

National Parliaments and Constitutional Transformation in the EU

Ben Crum*

C. HEFTLER et al. (eds.), *The Palgrave Handbook of National Parliaments and the European Union* (Palgrave 2015).

D. JANČIĆ (ed.), *National Parliaments after the Lisbon Treaty and the Euro Crisis* (Oxford University Press 2017).

A. JONSSON CORNELL and M. GOLDONI (eds.), *National and Regional Parliaments in the EU-Legislative Procedure Post Lisbon* (Hart Publishing 2017).

N. LUPO and C. FASONE (eds.), *Interparliamentary Cooperation in the Composite European Constitution* (Hart Publishing 2016).

(RE-)LOCATING PARLIAMENTS IN THE EU CONSTITUTIONAL ORDER

It was in the European Convention in 2002 that the role of national parliaments in the EU became closely wedded to the principle of subsidiarity. From the Declaration of Laeken, which defined its mandate, it was clear that the Convention would have to come up with something to strengthen the position of national parliaments. It was also clear that something had to be done to reinforce the principle of subsidiarity. If anyone can be held responsible for locking the two together it is probably Íñigo Méndez de Vigo, prominent member of the European Parliament and representative of its delegation in the Convention's Praesidium. Along with many other delegates of the European Parliament, Méndez de Vigo had been somewhat concerned that, in the Convention, the 16 Europarliamentarians were outnumbered by the 30 delegates from the national parliaments of the EU Member States (not to mention the 26 observers from the parliaments of the candidate countries). Surely, they welcomed parliamentarians in principle, but any push for more powers for the national

*Professor of Political Science, Vrije Universiteit Amsterdam.

parliaments should not come at the cost of the powers or the prestige of the European Parliament.

Hence, there was some concern among the Europarliamentarians when the Convention established a special Working Group on the position of national parliaments, (naturally) under the chairmanship of a national parliamentarian, UK MP Gisela Stuart. In turn, Méndez de Vigo was assigned the chair of the Working Group on the principle of subsidiarity. While Stuart took her time to get a grip on the disparate opinions held by her members, the well-established Brussels operator Méndez de Vigo steamed ahead, quickly establishing subsidiarity as the pre-eminent task for national parliaments upon which to focus their engagement in EU affairs. The way they were to do that was through a so-called Early Warning Mechanism, which would allow national parliaments to flag presumed violations of subsidiarity without, however, giving them any effective veto in the legislative process.¹

After considerable twists and turns, the basic idea of Méndez de Vigo eventually entered into force seven years later as Protocol 2 of the Treaty of Lisbon. Essentially, the mechanism invites national parliaments to review EU legislative proposals – during an initial period of eight weeks – for conformity with the principle of subsidiarity. If one-third of the parliaments raise a reasoned objection on the grounds of subsidiarity (one-fourth in the domain of freedom, security and justice), the drafter of the legislation (in most cases the European Commission) must review the proposal and justify its conclusions. If more than half the parliaments invoke the principle of subsidiarity, not only does the Commission have to review the proposal: the European Parliament and the Council are also given the chance to strike it down directly.

The merits of the Early Warning Mechanism were, and remain, heavily disputed. One might interpret the mechanism as providing a way to effectively sideline the involvement of national parliaments in the EU. Thus, it not only effectively quelled calls for a greater institutional role for national parliaments, for instance by establishing a third legislative chamber in EU law-making, but also ensured that national parliaments' role was confined to rather limited and technical concerns. Others still reject the Early Warning Mechanism as an intrinsically malign instrument whose use only appeals to Eurosceptic and obstructive inclinations. Criticism of the Early Warning Mechanism as 'much ado about nothing'² perhaps figures most prominently, decrying it as a formalistic

¹ Cf. A. Groen and T. Christiansen, 'National Parliaments in the European Union: Conceptual Choices in the European Union's Constitutional debate', in C. Heffler et al. (eds.), *The Palgrave Handbook of National Parliaments and the European Union* (Palgrave 2015) p. 43 at p. 50 ff.

² T. Raunio, 'Much Ado about nothing? National legislatures in the EU constitutional treaty', *9 European Integration online Papers* (2005), <<http://eiop.or.at/eiop/texte/2005-009a.htm>>, visited 6 October 2017.

mechanism that is bound to be of little or no consequence and that misses the point that the primary role of national parliaments in EU affairs is to scrutinise the EU involvement of their own governments. Still, one could also see the mechanism as the most concrete element of a systematic upgrade of the position of national parliaments in the EU, reinforced by recognition of their indispensable role in contributing to the democratic legitimacy and proper functioning of the Union as set out in Articles 10 and 12 of the Treaty of Lisbon.

To be sure, during the last 10–15 years there has been a notable upsurge in the involvement of national parliaments in EU affairs that goes well beyond the Early Warning Mechanism: many national parliaments have revised and reorganised their scrutiny procedures, and their coordination has received a substantial boost from the (existing) Conference of Committees on European Affairs (COSAC); two new interparliamentary conferences have been established – one on foreign policy and one on economic and financial affairs – plus a Joint Parliamentary Scrutiny Group on Europol that will start its work in Autumn 2017; and the EP regularly hosts a range of Interparliamentary Committee Meetings to which it invites EU national parliaments.

Academic analysis of national parliaments in the EU has become a growth industry. The four edited volumes reviewed here clearly underline this and indeed reflect a lively academic community that finds itself at the cross-current of law and political science (with a considerable range of sub-disciplines on both sides). Notably, the contributions reference one another: some dozen of the authors contributed to more than one volume, with six authors (Cooper, Fasone, Fromage, Granat, Jančić, Lupo) making (sometimes multiple) contributions to three of the four volumes.

There is good reason for this academic enthusiasm. Above all, if the fate of European politics over the last years has demonstrated anything it is that national politics remains absolutely essential to it. Even the staunchest believers in European integration have had to abandon any hope that the Member States and their parliaments will be superseded by a European federation any time soon. At the same time, it is hard to deny that European decision-making struggles to secure democratic legitimacy and that, for this, it certainly cannot rely on Brussels institutions alone; the support and involvement of national parliaments as repositories of democracy at the national level thus appear to be indispensable.

What is more, there are also methodological considerations that make the role of national parliaments in the EU an appealing field of research. For one, this population of 28 parliaments (or 41 chambers) provides a treasure trove for comparative institutional research. At the same time, the interaction facilitated by the fact that they are united in one overarching EU political system has all kinds of interesting effects; a major case in point is the way in which parliaments in

acceding states model their EU involvement on the arrangements in parliaments with longer-standing membership.³ Furthermore, with some conceptual imagination, one can discern in the interactions between these national parliaments the inklings of an emerging model of multilevel democracy in which supranational decision-making relies on the legitimation awarded at the national level. In fact, the promise that makes these developments particularly interesting – although it is more explicitly embraced in some of these volumes than in others – is that what is happening to national parliaments in the EU amounts to a genuine constitutional transformation at the national level, the European level, and even at the regional level.

MAPPING THE ACADEMIC ANALYSIS

Regardless of the close links between the four volumes, each has a distinct character. *The Palgrave Handbook of National Parliaments and the European Union* is a tome of 760 pages that delivers what it promises: a handbook, the heart of which is formed by the 28 chapters that systematically set out the formal powers and the actual engagement of the parliaments in EU affairs for each Member State. Two volumes – one edited by Nicola Lupo and Cristina Fasone, and one by Anna Jonsson Cornell and Marco Goldoni – are from the same, new series by Hart Publishing with each focusing on a different aspect of the position of national parliaments in the EU: Jonsson Cornell and Goldoni on the Early Warning Mechanism and Lupo and Fasone on interparliamentary cooperation. The volume edited by Davor Jančić is the most recent – as reflected by the way the impact of the Euro crisis on relations between the EU and its Member States informs its analyses.

Taken together, these four volumes underline the fact that – as Katrin Auel puts it – ‘the introduction of the [Early Warning Mechanism] has certainly led to an overhaul of parliamentary scrutiny provisions and the establishment of greater parliamentary administrative capacities in EU affairs’.⁴ Indeed, if anything these books do a great job in mapping the wide range of activities that have been developed to increase the engagement of national parliaments in the EU since the Treaty of Lisbon. Most of the contributions offer very close descriptive analysis of the current state of play of national parliaments’ involvement in EU affairs and of the developments that have taken place in recent years. If this era ultimately proves

³A. Buzogány, ‘Learning from the Best? Interparliamentary networks and the parliamentary scrutiny of EU decision-making’, in B. Crum and J.E. Fossum (eds.), *Practices of Inter-Parliamentary Coordination in International Politics: The European Union and Beyond* (ECPR Press 2013) p. 17.

⁴K. Auel, ‘Able and Willing? Early Warning System and Political Dialogue in the Bundestag and Nationalrat’, in A. Jonsson Cornell and M. Goldoni (eds.), *National and Regional Parliaments in the EU-Legislative Procedure Post Lisbon* (Hart Publishing 2017) p. 291 at p. 311.

to have been crucial to the evolution of parliamentary order in the EU, these books will serve an indispensable function, having documented the situation from early on.

This applies above all for the *Handbook*, which completes the Herculean task of providing an in-depth portrayal of the situation in all 28 national parliaments. Since 2004, when the EU expanded its membership from 15 to 25, it has become clear that it is no longer possible for any single analyst to command inside knowledge of all the Member States, even though such knowledge is indispensable to an understanding of the dynamics of the EU as a whole. Even the most substantial research projects on EU decision-making are often forced to limit their analyses to a smaller subset of Member States. In this light, the *Handbook* is an exceptional achievement. It is probably best consulted as a handbook – reading the country chapters one after another might provide an information overload. Still, if the chapters are read consecutively it becomes clear that in quite a number of national parliaments – many of the new Member States, but also, for instance, Greece – the actual involvement of national parliaments in EU affairs falls far short of what one might have expected. At the same time, many of the country chapters, especially those dealing with less well-publicised cases, are very much worth one's while as the perspective of the national parliament offers a wonderful window into the country's political system and culture, and its perspective on Europe.

The volume by Jonsson Cornell and Goldoni focuses on the impact that the Early Warning Mechanism has had on the domestic constitutional and political orders. In this case, sampling has been inevitable, although they cover no fewer than 12 of the Member States. What is more, this volume expands the multilevel orientation – already present in much of the literature – by dedicating four chapters to the impact of the Early Warning Mechanism on regional parliaments.

The descriptive core of the Lupo and Fasone volume is its detailed overview of the establishment and evolution of the four ('old and new') interparliamentary conferences in the EU: the Conference of Committees on European Affairs; the Interparliamentary Conference on the Common Foreign and Security Policy; the Interparliamentary Conference on Stability, Economic Coordination and Governance; and the EU Speakers Conference. In their descriptive detail, many of these accounts offer revealing and thought-provoking nuances that can alter expectations: the all too lofty aspirations of the new Lisbon instruments (the Early Warning Mechanism and the interparliamentary conferences) are effectively cut down to size. Many of the enacted reforms have failed to usher in the desired level of activity because the actors involved have conflicting interests or, as is often the case, a simple lack of interest. Still, these accounts also testify to the enormous range of initiatives and the fact that, at least for some national parliamentarians, the political system of the EU as a whole has become a relevant horizon of their work.

Jančić's volume (in combination with his own chapter in the Lupo and Fasone volume) offers the most complete impression of where national parliaments are left following the Euro crisis. The evidence challenges the superficial impression that the Euro crisis has only reduced the powers of national parliaments, and instead shows that many parliaments have responded to the crisis actively, with some even ending up more vigilant in European, economic and financial affairs than they had been before. At the same time, the findings also indicate that an active response by national parliaments is certainly no guarantee for them effectively taking back control.

While the four books thus document the whole range of efforts taken by national parliaments, the impact these changes have had and how they should be assessed remains less clear. Notably, in each volume the more descriptive chapters are flanked by more analytical contributions. Even in the *Handbook*, the country chapters are accompanied by five cross-cutting chapters that each address a specific theme (the historical-institutionalist trajectory, variations in parliamentary strength, interparliamentary cooperation, parliamentary administrations, and regional parliaments), with an introductory and a concluding chapter. The Jonsson Cornell and Goldoni volume starts off with some broad critical reflection on the Early Warning Mechanism. The Lupo and Fasone volume is theoretically the most coherent as it is premised on the concept of a 'Euro-national parliamentary system' that is embedded in a 'composite European constitution' (I return to these concepts and the claims they involve below). The Jančić volume also contains a significant number of more theoretical contributions, although here the approach is a bit more open and pluralistic, both in the sense of the substantial positions adopted, which tend to be premised on a strong recognition of the plurality and the irreducibility of the national political orders, as well as in the apparently wider range of variation between the approaches adopted, which range from the administrative perspective of Peter Lindseth to the (quasi-)federalist positions of Ingolf Pernice and, in a different way, Katarzyna Granat. However, once one looks for the theoretical messages that emerge from the four volumes taken together, it is a challenge to identify a clear and coherent storyline.

THE BIG QUESTIONS AT STAKE

Zooming out to the highest level of abstraction, one can say that if there is a single big theoretical claim that can be tested by the work collected in these volumes then it is the claim that the changes in the role of national parliaments in the EU amount to a constitutional transformation. Most concretely, such a transformation can be registered at the national level where the new opportunities created by the Lisbon Treaty invite parliaments to change their mode of operation, to effect changes in their relation with the government and, most radically, to

establish direct political relations with European institutions thus bypassing the government in its role as gatekeeper of the national interest. In the shadow of these developments, a range of contributions also looks to the effects at the regional level, suggesting that, even if the Protocol on subsidiarity only includes a minor reference to regional parliaments, this European intervention may have spurred a revisiting and reorganisation of the relations between regional parliaments and national institutions.

Ultimately, there is the hypothesis that the changing role of national parliaments prefigures a constitutional transformation of the EU as a whole. Such a hypothesis departs from the understanding that the EU as it stands remains constitutionally unstable. The federalist telos implied by ‘an ever-closer union’ has been abandoned, and with it the prospect of a simple hierarchical legal order. At the same time, the conceptual characterisation of the situation as ‘pluralism’ appears essentially dissatisfactory and indeterminate, certainly from the concrete institutional perspective of national parliaments.⁵ One possible alternative – with Peter Lindseth in the Jančić volume as its rather lone representative – is to treat the European order as no more than an administrative extension of the national constitutions. Taken to its extreme, this position essentially turns the hierarchical order on its head and locates constitutional primacy clearly at the national level. One further approach that we see little developed in these volumes is one that recognises the autonomy of the two levels – national and European – and argues that this situation is best stabilised by separating them and their tasks as consistently as possible from each other. Such an approach might, for instance, rely on the appeal to a comprehensive and stable catalogue of competences and on limiting the interaction between the two levels to the political role of governments.

The approach that appears most dominant in these four volumes rather tends to envisage the constitutional relation between the national and the European level of government as one that is non-hierarchical and relies on a high degree of mutual engagement. This mode of constitutional thinking finds its pioneers in the work of Ingolf Pernice on multilevel constitutionalism and Leonard Besselink on a ‘composite constitutional order’. In this approach, the constitutional autonomy of both levels (the national and the European) is acknowledged, while their fundamental dependence on each other is also taken to oblige them to find a mode of constructive coexistence. Hence, the maintenance of channels for alignment between the two orders becomes key; and, in this, national parliaments are of particular importance, not only for functional reasons but above all for reasons of democratic legitimacy. In this light, the operation of national parliaments in the

⁵ Cf. L. Besselink, ‘The Place of National Parliaments within the European Constitutional Order’, in N. Lupo and C. Fasone (eds.), *Interparliamentary Cooperation in the Composite European Constitution* (Hart Publishing 2016) p. 23 at p. 24.

EU emerges as a testing ground for the practical viability of such a composite constitutional order.

Yet, even if the idea of an emerging EU composite constitutional order is the dominant normative model, it is clear that this model is not fully fleshed out and that the – federalist, nationalist and sovereigntist – alternatives models remain alive as well. This condition, in which the background model remains essentially unclear and shifting, complicates the ability to make any determinate evaluative assessments, because any assessment depends on the kind of model one has in mind. This can be nicely illustrated by the key question of whether more engagement of national parliaments with EU affairs – be it through scrutiny of their government, through the Early Warning Mechanism or through interparliamentary cooperation – is by definition a good thing, or whether a more limited or strained engagement may indeed be a sign of satisfaction or some kind of happy equilibrium. While the advocates of more nationalist and sovereigntist approaches are inclined to adopt a rather reserved line on this question, advocates of a composite constitutional order in the EU seem predisposed to welcome any increase of transnational and supranational engagement of national parliaments, and to lament those situations in which it remains lacking or where formal possibilities remain unexploited in practice.

Having said that, we can raise some big questions that are provoked by the four volumes, even if they themselves sometimes shy away from addressing them head on, also exactly for the reasons that the normative standards often remain far from self-evident.

IS THERE AN IDEAL MODEL OF EU SCRUTINY?

The big question, which is raised above all by the Handbook, is what good scrutiny of national parliaments of EU affairs looks like or, indeed, which national parliament performs best in EU affairs? The Handbook adopts an ambiguous strategy on this question, which is reflective of the tendencies in the literature so far. On the one hand, following up on earlier work by, among others, Raunio, Bergman and Winzen, the Handbook ranks national parliaments on the basis of institutional strength and – as a novel standard – (actual) activity. Notably, these two indices strongly correlate and broadly confirm that there is a class of well-known frontrunners (including the parliaments of Finland, Sweden, Denmark, Estonia, the German *Bundestag* and the Dutch *Tweede Kamer*), a group with exceptionally little power (the Slovenian Senate, the parliaments of Greece and Cyprus, and the chambers of the Belgian parliament), and a wide middle-range of chambers that have acquired powers but that in practice only exercise them to variable degrees.

There are, however, clear limitations to such ranking exercises. It is difficult to attach much meaning to a difference in institutional strength between parliaments

that runs, say, between 0.43 and 0.51 (a range that includes 12 parliamentary chambers).⁶ This is all the more the case if the indices involved are constructed from multiple dimensions that apparently display little correlation. Thus, the Handbook's institutional strength index includes 11 indicators organised around three thematic sets: access to information, scrutiny infrastructure, and oversight. While, unfortunately, no measures of correlation within and between each set are given, much of the evidence suggests that different parliaments have different priorities, both in the powers they enjoy and in the way they actually employ them.

Indeed, such qualitative differences are underlined by the other approach to national parliaments that the Handbook embraces. This approach sees the differences in the powers that national parliaments exercise in EU affairs not so much as a function of their strength but rather as a reflection of the role they play in the national constitutional system and the strategies, priorities and mode of operation that appear appropriate from that perspective. For a long time, this recognition has been inscribed in the literature by the often-made distinction between document-based (typically the UK) and mandate-based (typically Denmark) scrutiny systems. While fundamentally different, neither of these two systems was considered to be inherently superior to the other. Rather they reflected different parliamentary priorities and different conditions under which these were to be achieved. The Handbook extends this approach by identifying five ideal-typical models of parliamentary engagement in EU affairs: policy shaper, government watchdog, public forum, expert, and European player.⁷ These models are used to characterise the EU engagement of each national parliament in turn.

The five models form a useful thread throughout the volume and generally succeed in conveying a sense of which priorities each parliament sets for itself. However, for more comparative purposes, the models remain wanting. Interestingly, in some ways the five models are not really treated as 'models', assuming that that would imply them to be mutually exclusive, but rather as 'functions' that can supplement each other. Hence, in principle a parliament can correspond to all five (in fact, in the final ranking the Swedish parliament scores 'highest' by ticking the boxes of four of the five models)⁸. However, at the other extreme, there seems to have been a reluctance to allow for the possibility that a parliament meets none of the models. Even the authors who discuss parliaments where one really has to look very closely to find any substantial engagement with EU

⁶ K. Auel et al. 'Fighting Back? And, If So, How? Measuring Parliamentary Strength and Activity in EU Affairs', in Heffler et al., *supra* n. 1, p. 60 at p. 79 (Table 3.5).

⁷ O. Rozenberg and C. Heffler, 'Introduction', in Heffler et al., *supra* n. 1, p. 1.

⁸ C. Neuhold and J. Smith, 'Conclusion: From "Latecomers" to "Policy Shapers"? – The role of national parliaments in the "post-Lisbon" Union', in Heffler et al., *supra* n. 1, p. 668 at p. 678 (Table 35.1).

affairs (e.g. Greece or Bulgaria) are somehow forced in the end to rank their parliaments positively on one model (in most cases the Government watchdog one), even if in comparison the performance of the parliament remains weak overall.

While the five models thus have little discriminatory power among the weaker parliaments, they do bring to light an important distinction between, on the one hand, the stronger lower houses that (continue to) concentrate their efforts on their national government (Germany, Finland) and, on the other, those that have come to manifest themselves actively as players on the European scene (Sweden, the Netherlands, Denmark). At the heart of this distinction is the use of the Early Warning Mechanism and the extent to which parliamentary chambers have picked up on the Lisbon reforms to strengthen their position. This brings us to the volume edited by Anna Jonsson Cornell and Marco Goldoni.

HAS THE EARLY WARNING MECHANISM SUCCEEDED?

Understandably, Jonsson Cornell and Goldoni insist that, after a mere five years of it being in operation, the aim of their edited volume is not and cannot be ‘to produce a judgment on the success or failure of the [Early Warning Mechanism]’.⁹ Their focus is rather on identifying the impact the Early Warning Mechanism has had so far, both at the level of EU law-making and, even more so, on the constitutional and political organisation at the national level.

However, in their concluding chapter, the two editors cannot avoid a (preliminary) assessment of the Early Warning Mechanism. Notably, as they assess the Mechanism on two standards, their verdict turns out to be quite sceptical. First, as regards subsidiarity review in the EU, they concede that the Early Warning Mechanism ‘has had some impact’¹⁰, with the possibility that this might further increase in the future. On the second standard, the contribution to the democratic quality of EU law-making, they are much more dismissive in concluding that ‘at a practical level, it is not the case that the EWM has enhanced the democratic credentials of EU law-making’.¹¹

While these standards – the contribution to subsidiarity review and the reduction of the democratic deficit in the EU – are probably the ones that should matter in the end, in light of the volume as a whole these conclusions appear a bit out of proportion. Importantly, the two standards apply to the level of the EU as a whole, while the empirical analyses in the volume remain very much focused at the

⁹ A. Jonsson Cornell and M. Goldoni, ‘Introduction’, in Jonsson Cornell and Goldoni, *supra* n. 3, p. 1 at p. 4.

¹⁰ M. Goldoni and A. Jonsson Cornell, ‘The Trajectory of the Early Warning Mechanism’, in Jonsson Cornell and Goldoni *supra* n. 4, p. 335 at p. 353.

¹¹ *Ibid.*

national and the regional level. Looking at these lower levels, the least that can be said is that the Early Warning Mechanism has provoked quite a bit of activity.

The overwhelming impression that emerges from the different chapters is that most national parliaments have adopted substantial organisational reforms to accommodate the Early Warning Mechanism. Moreover, the volume provides ample evidence that regional parliaments have also taken note of the mechanism and adjusted their modes of operation. Certainly, many of the contributions (such as Tacea on the French parliament and Vandendruwaene and Popelier on Belgium) confirm that – beyond these organisational reforms and the symbolic importance that can be attached to them – the Mechanism has so far made little substantial difference to the positions adopted by the EU or even by individual governments. However, it is very instructive to see how, in the most compelling account of the adjustments undertaken by regional parliaments, Cristina Fasone highlights what she calls three ‘positive externalities’ of the Early Warning Mechanism on the position of the Regional Councils: a strengthening of the relationship with the national parliament, the Italian Senate in particular; more cooperation among Regional Councils; and an overall reparlamentarisation of EU affairs in national politics.

At the same time, the Jonsson Cornell and Goldoni volume underlines that there is considerable variation in the extent to which parliaments engage in the Early Warning Mechanism. In line with the findings from the Handbook, the analyses of the Mechanism confirm that such variations are only partly a function of the capacity and powers of parliamentary chambers. Just as important are the different cultural understandings of the appropriate role of parliament in EU affairs and, notably, different interpretations of the principle of subsidiarity. Specifically, three dominant interpretations of the subsidiarity principle can be distinguished. The first is a narrow legal reading that literally follows the EU treaty provisions and consistently distinguishes subsidiarity from the related but separate principles of proportionality and conferral. The second is a broader legal reading, which extends the subsidiarity review to issues of proportionality and conferral. Third, there is a political reading that basically uses the power to review the principle of subsidiarity to raise any political objection the chamber may have against the draft EU legislation proposed.

One might expect parliamentarians to be naturally inclined towards the more political interpretation. Notably, however, the contributions to the Jonsson Cornell and Goldoni volume demonstrate that this is not automatically the case. One particular tendency they identify is that parliaments that concentrate the review of EU draft legislation in the European Affairs Committee tend to adopt a rather narrow, legalistic interpretation of the subsidiarity review and to issue few opinions. In contrast, in parliaments in which this review has been decentralised to the sectoral committees, a much broader and political reading of subsidiarity tends

to prevail, which leads to a much greater number of (reasoned) opinions to the Commission. This tendency is borne out both by Jonsson Cornell's comparison between the Nordic parliaments (with centralisation prevailing in Finland and Denmark and decentralisation in Sweden) as well as by Lupo's comparison of the centralised approach in the Italian Chamber versus the decentralised approach adopted by the Italian Senate.

These variations should not obscure the fact that national parliaments steadily turn to the Early Warning Mechanism. According to the latest numbers,¹² in 2016, 26 of the 41 national parliamentary chambers submitted a total of 65 reasoned opinions – a significant upturn again after eight reasoned opinions in 2015 and 21 in 2014. Over the seven years since 2010, national parliaments have produced around 50 reasoned opinions per year. The record year so far was 2013, when 88 reasoned opinions were submitted, in which 34 of the 41 European parliamentary chambers were involved. There remains only one chamber, the Slovenian Senate, that has never participated in the Early Warning Mechanism (while the Slovenian Lower House has submitted only one reasoned opinion in total).

The critical point in the assessment of the Early Warning Mechanism, which is underlined among others by the chapters by Adam Cygan and Nicholas Lupo, is that all activity at the level of individual national and regional parliaments remains rather disconnected and does not directly translate into clearly identifiable results at the level of the EU polity as a whole. Unfortunately, however, the volume by Jonsson Cornell and Goldoni does not include any systematic empirical analyses at the supranational level. To complete the picture, and indeed to substantiate the assessment of the Early Warning Mechanism in terms of subsidiarity and democratic representativeness, one would have liked to see some in-depth analysis of the three cases so far in which parliaments succeeded in mobilising in sufficient numbers to activate a yellow card: the right to strike directive in 2012, the proposal for a European Public Prosecutor's Office in 2013, and the revised posted workers directive in 2016.¹³

What is missing in particular is a systematic analysis of the way that the European Commission has so far responded to the reasoned opinions. Many contributors register the discontent among the national parliaments with the time the Commission takes in responding to reasoned opinions and the fact that, once they are in, these responses tend to remain rather short, general and, above all,

¹² European Commission, *Annual Report 2016 on Relations between the European Commission and National Parliaments*, COM(2017) 601 final, Brussels, 30.6.2017.

¹³ Although the two earlier yellow cards have already been analysed elsewhere in the literature and the one on the posted workers directive is discussed in D. Jančić, 'EU Law's Grand Scheme on National Parliaments: The third yellow card on posted workers and the way forward', in D. Jančić (ed.), *National Parliaments after the Lisbon Treaty and the Euro Crisis* (Oxford University Press 2017) p. 299.

rather narrowly formalistic. These responses betray that the Commission, regardless of the formally inviting attitude that it tends to adopt, has been reluctant to use the Early Warning Mechanism genuinely as an instrument of dialogue in which it is willing to take the views of the national parliaments to heart. Unfortunately, however, the Commission's approach is nowhere examined in a systematic way.

In sum, if we assess the Early Warning Mechanism on the difference it has made to the policing of subsidiarity and the reduction of the democratic deficit in the EU, it is bound to fall short. However, if the aim of the Mechanism was to increase national parliaments' engagement with EU affairs, then significant progress has been made. The main challenge is then exactly to ensure that the latter effects (greater national parliament engagement) actually come to be converted into the former (subsidiarity control and a better-functioning EU democracy). Two factors appear critical for such conversion to become viable. One is that the new formal powers of national parliaments are also consistently followed up by actual vigilance and activity in practice. The other is that such activity becomes actively coordinated between parliaments.

DOES INTERPARLIAMENTARY COOPERATION IN THE EU CONSTITUTE A SYSTEMATIC ORDER?

If the two volumes published in the new Hart series can be seen as companion volumes, they are not only complementary in that Jonsson Cornell and Goldoni look at the Early Warning Mechanism whereas the focus of the Lupo and Fasone volume is on interparliamentary cooperation, but also in the fact that the former adopts a more comparative, bottom-up perspective while the latter volume is premised on an emphatically holistic understanding of the EU order. This holistic understanding is organised around two key concepts. The first is the 'composite European Constitution', which implies that the EU constitutional order is 'grounded at the same time on the Constitutions of the Member States and on the European Treaties'.¹⁴ The second concept is the concept of a 'Euro-national parliamentary system', which embodies the prospect of 'the development of parliamentary and inter-institutional procedures, both bilateral and multilateral, which are not only able to structure the relationship among parliaments into a real and effective "system", but also between each parliament and its own executive at the national level'.¹⁵ The crucial implication of this approach to the EU constitutional order is that it underlines that national parliaments have an

¹⁴ C. Fasone and N. Lupo, 'Introduction. Parliaments in the composite European constitution', in N. Lupo and C. Fasone (eds.), *Interparliamentary Cooperation in the Composite European Constitution* (Hart Publishing 2016) p. 1 at p. 7.

¹⁵ Fasone and Lupo, *supra* n. 14, p. 11.

independent role to play in it; a role that is more than only derivative of that of their governments.

From a constitutional perspective, there is much to be said for conceiving of the position of national parliaments as embedded in an EU constitutional system in which they maintain systematic relations with each other and with the executive powers at both the national and the EU level. In their concluding chapter, Lupo and Fasone assert that this perspective is to be preferred over alternatives that opt for a less coherent and systematic perspective and that tend to focus on parliaments alone.¹⁶ However, looking at the empirical analyses it is far from evident that the level of integration of national parliaments in the EU is appropriately characterised as 'a system'. For one, even if interparliamentary conferences have been institutionalised, in practice their main occupation continues to lie in networking and exchanging information rather than that they produce any consequential decisions or relations themselves. Furthermore, the accounts of the interparliamentary conferences also testify to major differences among national parliaments, ranging from different policy interests to fundamentally different views on the value of interparliamentary cooperation and the way it is best organised. These differences tend to increase even more once the European Parliament is included. Notably, on a great number of occasions the European Parliament has played a critical role in withholding from interparliamentary conferences the power to adopt binding positions and to do so by some kind of (super-)majority rather than unanimity.

However, as it emerges, the key condition that undermines interparliamentary conferences from taking any more consequential position in EU affairs is that each of the national parliaments comes with a different status and different powers from the national constitutional system. This is a feature that is particularly highlighted in the case of the EU Speakers Conference,¹⁷ but it also recurs in the other cases. These differences in status remain the exclusive prerogative of the national orders. Thus, in this fundamental respect the composite EU constitutional order is unable to assert itself; the way that parliaments and their powers are defined remains an inherent and exclusive national competence.

One trend that does give some credence to the claim that national parliaments become ever more an integral part of the EU constitutional system is the recurring observation that European Affairs Committees are losing their central role in the involvement of national parliaments in EU affairs. This development underlines

¹⁶ For the sake of disclosure, I should note that the main antagonist here is the concept of an 'EU Multilevel Parliamentary Field' as it has been coined by John Erik Fossum and myself: B. Crum and J.E. Fossum, 'The Multilevel Parliamentary Field: a framework for theorizing representative democracy in the EU', 1 *European Political Science Review* (2009) p. 249.

¹⁷ C. Fasone, 'Ruling the (Dis-)Order of Interparliamentary Cooperation? The EU Speakers' Conference', in Lupo and Fasone, *supra* n. 14, p. 269.

that EU affairs are ever less the exclusive concern of a specialised subset of national parliamentarians but have come to permeate the work of many if not most of them. However, it also has the consequence that the most institutionalised interparliamentary conference, namely COSAC as the Conference of Parliamentary Committees for EU Affairs, finds itself in something of an 'identity crisis', an assessment that is widely shared by the practitioners contributing to the Lupo and Fasone volume.

COSAC's role is being chipped away from two sides. On the one hand, as the organisation of new interparliamentary conferences on foreign policy and economic and financial affairs encountered some sticking points, it has been the Conference of Speakers of EU Parliaments that has acted as an arbitrator. Indeed, taking his cues from Cristina Fasone's analysis on the EU Speakers Conference, Ian Cooper in his contribution to the Jančić volume goes as far as to claim that the Speakers Conference has come to adopt a 'quasi-constitutional' role as supervisor of 'the emerging order of interparliamentary cooperation'.¹⁸ Although Fasone herself is more cautious, she does observe that the Speakers Conference has the potential to develop into 'the main locus of coordination for interparliamentary activities'.¹⁹ One reason for this is that the speakers of the parliaments can naturally claim a distinctive and superior position, while the members of the COSAC are usually just regular parliamentarians. Another reason is that the European Parliament has a strong preference to concentrate organisational powers in the Speakers Conference, also because the strict rule of unanimity obtaining there ensures it a veto in the decision-making. The big question is, however, whether the parliamentary speakers themselves are keen to further institutionalise their conference and, particularly, whether they want to gear their work much more towards EU affairs.

The other, arguably more immediate, competition for COSAC comes from the sector-specific interparliamentary conferences that have been established in recent years. As is most forcefully argued by Diane Fromage in her contribution to the Lupo and Fasone volume, these new sector-specific conferences undermine the gatekeeping function that European Affairs Committees in national parliaments for a long time enjoyed in EU affairs.²⁰ In their concluding chapter, Lupo and Fasone applaud this development and, following Fromage, even envisage that the development of sector-specific interparliamentary conferences might be extended to form some kind of 'interparliamentarism by committee' in which each sectoral

¹⁸ I. Cooper, 'The Emerging Order of Interparliamentary Cooperation in the Post-Lisbon EU', in Jančić, *supra* n. 13, p. 227 at p. 236ff.

¹⁹ Fasone, *supra* n. 17, p. 288.

²⁰ D. Fromage, 'Standing Committees in Interparliamentary Cooperation in the Post-Lisbon Era: Towards the end of the European Affairs Committees' predominance', in Lupo and Fasone, *supra* n. 14, p. 113 at p. 129.

Council of Ministers would basically be mirrored by a corresponding interparliamentary conference.²¹ Yet given the rather mixed experiences with the two sector-specific interparliamentary conferences so far, such a comprehensive coverage seems a rather far-fetched future. As long as it is clear that many national parliamentarians remain to be convinced of the added value of the interparliamentary conferences that we have, one would think that the priority should be to optimise their functioning before that model is extended further. What is more, it is no coincidence that the two first sector-specific interparliamentary conferences were established in two domains where strong pressures for European cooperation run up against deeply entrenched national prerogatives and that these domains, and the economic domain in particular, have witnessed a lot of action in recent years.

NATIONAL PARLIAMENTS AND THE WIDER POLITICAL CONTEXT

The volume edited by Jančić distinguishes itself from the three previous books by the fact that it very much approaches the position of national parliaments in the wider political context, with a particular emphasis on the Euro crisis and the extent to which it has actually hijacked some of the Treaty of Lisbon reforms. The volume does demonstrate that national parliaments have been much more resilient in their response to the changing European conditions than one might have expected. At the same time, it also confirms the finding of the previous volumes that this heightened activity so far fails to have significant impact on the EU system as a whole, either in terms of its policies or in terms of demonstrably alleviating the democratic deficit.

The more contextual approach of the Jančić volume also has the merit that we see more politics shining through. Obviously, the Euro crisis has brought some fundamental political disagreements between Member States to the fore. What is more, the Jančić volume contains two chapters in which national parliaments most clearly figure as arenas for political conflict. Frank Wendler examines the different ways in which key authorisation decisions in the Euro crisis were discussed in the lower houses in Germany, Austria and France, and Aleksandra Maatsch analyses the reception of the Country Specific Recommendations by parliamentary parties in the same three parliaments plus the Irish *Oireachtas*. Notably, however, these analyses confirm a trend that is already hinted at in the other volumes, namely that the ideological differences within parliaments often remain smaller than the national differences between them, and that parliaments, or at least their deciding majorities, are usually inclined to track the position of their governments.

²¹ C. Fasone and N. Lupo, 'Conclusion. Interparliamentary Cooperation in the Framework of a Euro-national Parliamentary System', in Lupo and Fasone, *supra* n. 14, p. 345 at p. 358ff.

Wendler's analysis is particularly noteworthy because it is premised on the assumption that the discussion of EU issues in parliamentary plenaries is an important way to bring these issues closer to citizens and to increase their legitimacy. However, any overly grand expectations that this is successful need to be played down. One reason for this is that Wendler establishes that parliamentary debates take rather different forms, and only in Austria does he observe critical contestation of the government policies. Another reason is that, even if national parliaments publicly discuss EU affairs, we do not have systematic evidence that this is actually covered by the media and observed by citizens. Indeed, Katrien Auel in the Jonsson Cornell and Goldoni volume observes with specific reference to reasoned opinions submitted by the German and Austrian parliament that they 'hardly receive any coverage in the three main newspapers in each country beyond mere mentions in passing'.²²

If, from the perspective of democratic legitimacy, the hope was that increasing the involvement of national parliaments would bring in prospering forums for democratic deliberation and legitimation of EU decision-making, this promise remains far from fulfilled. To the contrary, we see tendencies that the responses of national parliaments to their new EU powers have involved some form of bureaucratisation rather than anything much in terms of democratisation.²³ Typically, the observation that Diane Fromage cites from José Tudela on the involvement of regional parliaments, may also apply to many national parliaments: 'After a first euphoric period, the participation of subnational parliaments in the Early Warning System of the Treaty of Lisbon has become an administrative process carried out by legal advisers'.²⁴ A similar logic of institutionalisation, or bureaucratisation, in the relations between parliaments can be read in the three trends that Ian Cooper identifies in the Jančić volume, namely the increasingly sectoral focus of interparliamentary cooperation, the emerging supervisory role of the EU Speakers Conference, and the way that the 'parliamentary dimension' has become institutionalised as part of the rotating presidency of the Council.²⁵ In all, one might conclude that, more than that national parliaments have brought democratic engagement into EU decision-making, their new involvement in EU affairs has served to domesticate them into the EU order and its bureaucratic tendencies.

²² Auel, *supra* n. 4, p. 307.

²³ T. Christiansen et al., 'National Parliaments in the Post-Lisbon European Union: Bureaucratization rather than democratization?', 12 *Comparative European Politics* (2014) p. 121.

²⁴ J. Tudela cited in D. Fromage, 'Regional Parliaments and the Early Warning System: An assessment and some suggestions for reform', in Jonsson Cornell and Goldoni, *supra* n. 4, p. 117 at p. 133.

²⁵ Cooper, *supra* n. 18, p. 243ff.

Clearly, however, European integration has been anything but a merely bureaucratic affair in recent years. In that light, the Jančić volume – and by implication also the three other books – could have gone further in contextualising the position of the national parliaments. Most notable is the fact that most chapters (in all four books) treat parliaments as institutional actors. As logical as such a focus may be, it undermines closer attention to intra-parliamentary dynamics and, in particular, to the position of Eurosceptic movements that have become increasingly prominent in many parliaments. The one exception in this regard is the account by Julie Smith in the Jančić volume of the recent developments in the British parliament, but then this case is so idiosyncratic that it hardly speaks to the other contributions. Looking more at current policy issues, there is also something odd that, while the impact of the Euro crisis is duly acknowledged, the migration crisis remains practically invisible and that there is also no discussion of the role of national parliaments in the much-discussed domain of international trade.

These observations suggest that the analysis of national parliaments in the EU remains somewhat detached from broader debate on the direction that European integration has taken in recent years. Arguably, while analysts were focusing on the position of national parliaments in the EU, the main transformation of the EU's constitution took place elsewhere. As it is, the expansion of the role of parliaments in the EU has been closely tied to the legislative process or, more broadly, the 'Community Method'. The emancipation of the European Parliament has been embodied, above all, by it acquiring standing equal to the Council of Ministers in the EU legislative procedure. Similarly, the involvement of national parliaments through the Early Warning Mechanism is premised on the presence of draft EU legislation. Critically, however, the series of recent EU crises have pushed the focus of EU action away from legislation according to the Community Method to a mode of operation that some have characterised as the 'Union method' or as the 'new intergovernmentalism', which far more relies on executive action and in which the member governments remain the key players.²⁶ There is some acknowledgment in the four volumes of this trend away from EU legislation, for instance in the attention that the Handbook gives to parliamentary scrutiny of the European Council; in the chapter by Gavin Barrett in the Jančić volume on the role of national parliaments in comitology and the Open Method of Coordination; in the chapter by Kolja Raube and Jan Wouters on parliamentary involvement in EU external relations; and in the contribution by Jančić himself on

²⁶A. Merkel, 'Speech at the opening ceremony of the 61st academic year of the College of Europe in Bruges', 2 November 2010, <www.coleurope.eu/speeches> visited 6 October 2017; C. Bickerton et al., 'The New Intergovernmentalism: European Integration in the Post-Maastricht Era', 53 *JCMS* (2015) p. 703; Editorial 'In Search of the Union Method', 11 *EuConst* (2015) p. 425.

the accountability of the European Central Bank. Still, no systematic analysis of the implications of the move from EU legislation to executive action for national parliaments is provided.

Importantly, this shift in perspective underlines that the involvement of parliaments is not pursued for its own sake but above all as a means to check the exercise of public power. In the domains in which we have seen an expansion of EU involvement, public power is formally retained by the Member States. However, as the recent crises have exposed high levels of interdependence, these governments have committed to frame their own decisions as part of collective orientations, even if these do not become embodied in a superior supranational authority or binding European legislation. If EU power is thus increasingly exercised through closely sequenced chains that straddle the national and the international level, one can envisage what has been called a ‘new parliamentarism’²⁷ as a continuous parallel process in which parliaments at different levels (national and European) and in different configurations are involved to make these EU executive decisions visible and to hold those who take them to account.

Clearly, national parliaments have an important role to play in keeping the EU’s new intergovernmentalism in check. However, it requires them to turn their attention far beyond the Early Warning Mechanism and rather to reinvigorate their good old task of governmental scrutiny, but with a particular sensitivity for the distinctive forms these new modes of decision-making take. Some sort of interparliamentary cooperation seems indispensable to fulfil this task and to align parliamentary involvement along the whole chain of decision-making, and it will be interesting to see whether the interparliamentary conferences can effectively be geared towards this. Conceptually, these dynamics may indeed be implied in Lupo and Fasone’s notion of an ‘Euro-national parliamentary system’ (even if their emerging and rather haphazard character objects, in my view, to considering them as a ‘system’). Empirically, this shift in EU decision-making opens up a whole new direction for the analysis of parliaments in the EU that the present volumes have only started to explore.



²⁷ V. Schmidt, ‘The “new” EU Governance: “new” intergovernmentalism, “new” supranationalism plus “new” parliamentarism’, in A. Crespy (ed.), *Issue on The EU Economic Governance*, Cahiers du Cevipol/Brussels Working Papers, n° 5/2016. (Université Libre de Bruxelles) p. 5.