competences” variable did not reach statistical significance. It appears that this information is not significant for national legislators and the division of competences according to the Treaty of Lisbon does not play a role. The assumption that parliaments intensify oversight activities according to the division of powers (and, for example, more closely monitor those proposals where the competences of the EU and member states are shared) was thus not confirmed.

The COSAC meeting variable and the presence of economic recession statistically highly significantly reduces the probability of the use of collective scrutiny just as the higher rate of the consensuality of the political system does. This probability increases, however, when an upper chamber scrutinizes a proposal, in countries with a tradition of mandate based oversight, and when a proposal is in the form of a directive.

On the contrary, variables monitoring the type of parliamentary chamber, type of legislation, oversight tradition, COSAC meetings and the consensuality of the political system were shown to be highly significant. Thus we can see that the willingness of a national parliament to become involved in the collective scrutiny mechanism increases when a proposal is scrutinized by an upper chamber, when there is a tradition of mandate based oversight in a given system, and when a proposal is submitted as a directive. The equally constant probability of becoming involved in the control mechanism then falls when a COSAC meeting is held within the period when a proposal is being scrutinized. The same applies to the “Consensuality Index” variable, where a higher rate of consensuality results in a lower probability that a parliament will become involved in collective scrutiny.

6 CONCLUSION

The subject of the last chapter is mainly the evaluation of the findings resulting from the defined research questions. The second part of the conclusion, then, briefly introduces policy advising, focused on evaluating how collective parliamentary oversight of European integration functions to date.

6.1 THE SUMMARY OF THE RESEARCH QUESTIONS

When it comes to the descriptive research question related to the mechanism of collective oversight in the EU member states, particularly the tour through the five selected individual cases has shown, differences between member states in relation to the practice of collective oversight are significant. It is in fact nearly impossible to find in the analysed sample even a hint of an ideal approach. There are more differences than similarities – in brief, it can be stated that each state creates its own unique system which is influenced by parliamentary and political tradition combined with any recent developments. With the exception of the items (decision procedure, actors, form) mentioned in chapter 4.1 and which are summarised for the whole EU in table 5, the parliaments mainly differ in the role (and size) of parliamentary administration, the general environment of parliamentary powers in relation to the government, and in the role played by the parliament in European affairs. In this perspective is important whether the parliament focuses on the oversight of its own government or directly targets the European level.

In the context of administrative involvement, the most powerful instrument seems to be the determination of the administrative agenda. When taking into consideration the large volume of documents received by the parliaments from the EU, the emphasis on the selection of relevant proposals is logical. This is one of the few common elements found among the analysed chambers. On the other hand, the analysed parliaments significantly differ in the extent of parliamentary administration involved in the review of EU legislation as well as in the level of specialisation of the individual employees. Based on the analysis of the five cases it is apparent that the higher the capacity of an administration and the greater its expertise, the more parliamentary interest in subsidiarity oversight increases.

It is very difficult to meaningfully measure and quantify the general power of the parliaments in relation to the government. But it is obvious that in the analysed sample, strong parliaments can be found. This results from the historical context (Great Britain), or the political situation (minority governments in Sweden), and there are also the parliaments with a weaker position within the given system. As a result of the analysis, the findings again seem to be that the more powerful the position of the parliament, the greater its involvement in the subsidiarity oversight is.

It is not possible to formulate an unequivocal conclusion in relation to the parliamentary oversight of European legislative proposals. In the analysed sample there are cases where a parliament focuses on the oversight of its own government and at the same time consistently scrutinizes European legislation (typically Sweden), as well as cases where parliaments scrutinize the government but pay less attention to European legislation (typically France). There is also the model where European legislation is consistently reviewed but where the end target

of the review is not mainly the European Union but rather the respective national government (in the case of the *Bundestag*). Therefore it is not possible to clearly state that, for example, a document approach to oversight would necessarily lead to a higher level of activity in collective scrutiny than a mandate approach, no matter how logical that may seem.

An especially noteworthy finding is that it is not possible to find any formalised approaches to collaboration in subsidiarity control among the bicameral parliaments. However, it is apparent that the different attitudes of two chambers within one system may be (and also is) perceived as problematic by parliaments of other EU member countries; the intra-parliamentary coordination of subsidiarity oversight is exclusively based on the informal cooperation of administrative constituents.

Regarding both explanatory research questions asking which factors and how much they influence willingness of parliaments to participate in collective oversight of EU legislation, it is impossible to provide one simple answer. Statistical analysis revealed that there are several significant predictors of such activity. Their importance however varies.

Among the most powerful predictors of a parliament's willingness to participate belongs administrative capacity. The binary regression model showed that a higher capacity of administration increases both the probability of involvement in collective oversight and the level of its utilisation. Obtained coefficient was statistically highly significant. This revealed that the non-political constituent plays a significant role in the process of collective oversight. Thus the statistical analyses confirmed the assumptions inferred from the interviews with actors; these interviews de facto referred to the fact that the real creators and implementers of the oversight are, in the majority of cases, parliamentary administration employees.

As important and influential can be regarded both Eurosceptical variables. In the terms of mere participation, both types of Euroscepticism are statistically significant predictors. The strong role of Euroscepticism is, with respect to the perception of the EWS as the negative oversight of the EU institutions, expected and logical. It is apparent that in the countries where the general public or the political elite (or both) see the nature and pace of European integration as problematic, the need for oversight of EU procedures is higher.

The variable "Index of deliberation" turned out to be a strong and statistically highly significant predictor. The findings of empirical studies which agree that sectoral committee involvement makes the oversight process more efficient, for example, were also confirmed. In comparison with the cross-sectional committees for European affairs, sectoral committees possess the thematic expertise which allows them to comment more precisely on the content of legislation. By contrast, in cases where the number of actors of parliamentary debate and decision making is restricted, an overburdening occurs which manifests in a decrease of interest.

When it comes to the length of membership, it does not influence the involvement of parliaments in collective scrutiny as it could be expected, especially in relation to the mere willingness of the parliament to participate. Obtained coefficient, even that being statistically significant, is very low.

On the contrary, alternative variables, behaving as control variables, play an important role of in the behaviour of parliaments. A typical example of this is seen in the fact that the influence of the mandate tradition of parliamentary scrutiny was highly significant in all of the cases. The same influence can also be identified in relation to bicamerality wherein upper parliamentary chambers more conscientiously and intensively scrutinize EU legislation. National parliaments also more intensively examine legislation proposed by the Commission when the legislation is presented in the form of a directive.

If we put the findings of the study into the context of what is known about the behaviour of national parliaments in European politics, it can be stated that the study confirmed many existing findings. The only two existing empirical studies on the use of the EWS identified the key determinants for the submission of an opinion. (Gattermann, Heffler 2013, 2015) They determined that the higher the level of conflict over European policy is in a given state and the higher the exigency of a legislative action, the higher the probability will be that a parliament will submit a reasoned opinion. This report confirmed the first assumption; the exigency of the legislative proposal was not analysed. The chambers with a minority government and the chambers in which the revision of European legislation is under the auspices of a specific sectoral committee were more active in submitting opinions. This report did not analyse either of these variables. A negative effect on the submission of a reasoned opinion was identified in the case of economic recession and with the increased length of EU membership; neither of these were confirmed by this study. The other monitored variables collected by Gattermann and Heffler were based on both previous research and theoretical expectations (i.e. administrative capacity) and did not influence the submission of a reasoned opinion. This report came to a different conclusion here as well, and the influence of administrative capacity proved to be an important predictor of collective oversight. Högenauer a Neuhold's (2013) assumption about the strengthening of parliamentary administration in relation to the implementation of the EWS was confirmed. There were several expectations about the general motivation of parliaments for submitting reasoned opinions. Based on the delegation perspective or the constitutional perspective which work with the political knowledge of instruments or with the capacity of deputies, it is probable that reasoned opinions are more likely to be submitted by parliaments which do not make their decisions in plenary or by those which scrutinize European legislation in sectoral committees. The motivation to submit a reasoned opinion is then lower in parliaments where a strong mandate tradition exists. (Christiansen, Högenauer, Neuhold 2014) This finding, extended to the motivation to be involved in collective oversight, was partially confirmed. The report proved that the involvement of a wider spectrum of actors increases the probability of parliamentary involvement in collective oversight. A mandate control tradition also increases the probability of involvement in the collective oversight.

The report also examined some variables which are traditionally found in the research of individual parliamentary oversight. The influence of public Euroscepticism (Raunio 2005; Bergman 2000) was confirmed and the influence of the length of EU membership was also partially confirmed. In the research of individual oversight, this is considered the strongest explanation. (E.g. Hamerly 2007; Kietz 2006; Saalfeld 2005) Finally, the research focused on the relation between the EU parliament and the development of national parliaments.

The expectations of Winzen et al. (2014) that national parliaments in more pro-European systems have a tendency to create less strict monitoring mechanisms of the European integration was confirmed.

6.2 EVALUATION OF COLLECTIVE PARLIAMENTARY OVERSIGHT IN 2010–2014: TOO MANY CARDS, TOO MANY COLOURS?

More intensive involvement of national parliaments in the formation of EU legislation is often presented as one of the main institutional innovations of the Treaty of Lisbon and as a big step by the EU towards greater democracy and a closer relationship of citizens to the polity. Five years after having been implemented, the mechanisms of collective oversight can also be evaluated in the light of the pragmatic politics of the EU. The conclusions do not foster the idea that national parliaments will radically change in order to better the EU political system. On the contrary, existing common practices appear to be a half solution which makes the entire process of EU decision making more problematic rather than acting to positively stimulate the decision making system.

Based on the analysis presented in this study, the entire mechanism of collective oversight seems to be designed for a group of very similar actors. This, for example, corresponds with the quite limited time period in which the actors can express themselves, or the high thresholds for issuing particular cards. But as the analysis has shown, the individual parliaments are a significantly diverse group of actors. For example, it is obvious that some parliaments ignore collective oversight and focus on other aspects. This approach by specific parliamentary chambers or groups of parliaments is certainly legitimate, but at the same time it makes the probability of effective operation of collective oversight more questionable. Also, the internal environment of the chambers is diverse; this has a significant impact on the ability to comment on a proposal or on the quality of such commentary. The variety among the parliaments is so great that the variety itself hinders the effective utilisation of the control mechanism.

Five years of the EWS has proved what experts and commentators had already pointed out when the Treaty of Lisbon and its provisions entered into force. First, the setting of subsidiarity as a parameter which is to be controlled by national parliaments is very limiting and binding. Second, the rigid interpretation of subsidiarity narrows the area in which the parliaments operate. The rigid interpretation itself is difficult to define, and in fact it is the Commission, as the recipient of the reasoned opinion, which determines whether a particular argument is appropriate or not. In this context it would be beneficial if the parliaments could comment on a wider range of problems in the context of legislative proposal oversight. First, it seems that they have already adopted this approach (in that the Commission is obliged to at least respond to comments which do not adhere to the rigid definition of subsidiarity), and second, this relaxation of the definition will likely increase the motivation of parliaments to actually comment on the legislation. There is also a question of whether a legislative proposal's compliance with the defined subsidiarity would be better assessed by the Committee of Regions, whose competence seems indisputable in this matter.

Besides the more relaxed interpretation of the oversight of legislative proposals it would seem to be more appropriate if the role of national parliaments could also be enriched by the opportunity to enter the process in

a positive way. In this regard, the activities toward the implementation of a so-called green card which would provide national parliaments with the ability to submit a legislative incentive make sense. An appropriate approach to this could be the strengthening of political dialogue in terms of its integration into the collective role of the national parliaments. In any case, the opportunity for positive involvement could increase the participation of non-Eurosceptical parliaments, and the role of parliaments could shift from being negative watchdogs to being contributors of meaningful and necessary proposals. As the analysis has shown, Euroscepticism is a strong predictor of the willingness of parliaments to be involved in collective oversight, and this, in turn, influences the intensity of the application of the collective oversight instruments. The potential objection that national parliaments may not understand the European legislation is invalid here – in many cases the legislation is analysed by sectoral committees with indisputable factual competence.

It would also seem to be desirable to strengthen the impact of the collective collaboration of national parliaments in terms of enforceability and effectiveness. Currently, there is an asymmetrical relationship between the parliaments and the EC; the EC has a significantly stronger position, as it can issue yellow cards, make legislation, and assess compliance with subsidiarity. In terms of the legitimacy of the actors, it is apparent that the directly elected national parliaments are the stronger actors. So the following questions remain: should a parliamentary decision be assessed from the outset by someone other than the legislation maker; are the defined thresholds for issuing cards inappropriately high; and, should the parliaments as a collective actor has the right to veto legislative proposals. Here again the assertion about the expert competence of the parliaments applies – the legislation is in many cases analysed by relevant sectoral committees, whose expertise is indisputable.

From the point of view of the parliaments themselves, the effectiveness of the available instruments would be, without a doubt, increased by a higher level of coordination and communication. In this perspective, proposals for the standardisation of reasoned opinions and the sharing of specialised knowledge between the particular chambers are also desirable. Also, the sharing of best oversight practises in the individual chambers and in the operation of chamber administration responsible for oversight would improve collective scrutiny. Analysis revealed that both factors are important in terms of the application and intensity of oversight as well. Bicameral parliaments would likely benefit from the formalisation of communication between the chambers, as the result of the five country analysis revealed; communication and coordination happens based only on the informal rules and relations of chamber administrative employees.

Despite all this, the ball remains in the national parliaments' court. In particular, the EC must crystallise its expectations of the national parliaments, as they are the most legitimate representatives of the people in a liberal representative democracy. This is why the parliaments should be permitted to enter the decision making arena of the EU. Keeping the existing practice, wherein the national parliaments can be compared to muzzled dogs walked in a fenced garden on a very short leash, would more likely lead to the disillusionment and frustration of all parties involved.

Nevertheless, any potential reform of collective parliamentary oversight does not in fact provide a satisfactory response to the question of whether the collective oversight of European legislation is able to increase the level of democracy in European integration; nor, if this is the case, does it address how it can be accomplished. So far the implementation of this mechanism as a potential “cure” for the deficit of EU democracy has proven to be disputable – the experience of European integration and its modern evolution show that the introduction of new institutions and competences of directly elected bodies does not guarantee citizen satisfaction and instead leads to a less transparent system. The concept that more institutions and a higher level of control will lead to a higher level of democracy has not been adequately confirmed, and it almost seems that the idea of an instrumental solution to the EU democracy problem has been exhausted. The findings of this report likely suggest that instead of creating institutional innovations, which often operate only *pro forma*, the EU and its member states should, for example, think about the quality of feedback in the EU political system or about the capability of political elites to accept and appropriately process critical evaluation.

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