Engaging with Europe
Evaluating national parliamentary control of EU decision making after the Lisbon Treaty

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Executive summary

Background

European integration exerts a vast influence on national policy making. In response, national parliaments have strengthened their position in the European policy making process. The Treaty of Lisbon has added more direct instruments to this toolkit: through the so-called Early Warning System (EWS) it has provided national parliaments with a direct role in EU policy making. Commonly known as the “yellow card procedure”, the EWS provides national parliaments with an independent power to assess whether Commission proposals are in line with the subsidiarity principle. To this end, parliaments may send a reasoned opinion (RO) to the Commission within eight weeks after the publication of a legislative proposal. If more than one third of the national parliaments pass a negative opinion, this results in a “yellow card”, which necessitates reconsideration of the proposal by the Commission. Additionally, in 2006, Commission President Barroso initiated the non-binding instrument of the political dialogue. This provides national parliaments with the opportunity to react to Commission legislative proposals beyond scrutiny of the subsidiarity principle.

This study, commissioned by the Tweede Kamer, focuses on the functioning and effects of the instruments and procedures implemented by national parliaments in response to the Lisbon Treaty in order to increase their control over EU policy making. In doing so, it aims to draw lessons for the Tweede Kamer, with an eye on improving the functioning and effects of the new instruments. In order to do so, the following elements of national parliamentary control over EU affairs are analysed in the Tweede Kamer and nine other parliaments.

EU scrutiny in the Tweede Kamer

The Tweede Kamer has gradually strengthened its position in EU affairs, to the extent that it wants to be ‘on top of Europe’. To this end, EU scrutiny in the Tweede Kamer has been mainstreamed, by largely making the sectoral committees responsible for EU control. The starting point of scrutiny is the systematic prioritisation of Commission proposals on the basis of the Commission’s annual Work Programme. Upon publication of a Commission proposal, EU
staff members write a memo for treatment, comprising suggestions for scrutiny and control instruments that could be deployed. MPs may use regular parliamentary instruments, such as motions, questions, and general consultations with the minister, or specific EU-related instruments, notably the scrutiny reserve and the subsidiarity check. The scrutiny reserve is an instrument aimed at structuring the information provision by the Cabinet surrounding Council meetings. The subsidiarity check, secondly, implements the EWS for the Netherlands.

The Tweede Kamer uses the EWS rather actively, producing a steady output of ROs and scrutiny reserves. It also is quite ambitious, wanting to be a pioneer in the issuance of a yellow card. To this end, it recently proposed several improvements to the EWS procedure, such as more substantive Commission answers, increase of the eight-week deadline for yellow cards, the lowering of the threshold, and broadening of the EWS towards proportionality and legal base.

Concerning effects, there is a shared sense of dissatisfaction about the effects of the yellow cards produced so far. Yet, the fact that it has proved possible to draw two yellow cards is seen as positive. Turning to the conditions, capacity at the administrative level was not flagged as a main problem, although the work load is perceived to be rather high, especially by sectoral committee staff. The Tweede Kamer has committed to playing a key role between the European Union and Dutch citizens, even though activity between party groups is claimed to vary. According to several respondents, the use of the EWS instrument in the end is a cost-benefit calculation made by MPs, a crucial condition being an MP taking the initiative.

**Thematic analysis**

Our study provided evidence of the relative importance of indirect instruments, related to the control of national government in EU matters, in the great majority of parliaments. Our analysis of the nine parliaments identified indirect instruments that are stronger than those of the Tweede Kamer. Regarding voting rights, some parliaments can oblige the government to provide extensive information about Council negotiations. Several parliaments we studied have stronger voting instruments, in the form of legally or politically binding mandates. Finland and Sweden have strong instrument for follow-up after Council meetings. Some parliaments have fixed rapporteurs in sectoral committees, as is the case in Belgium.

Concerning procedures for the subsidiarity check, the main differences are between decentralized and EAC-dominated systems, and the role of the plenary. Three parliaments deliberately developed highly complicated procedures, so as to make use of the EWS
impossible. The role of the administration typically is to aid selection and prioritization of Commission proposals. Parliaments seem united in their understanding of the subsidiarity principle as a legal concept; concerns about breaches of the principle however, are activated on the basis of political reasons.

Actual use of the EWS and Political Dialogue is highly divergent between parliaments. Concerning effects, broadly described, there is low faith in legislative effectiveness, as is confirmed by interviews with the European institutions. Individual ROs were said to have limited influence. Also, a boomerang effect of being too active with ROs may occur: they are alleged to weaken a parliament’s credibility with the Commission and parliaments in less active member states. Personal contacts with the Commission at an early stage are seen as more effective than formal contacts through the EWS. Also, ROs receive little attention by MEPs. At the same time, the feeling is that, if national parliaments really want to have their voice heard in Brussels, they have to persist. Arguably, also, the EWS has increased the urgency to take subsidiarity seriously. In addition, several side effects came to the fore, ranging from an increase in EU awareness to better substantive scrutiny of Commission proposals.

The analysis did not produce an equivocal explanation for the use of the EWS and political dialogue. Awareness and capacity seem to matter in some parliaments, whereas complicated procedures preclude active use of the instrument elsewhere. Institutionally strong parliaments tend to use the instruments more actively, even though the presence of strong mandating powers does not necessarily prevent use of the EWS. In addition, the interviews provided support for the importance of role conceptions. On the one hand, various rather pro-European parliaments are hesitant to use the instruments. On the other hand, various parliaments do not see direct control over EU policy making as a responsibility of national parliaments.

Finally, the interviews yielded positive views of the role of parliamentary representatives in Brussels. COSAC, according to a majority of respondents, could be improved by improving quality of debate, and making it more informal so as to counter the problem of absent national mandates. IPEX is not seen as a useful information system, because many parliaments cannot share information on it. Turning to the EU institutions, most respondents were highly critical about the European EWS procedure, complaints concerning the lack of influence, tight time frame and low quality and speed of Commission responses. In turn, respondents at the EU level suggest parliaments to improve their motivation in ROs, have a standard opening paragraph, and a uniform interpretation of subsidiarity. Also, they
recommend to actively follow-up on ROs, and to look for commonalities of interest rather than just differences. The main message concerning cooperation with the European institutions is that the EWS should be seen as one step in a longer process of influencing, starting with Green and White Papers.

**Recommendations (abbreviated)**

1. **An integrated but selective approach.** When adopting an RO, the *Tweede Kamer* is recommended to channel time and resources into an integrated approach, meaning that it should be seen as a complement to control over the government, and that it requires active follow-up, and scrutiny of Green and White Papers. An instrument that could be helpful to this end is the appointment of a rapporteur. The *Tweede Kamer* is explicitly advised to reserve this integrated approach for highly salient dossiers, based on broad and explicit political will to “go all the way”. This should be compensated by the critical reconsideration of activities in the field of EU control that are less effective or visible: passing high numbers of ROs should not become an end in itself; the scrutiny reserve and subsidiarity check procedures may be simplified and/or replaced by a generalized agreement on improved information provision, as exists in various other parliaments.

2. **Improving the EWS.** Two amendments constitute a minimalist agenda shared by all EU-28: an extension of the eight-week deadline to twelve or even sixteen weeks, and enhanced responsiveness both in turn-over time and substance of the reactions by the Commission. The *Tweede Kamer* is advised to take the lead in reforms during the upcoming Dutch Presidency of the EU in 2016, and follow-up on its earlier proposal of developing a common opening paragraph.

3. **Inter-parliamentary cooperation.** Several parliaments lack the willingness and/or capacity to play an active role under the EWS. Therefore, the *Tweede Kamer* is recommended to focus its attention on those parliaments willing and able to play an independent role at the European stage. The *Tweede Kamer* could stimulate the sharing of national priority lists and responses to Green Books and White Books in IPEX. The *Tweede Kamer* is advised to host COSAC meetings ‘new style’ during the Dutch presidency, along the following lines: more room for informal exchange, the possibility of side meetings on substantive dossiers instead of having long plenary sessions, less central a role for representatives of EU institutions, and more agenda influence by other parliaments.
# Table of contents

1 | Introduction .................................................................................................................. 1  
1.1 Background ................................................................................................................. 1  
1.2 Framework of the study ............................................................................................... 2  
1.3 Approach ..................................................................................................................... 5  
1.4 Case selection ............................................................................................................. 5  
1.5 Format of the report .................................................................................................... 6  
2 | EU scrutiny in the Tweede Kamer ............................................................................. 7  
2.1 Background ................................................................................................................. 7  
2.2 Procedure for EWS and political dialogue ............................................................... 11  
2.3 Effects ........................................................................................................................ 11  
2.4 Conditions .................................................................................................................. 12  
2.5 Cooperation ............................................................................................................... 13  
3 | Thematic analysis ....................................................................................................... 14  
3.1 Instruments ................................................................................................................. 14  
3.2 Procedures and actual functioning ........................................................................... 16  
3.3 Use of EWS and political dialogue ........................................................................... 17  
3.4 Effects ........................................................................................................................ 19  
3.5 Conditions .................................................................................................................. 21  
3.6 Intra-parliamentary cooperation ............................................................................. 24  
3.7 Inter-parliamentary cooperation .............................................................................. 25  
3.8 Legislative influence: the need for cooperation with EU institutions ................. 27  
4 | Conclusion and recommendations .......................................................................... 31  
   Recommendation 1: An integrated but selective approach ....................................... 32  
   Recommendation 2: Improving the EWS .................................................................... 33  
   Recommendation 3: Inter-parliamentary cooperation ............................................... 34  
Appendix 1 | List of respondents ....................................................................................... 36  
   Country experts ........................................................................................................... 36  
   Respondents ................................................................................................................. 36  
Appendix 2 | Patterns in use of EU instruments .................................................................. 40  
Appendix 3 | List of abbreviations ......................................................................................... 43
1 | Introduction

1.1 Background

European integration exerts a vast influence on national policy making, both through legislation and softer measures like recommendations and the Open Method of Coordination.³ In response, national parliaments have strengthened their position in the European policy making process. Initially, they focused on instruments for controlling the position of national governments in EU negotiations. The Treaty of Lisbon has added more direct instruments to this toolkit: through the so-called Early Warning System (EWS) it has provided national parliaments with a direct role in EU policy making.

Commonly known as the “yellow card procedure”, the EWS provides national parliaments with an independent power to assess whether Commission proposals are in line with the subsidiarity principle. To this end, parliaments may send a reasoned opinion (RO) to the Commission within eight weeks after the publication of a legislative proposal. If more than one third of the national parliaments pass a negative opinion (a quarter where the proposal pertains to the so-called ‘Area of Freedom, Security and Justice’), this results in a “yellow card”, which necessitates reconsideration of the proposal by the Commission. Finally, if a majority of national parliaments contest a draft, the Commission is expected to come up with a reasoned opinion if it decides to maintain it nevertheless; Parliament or Council are supposed to review the proposal, and either may decide to reject it (the “orange card”). Additionally, in 2006, Commission President Barroso initiated the non-binding instrument of the political dialogue. This provides national parliaments with the opportunity to react to Commission legislative proposals beyond scrutiny of the subsidiarity principle.⁴

After and even in the run-up to the ratification of the Lisbon Treaty, national parliaments have implemented new procedures to apply these instruments in practice.⁵ These procedures establish the steps necessary to pass a reasoned opinion, and to enable inter-parliamentary cooperation. Finally, several parliaments used the ratification of the Lisbon Treaty to introduce additional instruments increase parliamentary influence over EU policy making that are not strictly related to the Lisbon Treaty.
1.2 Framework of the study

This study, which was commissioned by the Tweede Kamer\textsuperscript{6}, focuses on the functioning and effects of the instruments and procedures implemented by national parliaments in response to the Lisbon Treaty in order to increase their control\textsuperscript{7} over EU policy making.\textsuperscript{8} In doing so, it aims to draw lessons for the Tweede Kamer, with an eye on improving the functioning and effects of the new instruments. In order to do so, the following elements of national parliamentary control over EU affairs are analyzed:

- Parliamentary instruments adopted in response to the Lisbon Treaty. These may be \textit{indirect}, targeted at the national government, or \textit{direct}, focusing on EU decision makers;
- Parliamentary procedures concerning the EWS. Attention will be paid to the role of sectoral committees, the plenary, and the government;
- Perceived practical \textit{functioning} of national procedures for the EWS, including the view of subsidiarity;
- Actual use of the EWS and political dialogue in quantitative terms;
- Desired and perceived \textit{effects} of the EWS and political dialogue;
- Conditions for adoption of ROs by national parliaments;
- \textit{Inter-parliamentary} cooperation, as a crucial condition for the adoption of yellow cards;
- \textit{Cooperation with the EU institutions}, as a key condition for legislative influence, i.e. modification or withdrawal of a Commission proposal in line with parliamentary preferences.

Based on existing literature on the EWS and various exploratory interviews, we specified a number of dimensions and expectations with regards to the effects of the EWS and political dialogue, and the conditions under which these effects are realized.

\textbf{Expected effects}

Ian Cooper\textsuperscript{9} has listed three possible direct effects of the EWS, namely legislative influence, a more direct link between the EU and its citizens, and improved public debate on EU affairs. In addition, several side effects are expected: more awareness of MPs; tighter scrutiny of EU proposals beyond subsidiarity; and influence on other channels of national representation, mainly the national position in Council negotiations. The expected effects are listed in Table 1.
Table 1 | Overview of expected effects of the EWS

<table>
<thead>
<tr>
<th>Direct effects</th>
<th>Legislative function</th>
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<tbody>
<tr>
<td></td>
<td>• Influence on legislative outcomes</td>
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<tr>
<td></td>
<td>Representative function</td>
</tr>
<tr>
<td></td>
<td>• “New link” between Europe and the citizen</td>
</tr>
<tr>
<td></td>
<td>Deliberative function</td>
</tr>
<tr>
<td></td>
<td>• More political debate on EU affairs</td>
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</tbody>
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| Indirect effects | • More awareness of EU issues at national level |
|                 | • Tighter scrutiny of EU proposals beyond subsidiarity |
|                 | • Affecting national position in Council negotiations |

**Conditions**

There are three broad theoretical perspectives on parliamentary control that help us identify the conditions (or “incentives”) for national parliaments to issue a reasoned opinion. First, according to the *constitutional or delegation perspective*¹⁰, the conditions for exerting parliamentary control are rather a-political, and most importantly include the awareness, encompassing knowledge of existence and functioning of the instruments, and capacity of politicians and their staff.¹¹ It has been shown that this is indeed also important for the use of the subsidiarity instrument and the adoption of an RO. In particular, knowledge about the EWS and the capacity to issue an RO within a limited time frame are important conditions.¹² Then, the complexity of the procedure for the EWS seems to play a role: procedures involving more players are likely to be used less often. As such, systems in which ROs must be adopted by the plenary are likely to produce fewer ROs, because of the time pressure. Systems involving sectoral committees are likely to boost the use of the EWS, because the workload can be shared. Furthermore, strong parliamentary information rights are likely to increase the use of the EWS, because this provides better access to information about often highly complex proposals. Finally, Christiansen et al. point out that the presence of strong mandating powers can lead to less interest in the use of the EWS, because these are a strong alternative.¹³

Second, according to the *cultural perspective*¹⁴ the conditions for the use of particular parliamentary instruments are mainly a matter of tradition. Parliamentary traditions are said to shape and be shaped by the role orientations of MPs, as well as by MPs’ beliefs about the functions a parliament should fulfil.¹⁵ Crucially, role orientations reflect the general understanding of the parliament’s function vis-à-vis the executive. In many political systems,
the main conflict lines are between coalition and opposition parties, rather than between parliament and government.\textsuperscript{16} With regard to EU affairs, Katrin Auel has for example used this perspective to explain why coalition parties in the German Bundestag are rather inactive when it comes to controlling the German government in EU affairs.\textsuperscript{17} Finally, role orientations may relate to a population’s general stance towards EU integration.\textsuperscript{18}

The previous conditions are rather structural qualities of parliaments or political parties in them. In contrast, the third perspective, the so-called \textit{negotiation perspective}, takes a “micro” perspective, and argues that effective control depends on the substantive aspects or the political salience of a particular dossier.\textsuperscript{19} Both media attention and interest group support may influence the political cost-benefit analysis made by MPs to actually engage in scrutiny.\textsuperscript{20} Although these conditions have so far not been extensively tested, a first empirical study has suggested that the salience of draft legislation is an important incentive for issuing an RO.\textsuperscript{21}

Evidently, the three broad theoretical perspectives on parliamentary control point at different conditions for the use of EU-related control instruments, and in particular for the adoption of an RO. As such, these perspectives may also further our understanding of conditions for the adoption of a yellow card, as a second step in the causal chain. That is, the threshold for the yellow card can only be reached when enough other parliaments (or a majority of parties in them) score “positively” on the conditions necessary for use of the EWS instrument. Particularly, previous research has shown that inter-parliamentary cooperation is key to reaching the threshold for a yellow card.\textsuperscript{22} In light of the three theoretical perspectives, we can thus expect that inter-parliamentary cooperation to reach the threshold for the yellow card is more likely to occur between parliaments with a role conception that is favourable to the use of the EWS, with the capacity to carry out a subsidiarity check, and with a majority of political groups in each of them making a cost-benefit analysis pursuant to adoption of an RO. Furthermore, to be effective, inter-parliamentary cooperation is dependent on some rather trivial preconditions, such as time and resources. Finally, it must be noted that intra-parliamentary cooperation in bicameral systems is also important. Theoretically, procedures for joint submission of ROs could lead to more ROs.

A third set of conditions relates to the influence on the outcome of the EU legislative process. Crucially, a yellow card is one of the many inputs in the complicated multi-level policy making process of the Union, in which many institutions play a role. If we view ROs and yellow cards as inputs into the full EU policy making process, it seems that cooperation with the European institutions playing a key role in this process is crucial. In addition, the European
procedures for dealing with contributions from national parliaments themselves will be evaluated, by looking at the perceptions of key stakeholders. We will identify conditions in this field inductively from the interviews.

1.3 Approach

The research consisted of five stages:

1. An exploratory analysis of the situation in Dutch parliament, primarily the Tweede Kamer, consisting of interviews with thirteen key political and administrative players.

2. Analysis of the facts and figures about parliamentary control ‘post-Lisbon’ across the EU, using existing academic and official reports. The focus here was on instruments, procedures, use and conditions.

3. Analysis of experiences with the instruments in nine parliaments. Central variables in this stage were the conditions, functioning of procedures, and the effects of the new instruments, as perceived by our respondents. Data collection consisted of interviews with parliamentary liaisons in Brussels, and with members of the EACs and their clerks, conducted during the COSAC Chairpersons Meeting in Rome, 17-18 July 2014.

4. Analysis of experiences within the European Parliament and European Commission, on the basis of nine interviews in Brussels.

5. Three case studies focusing on experiences with the post-Lisbon instruments.

1.4 Case selection

Case selection for stage three and five operated as follows. First, we chose five parliaments with novel instruments for EU scrutiny (Austria, Belgium, Greece, Italy, and Estonia). Next, we selected four parliaments with relatively strong EU scrutiny instruments, but rather diverging use of the EWS: Sweden using the instrument very often, Finland and Germany being rather inactive, and Poland taking an intermediate position. From each group, we selected one case for in-depth scrutiny:

a) Austrian Nationalrat and Bundesrat: a bicameral parliament that has various innovative instruments that could be interesting to the Tweede Kamer.

b) German Bundestag: a lower chamber with relatively strong EU scrutiny instruments, which does not use the EWS all too frequently.

c) Swedish Riksdag: a parliament with relatively strong EU scrutiny instruments, which uses the EWS rather frequently.
1.5 Format of the report

In the following, we first discuss the system of EU scrutiny in the Tweede Kamer, so as to better focus the analysis and recommendations. Next, we provide an analysis of the building blocks discussed above, integrating the findings from the other four research stages. Thus, attention will be given to the national instruments for EU scrutiny, EWS and political dialogue procedures and their actual functioning in the national parliaments, followed by information about their use. The analysis then turns to the effects and conditions of the new instruments, amongst other things focusing on cooperation with other parliaments and the EU institutions. The report concludes in chapter 3, after which a set of recommendations for the Tweede Kamer is formulated.
2 | EU scrutiny in the Tweede Kamer

Before turning to the findings of the research, we first discuss the way the Tweede Kamer organizes its EU-related control.

2.1 Background

The Dutch “no” to the proposal for an EU Constitution in 2005 has reinforced the process of gradual strengthening of the position of the Tweede Kamer in EU affairs, to the extent that it wants to be ‘on top of Europe’. The scrutiny system that has been put in place over the years is characterized by the principle that EU legislation should be treated like national bills. To this end, EU scrutiny in the Tweede Kamer has been “mainstreamed” by making the sectoral committees responsible for the discussion of legislative proposals and other documents. Few parliaments have a system with as strong an involvement of the sectoral committees as the Netherlands. The scrutiny and control instruments available are illustrated in figure 1.

Since the early 1990s, the Dutch government sends its assessment of new Commission proposals, called BNC-fiches, to the parliament. These documents summarize the EU proposal and indicate the position and strategy of the government. While in the 1990s these documents were the starting point for parliamentary involvement with EU legislation, this is no longer the case, as the Tweede Kamer more and more takes its own initiative in discussing EU affairs.

Currently, the starting point of scrutiny is the systematic prioritisation of Commission proposals on the basis of the Commission’s annual Work Programme as depicted in the top left corner of Figure 1 below. Since 2007, the sectoral committees make a selection of priority dossiers that will be discussed in the committee after publication. Since the entering into force of the Lisbon Treaty, the European Commission sends all its new proposals directly to national parliaments, making it easier for the staff of the European Affairs Committee to keep track of those topics that the parliament prioritized – and making the Tweede Kamer less dependent on the government for providing information.

A second important early instrument is responding to the Commission’s consultation documents, such as Green and White Papers. The Dutch government is expected to respond to these documents, and sends its reaction to the Tweede Kamer. Sometimes, a rapporteur is
assigned to specific dossiers, who will try to formulate a Chamber-wide position on Green or White Books. This could be combined with a position paper by the Tweede Kamer.

A series of additional instruments follow after the Tweede Kamer receives a Commission proposal for legislation. All Commission proposals flowing from the agreed priority list are automatically tabled for discussion in the relevant sectoral committee. In addition, Commission proposals not included in the Work Programme may be tabled in a committee meeting following political initiative or administrative advice. Upon publication of the Commission proposal, the EU staff writes a staff memo (stafnotitie) for treatment, comprising suggestions for scrutiny and control instruments that could be deployed. In 2013, the EU staff wrote about 118 of these notices. Upon the basis of this advice, the respective sectoral committee decides on the follow-up in a procedural meeting, after which it can be discussed in a regular committee meeting.

A general principle of the Dutch scrutiny system is that EU proposals and policy documents should be treated as national bills. This means that regular parliamentary instruments may be employed, such as round table hearings with relevant experts and/or stakeholders, and technical briefings by the European Commission or the ministry. Over the years, the number of briefings by staff of the EU institutions or EU agencies increased considerably, with an annual average over ten. Another instrument aimed at information gathering are (video)conferences with other EU institutions or parliaments. Since 2008, there have been about ten working visits to Brussels and other relevant capitals each year, and the number of occasions at which Commissioners were invited to the parliament also steadily grew.

Turning to parliamentary control, motions and written or oral questions may be employed for EU affairs, just like for national bills. Since 1996, another key option for a sectoral committee is to hold a general consultation (AO; Algemeen Overleg) with the respective minister (e.g. between the Committee for Social Affairs and the social affairs minister). Traditionally, this takes place before the meeting of the relevant Council of Ministers’ meeting in Brussels. In preparation for the AO, the minister sends his/her position for the upcoming Council meeting (geannoteerde agenda). Officially, the AOs do not have a mandating character (i.e. there is no legal obligation to have this meeting, and the parliamentary committee does not formally provide a mandate to the minister), but the AO can be followed up by a plenary meeting of the parliament at which motions can be presented, asking the minister to change his/her position. In 2012, 63 of these 'AOs' were held- in 2013, the number was 68. In addition,
ministers usually report after a Council meeting.

After the signing of the Lisbon treaty, the Dutch parliament added two new instruments to its toolkit (see figure 1), namely the scrutiny reserve and the subsidiarity test. The *scrutiny reserve* is an instrument aimed at structuring the information provision by the Cabinet surrounding Council meetings. It is not a mandate, even though in general consultations about the Council meeting, party groups can pose substantive questions, and they may table motions. The *subsidiarity test*, secondly, implements the EWS for the Netherlands.

Finally, to better enable scrutiny of EU-affairs, the Dutch parliament has improved its information position, by demanding access to the Extranet database containing Council documents. However, this is not used very often by MPs, who still experience an information gap, as information on the early stages of Council decision making is missing. To this end, the *Tweede Kamer* has experimented with the instrument of rapporteur on EU policy proposals, after the Commission disregarded the yellow card on the European Public Prosecutor’s Office, indicating that it would not withdraw the proposal. The *Tweede Kamer* plans to use this instrument more frequently in the future\(^3\).
Figure 1 | EU scrutiny instruments in the Tweede Kamer
2.2 Procedure for EWS and political dialogue

The prioritization system described above is the basis for deciding whether or not to carry out a subsidiarity test. Within eight weeks after publication of new legislative drafts by the Commission, the parliament may decide to execute a subsidiarity test to check whether the proposal should indeed be initiated at the European level. In line with the decentralized organization of EU affairs, this is decided by the relevant sectoral committee. If this is the case, the political groups provide their comments using, with an eye on time, a procedure by e-mail. The EU adviser then summarizes this, and together with the relevant committee clerk, assesses the majority position. In case of a positive opinion on subsidiarity, the procedure ends; in case of a negative majority opinion, the EU advisor and clerk write a draft reasoned opinion, which is then submitted to the plenary for a vote. In the meantime, the EU advisor starts, through the liaison, to contact counterparts in other parliaments in order to see if support can be found. When adopted by the plenary, the letter is sent to the European Commission, European Parliament, Council, and the Dutch government.

Most interviewees view the Tweede Kamer’s “toolkit”, containing the subsidiarity check and the other instruments, as rather adequate. The Tweede Kamer uses the EWS rather actively, producing a steady output of ROs and scrutiny reserves. It produced thirteen ROs in the period 2011 through 2013, based on fifteen subsidiarity checks carried out, as well as fifteen scrutiny reserves. It also is quite ambitious, wanting to be a pioneer in the issuance of a yellow card (interview). To this end, in a recent strategic document it not only suggested that ROs should be more extensively elaborated, but also proposed several improvements to the EWS procedure, mainly:

- Commission answers must become more substantive
- The eight-week deadline should be increased to twelve weeks
- The threshold for a yellow card should be lowered
- The EWS should be broadened to encompass proportionality and legal base

2.3 Effects

Turning to the effects of the EWS, withdrawal of undesired Commission proposals is not seen as the only desirable outcome. Other goals are signalling to voters that the parliament takes their interests seriously, and that MPs take responsibility for EU policy. There is a shared sense of dissatisfaction about the effects of the yellow cards that materialized so far (interview). On the other hand, one Dutch respondent observed that it is only five years after Lisbon – a period
in which national parliaments have started working with new procedures – a stage which is still one of experimenting. Yet, the interviewees also observed that the fact that it has proven possible to draw two yellow cards\textsuperscript{36} is positive. Also, an important side effect is that the Dutch minister used the EPPO yellow card to strengthen its position in the negotiations. Two other respondents shared this view, explaining that an important (but rather minimal) side effect is that the government is made aware of the position in the parliament. Finally, one respondent noted a side effect in a sectoral committee, namely much more interest in the substantive aspects of a European file, also after the subsidiarity test. From the point of view of a more direct link between the EU and its citizens, and public debate, it is important to note that due to the strict time frame, subsidiarity tests are usually carried out through an e-mail procedure, away from the spotlight. At the same time, it must be noted that the Tweede Kamer tries to communicate actively about its role in EU control, using social media and more traditional channels.

2.4 Conditions

Interviews with representatives of Dutch parliament brought to light several conditions for the use of the EWS in the Tweede Kamer. Capacity at the administrative level was not flagged as a main problem, although the workload is perceived to be rather high – possibly also as a result of the rather ambitious stance of the administration of the EAC. The workload as experienced by sectoral staff might thus be a problem. Capacity at the political level is reported to be problematic especially for smaller parties, who are reported to have problems getting involved in EU affairs. In this respect, the rather small Tweede Kamer, with fourteen political groups, cannot be compared to larger and less fragmented parliaments, like the German Bundestag.

Awareness of the available instruments amongst sectoral MPs and their staff seems low. This is compensated by the active role of the EAC staff, which is reported to play a key role in activating MPs – as reflected by the practice to advise Committee members on the use of control instruments available. According to several respondents, the EU staff plays a rather influential role, suggesting and stimulating use of control instruments. The general understanding amongst our respondents, however, is that ultimately, the choice to use instruments for EU control is and should be political in nature.

Turning to the condition of role conception, the Tweede Kamer views itself as having a key role between the European Union and Dutch citizens. This role conception, detailed in a set of more specific action points, was adopted almost unanimously by the Tweede Kamer.\textsuperscript{37}
Yet in actual activity, some differences between party groups are reported to exist. Especially those political parties that are more critical about further European integration have a high stake in EU scrutiny.\textsuperscript{38} According to several respondents, the use of the EWS instrument in the end is a cost-benefit calculation made by MPs. A crucial condition for activation of the procedure is to have a member taking the initiative, which in the words of one respondent is ‘mostly a matter of interest, passion, and ownership, and intrinsic interests being at stake’.

2.5 Cooperation

To improve \textit{inter-parliamentary cooperation} (a crucial condition for producing more yellow cards), the Tweede Kamer has already made several proposals and initiatives, such as a contact list, a meeting of EAC clerks, the proposal to hold ‘cluster of interest meetings’ (ad hoc meetings between groups of parliaments dealing with a particular policy theme), and the idea to allow for exchange of substantive arguments beyond subsidiarity.\textsuperscript{39}

There is no systematic \textit{intra-parliamentary cooperation} in the Netherlands, i.e. cooperation with the Eerste Kamer, on the subsidiarity test. The respondents do not see this as a problem. That is, despite the fact that the two chambers have their own procedures, administrative cooperation is said to function properly. In about half of the cases ROs are adopted jointly by both chambers.

From the vantage point of the Tweede Kamer, \textit{cooperation with the EU institutions} could be strengthened, as this might be an important way for improving the effects of reasoned opinions or yellow cards. The conferences organized by the EP are seen as offering too limited opportunities for interaction. Contacts with MEPs are rather thin and ad hoc, and could be systematized. Contacts with the Commission could also be improved, going beyond contacts between clerks and Commission administrators.
3 | Thematic analysis

This chapter reports the insights produced by the factual analysis, interviews within national parliaments and EU institutions, and the three case studies, integrating them thematically.

3.1 Instruments

COSAC surveys show the relative importance of indirect instruments, related to the control of national government in EU matters: 92% of parliaments/chambers identified holding governments to account for their participation in the Council as being the most important task of parliamentary scrutiny in EU affairs.40

The study of the nine parliaments, including the in-depth case studies, provided four most popular indirect scrutiny instruments, namely information rights, voting instructions, follow-up after Council negotiations, and rapporteurs. The Tweede Kamer might learn from these instruments in several respects.

To begin with, the interviews made clear that parliaments have different degrees of parliamentary information rights. Firstly, besides the “normal” flow of information between government and parliament that often includes explanatory memorandums from the government on Commission proposals, some parliaments can oblige the government to provide additional information. Most notably, in Finland, the government may submit to the parliament anything relating to the EU, and is obliged to do so if the Grand Committee so demands – which has led to a flexible working understanding on the sharing of information. This includes information on issues or documents that are not formally part of the powers of the parliament, such as non-legislative Commission documents. Similarly, in Sweden, sectoral committees may oblige the government to provide information on EU matters.41

Specifically, some parliaments have obtained more extensive access to information about negotiations in the Council of Ministers. In particular, the Italian Camera dei Deputi recently adopted a new rule concerning the exchange of information. Accordingly, the Italian Permanent Representative has to provide the parliamentary liaison with all information pertaining to EU negotiations, including trilogues, minutes of COREPER and Council working groups, and detailed documents on the Italian position. The German Bundestag also has
extensive access to documents pertaining to negotiations, including documents of informal ministerial meetings, COREPER, and Council working groups; as well as the ‘coordinated instructions for the German representative’ on COREPER and reports from the Permanent Representation.42 This information, along with many other documents, is available in the electronic information system EuDox, and all documents are accompanied by government opinions (doppeltes Ueberweisungsverfahren). Other parliaments mostly receive information through reports from the government on Council negotiations, such as in Finland and Sweden; or through ‘pre-’ and ‘post-briefings’ on Council meetings, such as in Belgium.43 While the Polish government must submit to the Sejm written information ‘on the progress of EU law-making procedures and information on the Republic of Poland’s positions taken in the course of those procedures’, it must also inform the Sejm of ‘Poland’s participation in the activities of the EU’ at least twice a year.44

Second, several parliaments have stronger voting instruction instruments than the Tweede Kamer. Legally binding mandates exist in Austria, Estonia, and Poland, whereas the German, Finnish and Swedish parliament use the instrument of opinions, which are only politically binding. In Belgium, an informal mandating power is argued to exist. Generally, these indirect instruments are seen as very effective instruments for influencing EU decision making. In Sweden, the mandate instrument is seen to be rather efficient, because the EAC can decide without plenary debate.

Third, Finland and Sweden have a particularly interesting instrument of follow-up to mandates. If a minister cannot stick to an opinion, they must get back to the Parliament. Sometimes, even virtual sessions with the national parliament are held during Council meetings.

Fourth, several respondents noted instruments to make MPs responsible for EU affairs. The Polish Sejm uses a system of rapporteurs who are assigned to EU legislative proposals, while the Greek parliament has a more informal system in which a certain MP takes the lead. The Polish rapporteurs are MPs of the EAC who have an interest in the Commission proposal under scrutiny. The rapporteur introduces the document of his responsibility in the EUAC and to other MPs. In case a reasoned opinion is adopted, it is also the task of the rapporteur to draft the opinion. He or she is also responsible to attend the relevant EU meetings or inter-parliamentary meeting were the proposal is discussed. However, the rapporteur has no mandate from the EAC and cannot represent the views of the whole Polish Sejm at such meetings, if there is no plenary agreement or already an agreement on issuing an
RO. In the Polish system, there is a ‘reporting deputy’ for each draft legislative act selected for discussion.\textsuperscript{45}

In a similar vein, but in a somewhat broader setting, the Belgian \textit{Chambre des représentants} has introduced a system of “Europromoters”: every sectoral committee has appointed such a Europromoter among its members, who has the task to follow the EU policy making processes that are relevant for the committee.\textsuperscript{46} The idea is that these MPs stimulate other committee members to study and scrutinize European legislative dossiers. Moreover, the Europromoter is formally responsible for drafting a reasoned opinion under the EWS, and could thus potentially stimulate the scrutiny of subsidiarity issues. Although the results of this system are not clear yet, given the structural character of the system in contrast to ad hoc rapporteurs on specific dossiers or draft legislative acts, it could promote the scrutiny of EU affairs in day-to-day parliamentary work.\textsuperscript{47}

Despite the great importance of indirect EU scrutiny, 20 out of 37 parliaments believe that democratic accountability should also include EU institutions directly, the EWS being slightly more popular than the political dialogue.\textsuperscript{48} Whereas the legislative phase of EU decision making is most popular, several parliaments try to scrutinize Commission consultation or strategic documents. In Sweden, scrutiny of Green and White Papers is even obligatory.\textsuperscript{49} Both the Austrian and Swedish parliament tend to bundle various instruments, in order to increase effectiveness.

\textbf{3.2 Procedures and actual functioning}

To enable actual use of the EWS and political dialogue, most parliaments have adopted their laws and rules of procedure for parliamentary scrutiny accordingly.\textsuperscript{50} The main difference in procedures is with the \textit{actors involved}: a range of parliaments conduct subsidiarity checks mainly in the European Affairs Committee, whereas others use a more decentralised system run by sectoral committees (\textit{e.g.} Sweden, \textit{Tweede Kamer}, German \textit{Bundestag}, and Luxembourg). A third group of parliaments has hybrid systems.\textsuperscript{51} A second key difference is the \textit{role of the plenary}. The Dutch situation of plenary involvement is obligatory in sixteen other parliaments or chambers.\textsuperscript{52}

As our interviews borne out, three parliaments deliberately developed highly complicated procedures, so as to make use of the EWS virtually impossible. In one self-reportedly pro-European parliament, the conscious choice was to develop a system that would bypass sectoral committees, in order to minimize the risk of the EWS being “captured” by
sectoral interests.  

The comparison of the nine parliaments revealed key similarities concerning the role of the administration. Mostly, administrators play a role in the selection and prioritization of Commission proposals and recommendation of instruments to be used, while the final choice of instruments is in political hands. In Austria, interestingly, the selection is made by both administrative and political staff. After administrative staff has prepared a pre-selection list, so-called political group advisors develop a list of proposals that are placed on the agenda of the sectoral committees, which then makes the final choice. An exception in this regard is Sweden, which does not have a selection system: MPs look into all Commission proposals, making a selection for further scrutiny. Administration does not have a task here, because this is believed to be a political responsibility.

Most parliaments, furthermore, use the same procedure for the EWS as for the political dialogue. Some parliaments, however, do not regulate the procedure for the political dialogue in great detail (Sweden, Portugal, Austria, and Ireland).

An important aspect of the actual functioning of the EWS procedure is the understanding of subsidiarity. Despite allegations of differences in opinion, parliaments seem united in their understanding of the subsidiarity principle as a legal concept. However, concerns about breaches of the principle are raised on the basis of political reasons. Even in those parliaments with a rather formalistic understanding, political and legal concerns interact. Several respondents indicated, however, that subsidiarity is a very problematic concept, especially because it is hard to distinguish from proportionality.  

3.3 Use of EWS and political dialogue

As shown in figure 2, actual use of the EWS and Political Dialogue is highly divergent between parliaments. Sweden is by far the most active parliament when it comes to issuing reasoned opinions, with 48 ROs in the period 2010-2013. Sweden is followed by Luxembourg (16), the French Senate (15) the Tweede Kamer (14), the UK House of Commons (13), and the Polish Sejm (12). Least active in sending Reasoned Opinions are parliaments of Slovenia (both chambers), the Czech Lower House, Hungary, and Estonia.
Figure 2 | Use of reasoned opinions per parliament/chamber (2010-2013)

Figure 3 | Use of the political dialogue per parliament/chamber (2010-2013)

Note: Sweden does not use the political dialogue actively. The high number of contributions in this table is due to the fact that the European Commission counts the Swedish reactions to green and white papers as contributions under the political dialogue.
The political dialogue, as shown in figure 3, is used much more often than the RO. Portugal is the top user, with more than 700 opinions until 2013. This might be related to the fact that there is no formal procedure for the Political Dialogue in Portugal. More in general, several parliaments prefer the political dialogue over the EWS, because it does not ‘put a break on European integration’. Several parliaments concentrate on either the PD or the subsidiarity check. A third group of countries uses neither instrument frequently, for reasons that will be set out below.

3.4 Effects

This research relied on interviews with key stakeholders to obtain information on perceived direct and side effects of ROs. Starting with the first direct effect of influencing legislative outcome, the interviews in the nine parliaments revealed that there is low faith in legislative effectiveness of the EWS, largely due to the allegedly slow speed and low quality of Commission responses to ROs. This impression is confirmed to some extent by interviews with representatives of the European institutions. The reasoned opinions as such were said to have only little real influence, as they are a small factor: given the large amount of input from various actors, a reasoned opinion becomes just one piece of information among many. The fact that national parliaments fairly often submit contradicting opinions does not help to enhance effectiveness.

In this regard, several respondents from the national parliaments describe a boomerang effect of being “too active” with ROs. They are alleged to weaken a parliament’s credibility with the Commission and parliaments in other member states. One liaison even describes how reasoned opinions by very active parliaments are not regarded seriously, when making the decision whether or not to follow other parliaments. Finally, Austrian and Finnish respondents explained an unintended effect of inactivity, namely that the Commission in case of a Yellow Card may view the absence of ROs from a particular parliament as implicit agreement with a particular proposal.

Interviews within the EU institutions suggest that personal contacts between national MPs and the Commission are said to be more effective than formal contacts through the EWS if one wants to influence legislative outcomes. Timely involvement is more appreciated by the Commission than comments on draft legislation in the final stage. The Commission advises parliaments to provide input at an early stage, because changes can then be more easily implemented. Yet, since the entry into force of the Lisbon Treaty, national
parliaments seem to have started to give relatively more attention to already proposed legislation, and less attention to Green and White Papers in their dialogue with the Commission.61/62 This is a possible side effect of the EWS that should not be disregarded.

In addition, our parliamentary respondents were fairly united in expressing disappointment with the European Commission’s responses to the earlier yellow cards.63 Crucially, the European Commission has discretionary room to decide how to respond. Experience so far has learned that a yellow card does not automatically lead to withdrawal or amendment of the proposal. On balance, the Commission is still primarily oriented toward the Council and the European Parliament: the political assessment whether a proposal can make it through these legislative institutions largely sets the Commission’s course.64

Turning to the effects in the European Parliament, our interviews did not sketch a positive picture either. Despite the presence of a system of information dissemination in the EP, reasoned opinions and other parliamentary contributions were argued to receive little attention by MEPs. In general, subsidiarity questions are not as pressing as at the national level.65/66 According to one MP we interviewed, the EWS has even deteriorated cooperation between MPs and MEPs, even within party groups. This image is sustained by interviews within the European institutions. Whereas the disinterest in the EP is said to be partly related to the information overload experienced by MEPs, a general sense of rivalry vis-à-vis national parliaments is also said to exist. Not all MEPs allegedly appreciate the direct involvement of national parliaments in EU decision making.

At the same time, this picture of disappointment is offset by several other observations. According to some respondents in Brussels, if national parliaments really want to have their voice heard in Brussels, they have to persist. There is a general expectation that the new Commission and the newly elected European Parliament will listen more carefully to national parliaments.67 In addition, interviews with the Commission indicated that the EWS has increased the urgency to take subsidiarity seriously. The knowledge that national parliaments may reject a proposal on grounds of non-compliance with the subsidiarity principle has increased the Commission’s awareness that initiatives have to be justified from this perspective. Although national parliaments are still not satisfied with the explanations from the Commission, the number of proposals that are solely justified on the basis of the simple conclusion that the proposal complies with the subsidiarity principle has declined over the last years.68/69

Turning to the effects on deliberation and representation, these seem fairly limited.
The study shows that the EWS has so far led to more *plenary debate* on EU Affairs in only one member state (Austrian parliament). Strikingly, however, in Sweden the active use of the EWS instruments makes debate less necessary, because subsidiarity concerns are now handled in an earlier stage of decision making than before. The effect of the EWS on establishing a better link between citizens and Europe also seems limited. While this is recognized as a desired effect in various parliaments, the EWS has so far not attracted public interest in EU matters. Only in two parliaments (Austria, Finland), there is a perception that the EWS increases public interest.

Our interviews in the nine parliaments did reveal, however, several *side effects* of the EWS and political dialogue at the national level. In four out of the nine parliaments studied, the EWS is said to have *increased EU awareness* in parliament. Other side effects mentioned by some parliaments were *better scrutiny* of the substantive aspects of Commission proposals, going beyond subsidiarity only (Austria, Estonia, Greece).

The effects of ROs on governments’ negotiation positions are not unequivocal. According to one of our respondents in Brussels, it is questionable whether governments take into account the opinions of their parliaments; this will partly depending on the stringency of parliamentary control over the government. In this regard it is worth noting that ROs, although primarily directed at the Commission, may also bind government in a more direct way. In Austria, ROs directly bind national government. In Sweden this is effect is more indirect: here the parliament tables the RO during the meeting held prior to the Council meeting.

In Austria, finally, a surprising institutional effect is claimed to have arisen: the EWS is said to have strengthened the general position and even *raison d’être* of the Austrian *Bundesrat*, which has adopted a key role in performing subsidiarity tests.

### 3.5 Conditions

Analysis of both quantitative data, as depicted in Appendix 2, and qualitative experiences in the parliaments has not produced a one-size fits all explanation for the use of the new instruments. While similar types of conditions have an effect in the various parliaments, a fine-grained picture of so-called “equifinality” appears: there are multiple causal pathways to the use or non-use of the instruments. Although a thorough understanding of all these pathways was not feasible within the scope of this study, the following picture arises.

Starting with the *constitutional perspective*, respondents highlighted *awareness* of the new
instruments as a problem in just two of the nine the parliaments. In addition, our factual analysis shows that capacity in terms of the number of staff is not a necessary condition for the use of the EWS, although several less active parliaments mention in the twentieth COSAC report that they suffer from limited resources available for EU scrutiny work (e.g. Greece, Ireland and Estonia). This image is supported by the interviews. Capacity problems were mentioned by respondents from Estonia, Greece, Finland, and the Italian Camera dei Deputati. In Sweden, the capacity problem was said to be solved by the decentralised system, which allows for sharing of the work- although it is offset by a requirement that all Commission proposals are scrutinized by MPs. A final relevant insight is that capacity is not an a-political condition: in some parliaments, such as Finland, low capacity for EU matters is linked to a perception that the parliament does not have a large role to play concerning the EWS.

Turning to the various national procedures for the EWS, whereas some parliaments with decentralised systems are very active (Luxembourg, Tweede Kamer, Sweden), this is not a necessary condition for active use, as evidenced by the French Sénat and the UK and Polish lower houses. Across the board, however, the chambers that use a very complex procedure involving different actors at the administrative and political level are amongst the less active parliaments (e.g. Germany, Portugal, Belgium and Finland).

Parliaments, as said, differ regarding the role of the plenary under the EWS/political dialogue. Plenary involvement, despite being time-consuming, has no clear effect on the number of ROs adopted by a parliament.

Amongst the active parliaments, there is an over-representation of institutionally strong parliaments, which have wide access to information, a strong scrutiny infrastructure, and strong powers of control. Yet, institutional strength is not a necessary condition for frequent use. That is, the Polish Sejm, the Dutch Eerste Kamer, the French Sénat, and the UK House of Commons only score moderately on institutional strength relating to EU matters, as shown in Appendix 2, while being fairly active under the EWS. Vice versa, Denmark, Germany (both chambers), Estonia, Finland, and Lithuania are comparatively strong, but use the EWS to a low or moderate degree. To better understand the effect of institutional strength, we thus need to break this down into its various aspects, by turning to the interviews.

To start with, information rights were said to be an important condition for use of the EWS. Sweden, Poland, and Austria, which were very satisfied with their strong information rights, are amongst the active parliaments. An interesting exception is formed by Germany and Finland, where strong information rights do not translate into active use of the EWS or political
dialogue. The study of the nine parliaments corroborates earlier findings that the presence of strong control powers *vis-à-vis the government* does not have a clear effect on the use of the EWS. While various parliaments combine legal or political mandating powers with active use of the EWS (Sweden, Poland, and Austria) others with strong political mandates (Finland and Germany) hardly use the EWS. The presence of more effective instruments to indirectly exert control on EU matters is argued by some to preclude active use of the EWS. This is primarily an argument in the German case. Another striking finding in this respect is that *Upper Chambers* tend to be much more active in using the political dialogue than Lower Chambers. This may be due to their more remote position to governments.

Turning to the cultural perspective, the interviews provided support for the importance of role conceptions. According to various respondents in Belgium, Estonia, Germany, Italy, and Poland, the perceived positive popular stance towards European integration is a key condition for the fairly infrequent use of the EWS in these parliaments. Polish, Belgian, and Italian respondents explained how the EWS is seen as rather negative, which is why the political dialogue is seen as a positive alternative, sometimes even with the aim of expressing support for European integration. This alleged condition is hard to capture statistically, however: EU trust or support for EU membership as measured by the Eurobarometer do not have a clear effect on use. In the German case, the incentives for the mainstream parties to stand by the process of European integration are strong, as a result of a generally pro-European constituency, a dominant position of the German government in Europe, and major political and economic benefits from EU integration.

The consensus amongst the Finnish respondents was that *national parliaments should not have an independent role at the EU level*, which explains the inactivity of the Finnish parliament. A similar argument can be made for the German case, where the general idea is that it is the government negotiating in Brussels, and the role of parliament is to control government – facilitated by the existence of strong scrutiny instruments. However, the influence of these parliamentary role conceptions could not be fully specified for all EU parliaments. Those parliaments labelled ‘European players’ (seeking to play an active role at the EU level) by the OPAL group are not necessarily highly active, as evidenced by the position of the Czech lower house illustrated in Appendix 2. However, parliaments with a very strong and exclusive focus on national government, without playing a strong European role, are hardly active under the EWS and political dialogue, with the exception of Poland.
Parliamentary role conceptions are highly case-specific. This is evidenced by a comparison between the Finnish and Swedish case. Similarly to Finland, the consensus in the Swedish Riksdag is that national parliaments should not play too independent a role at the EU level. Unlike in Finland, this position does not translate into inactivity, as evidenced by the frequent use in Sweden. According to Swedish respondents, the active use of the EWS is related to a general duty towards the law in Sweden: MPs across the political spectrum are claimed to see it as their obligation to use the instruments they have at their disposal, as a responsibility to their voters, and as a means for safeguarding national interests.

Furthermore, the interviews in the nine parliaments provided much support for the negotiation perspective on the EWS. Respondents from various parliaments stressed the importance of a “pusher” who is willing to invest time and energy. This is not necessarily an MP, but may also be an administrator, external stakeholder, or even the government pushing for a subsidiarity check, as happens sometimes in those parliaments that actually prefer not to use the EWS. One of the Austrian respondents explained that it is crucial that MPs create an ‘appetite for Europe’ amongst their colleagues. The role of personalities, as shown by the Austrian case study, can be far-ranging, given the fact that both the chair and vice-chair of the Bundesrat are highly interested in European politics, actively trying to make a difference.

Components of the cost-benefit analysis differ per parliament and case, but strong preferences on politically salient topics, are main parameters. Other considerations, instead, work against the active use of the EWS. Several respondents explain that MPs do not see the instrument as having great added value, because Europe is not seen as important by voters. The presence of other important national topics on the agenda, and intra-coalition dissensus, also were argued to reduce the attractiveness of the EWS. The position of the government is an important influence on the activity in specific dossiers—parliaments being asked to either adopt an RO, or to steer clear from doing so. Finally, several respondents indicated that the disappointing reaction of the Commission so far hinders activation of the EWS, whereas some actually argue that this has triggered MPs to become more active.

3.6 Intra-parliamentary cooperation

Cooperation between chambers of a parliament may be seen as way to increase the chances of a yellow card being adopted. Yet our factual analysis has not provided any explicit best practices of institutionalized cooperation. Most bicameral parliaments we studied have different procedures in the two chambers for conducting subsidiarity checks. Cooperation is
mostly non-binding and informal, with the exception of the Spanish and Irish parliament. These have formal tools for cooperation between the chambers.

In Austria, the administrative staff works for both parliaments. Yet this does not necessarily lead to more cooperation. Interestingly, both chambers have submitted reasoned opinions on the same dossier only once (until 2012). According to Miklin, this is due to the different degree of priority that is given in the two chambers to EU scrutiny, as well as to conflicting schedules and organizational difficulties in meeting the eight-week deadline.\textsuperscript{82}

The situation is further complicated in federal parliaments, where regional parliaments have competences under the EWS, such as Austria, Belgium, and Spain. Particularly in Belgium the division of competences under the EWS between the regional and central parliament is not always clear and can delay the procedure.\textsuperscript{83} The interviews we carried out in bicameral parliaments pointed towards the importance of informal information exchange, as is the case in the Netherlands.

3.7 Inter-parliamentary cooperation

Cooperation between national parliaments, in the sense of exchanging arguments and amassing support, is important for the effective use of the EWS. Indeed, without such cooperation the threshold of parliaments would be hard to meet, given the fact that national MPs mostly do not test EU legislation across the board.\textsuperscript{84} Inter-parliamentary cooperation runs through a diversity of channels, some of which are political in composition, others administrative. In the following, we introduce the main channels mentioned most often by the respondents: COSAC meetings, administrative liaisons in Brussels, and IPEX.

The most important formal forum for inter-parliamentary cooperation is the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC).\textsuperscript{85} COSAC meetings take place twice a year, and are organized and chaired by the parliament of the country which holds the rotating Presidency. They serve to exchange views, information, best practices, and expertise on EU matters.\textsuperscript{86} Each delegation consists of six members from EACs from national parliaments, and six members of the European Parliament. Often, COSAC invites guest speakers such as European Commissioners or representatives of the rotating presidency. In addition to the biannual meetings, the chairpersons of EACs also meet twice a year within the COSAC format, where similar networking opportunities exist.

Most parliaments (27 out of 31) perceive networking as the most successful aspect of
COSAC meetings. This networking function became particularly visible when the first yellow card (Monti II) was issued. Nevertheless, there is quite some criticism on COSAC meetings. 18 out of 31 Parliaments/Chambers identify the quality of debate during COSAC meetings as the least successful aspect of this type of inter-parliamentary cooperation. Most parliaments do not consider COSAC to be the right venue for collective decision making, instead preferring COSAC to be used as a more informal setting by increasing the number of side meetings to discuss specific legislative proposals. This has been the position of the Tweede Kamer for some years, as evidenced by its report on Democratic Legitimacy.

A problem plaguing COSAC meetings is that MPs representing their parliament usually do not have a mandate. Also, as evidenced by the Swedish case study, some parliaments may not be willing to proactively look for coalitions, or engage in persuasion attempts. The general absence of mandates reduces the attractiveness of formal exchange of thoughts, and is an important argument for having more informal meetings, rather than having discussions in the plenary. The dominance of formal interactions is one of the reasons why COSAC meetings are not viewed as very valuable by most of our respondents. In addition, points of criticism are the absence of MPs from some parliaments (or at least difficulties of engaging them), dominance by EP and Commission, and the dependence on accidental personal contacts.

A majority of our interviewees suggested that COSAC meetings should become more substantive, allowing for dialogue and exchange of views, preferably through more room for ad hoc interaction. Parliaments focusing primarily on control of their national government have a lot to gain. According to several respondents in these parliaments, sharing of information on specific dossiers may help them to better control the government. Two respondents take another stance, suggesting that COSAC should focus more on institutional issues, and the role of national parliaments in EU decision making. However, the feasibility of this suggestion seems limited, as many parliaments are not interested in such exchange.

At the administrative level, national parliaments cooperate through the parliamentary liaisons in Brussels, which together form an informal network. The representatives exchange information and coordinate the submissions of reasoned opinions. They provide a ‘bridge-building function’ across national parliaments. A main instrument for doing so are the Monday Morning Meetings of the Representatives held each week. Most parliaments and chambers consider the liaison officers in Brussels as highly useful. According to our respondents, the role of the liaisons is crucial for the EWS, as they function as the “eyes and ears” of parliaments in Brussels.
A third instrument for inter-parliamentary cooperation worth mentioning is IPEX—‘InterParliamentary EU information eXchange’ (sic). This is a platform for the exchange of information between national parliaments and the European Parliament concerning issues related to the European Union, especially in light of the provisions of the Treaty of Lisbon. Parliaments make varying use of IPEX for example by adding national documents. The countries that upload most documents on IPEX are Austria, Germany, Italy, the Netherlands, Sweden, the Czech and French Senates and the Polish Sejm. Many parliaments criticize the database for not being up to date and information only being available in national languages. This view is supported by a recent academic study. The interviews sustain this critical view of IPEX, the main problem being that little information is actually uploaded in time. According to a respondent, the reason is that many parliaments may not share information that is not official.

Fourth, there seems to be a consensus amongst the respondents in the national parliaments that there is no need for new systems or instruments for inter-parliamentary cooperation, except one: exchanging lists of priorities by those parliaments who scrutinize the Commission Work Programme. However, as one respondent put it, the general idea seems to be to ‘first improve existing instruments before creating new ones’.

3.8 Legislative influence: the need for cooperation with EU institutions

After the Treaty of Lisbon, both the European Commission and European Parliament developed procedures for dealing with reasoned opinions and yellow cards. The European Commission currently employs a self-imposed deadline of three months to respond to ROs, which it usually meets. Our respondents in the nine lower chambers were rather critical about the European EWS procedure. Their main complaints concern the lack of influence of yellow cards, the tight time frame of eight weeks, and the quality and speed of the Commission’s response. Several respondents argued that the understanding of subsidiarity is too restricted, and should be broadened to also encompass proportionality, even though Austrian and Swedish respondents argued that proportionality may be a part of subsidiarity.

In response to these criticisms, Commission respondents explained that faster answers, as desired by national parliaments, are not feasible, especially in complicated cases. The fact that the answers tend to be rather formal is seen as a given, because of the formal nature of the procedure. In addition, the processing of complex questions takes quite some time, because it requires the involvement of several services within the Commission. Another
complicating factor from the Commission’s vantage point is that the views of national parliaments often diverge greatly. It is not only unnecessary, but also impossible for the Commission to satisfy the demands of all national parliaments.107

In order to enhance the utility of the EWS, respondents in the Commission suggested that parliaments should provide a more extensive and clearer motivation, and distinguish between substantive (political) and subsidiarity arguments. Moreover, according to the Commission, they could give ROs the form of an “amendment”. Finally, the Commission argued that parliaments could use a standard opening paragraph for reasoned opinions, and possibly even a shared format.108 Coordinating the argumentation of an RO is also advised.109

National parliaments could contribute to a uniform interpretation of the subsidiarity principle by appealing to the European Court of Justice if their reasoned opinions have been ignored, while they still believe that the legislation infringes the subsidiarity principle. In light of the generally felt need for better personal contacts with the Commission, it could be recommended to have a meeting with the Commission after the submission of a reasoned opinion by several parliaments. However, this may be difficult for those parliaments that, according to our respondents, explicitly rule out lobbying the Commission.110 From the vantage point of the national parliaments, interaction with the Commission is generally seen as attractive, but difficult to organize.111

Turning to the European Parliament, above we described the fact that MEPs do not actively follow the contributions made by national parliaments. To this end, the EP secretariat is planning to introduce some new tools, such as directly signalling to the rapporteur if there is a lot of parliamentary attention.112 In addition, according to respondents within the EP, mutual relations with the EP could be strengthened through regular participation in inter-parliamentary conferences and intensified bilateral contacts, both on a personal level and by making use of videoconferences. Thus, cooperation in the context of the EWS should be seen against the background of cooperation more broadly. To improve relations, it seems important to ensure that the focus is not on differences of opinion only, instead searching for common interests.113

Even though contacts between MEPs and MPs are not yet a “natural” part of the legislative process, they are claimed to have intensified in recent years.114 Several instruments and developments are noteworthy. First, the EP regularly organizes meetings involving national parliaments, sometimes in cooperation with the parliament from the member state holding the presidency.115 The 21st biannual COSAC report indicates that the majority of
chambers/parliaments (24 out of 38) regularly attend the irregular inter-parliamentary meetings held at the premises of the European Parliament. Only Denmark and the Slovenian Drzavni zbor rarely attended these meetings. Most parliaments consider the quality of debate during such meetings the weakest aspect, while networking and exchange of best practices are considered to be the most important aspects of such meetings.\footnote{116}

In recent years, the emphasis has shifted to the creation of smaller networks around specific topics, and the organization of small-scale meetings where only rapporteurs, experts or committee chairs are present.\footnote{117} This trend of specialization has revolved around *specialist Joint Committee Meetings* organized jointly by the EP and the national Parliament of the country holding the rotating Presidency, and *Interparliamentary Committee Meetings* organized by the EP.\footnote{118} These substantive meetings are explicitly welcomed by some of our respondents from the national parliaments.\footnote{119}

An alternative instrument for cooperation with the EP are bilateral contacts between MPs and MEPs. Parliaments however generally do not systematically engage in these.\footnote{120} Several parliaments have instruments for involving MEPs in national operations, such as the right of MEPs to observe committee meetings (Austria), or even membership of committees (Belgium).\footnote{121} Finally, there are remarkable differences between parliaments: the French Assemblée Nationale is particularly active, for instance by engaging with EP rapporteurs. The German Bundestag also has a rather strong practice, because of the presence of political liaisons in Brussels, and by organizing committee meetings in Brussels.\footnote{122}

Several other instruments for inter-parliamentary cooperation exist. One instrument are bilateral visits. MEPs particularly value bilateral visits that are organised by member states about to take over the presidency of the Council, because they provide for more thorough discussions with a limited number of participants and an opportunity to exchange views on concrete issues.\footnote{123/124} Since fairly recently, it is possible to use videoconferences for bilateral meetings too. These save time and resources, and may partially resolve agenda-setting problems that are sometimes in the way of successful cooperation. To this end, the European Parliament has good technological facilities at its disposal, including a few channels for translation. About half of the national parliaments have the necessary facilities for videoconferences.\footnote{125}

To sum up, the main message concerning cooperation with the European institutions is that the EWS should be seen as one step in a longer process of influencing, starting with Green and White Papers. Greater emphasis on informal contacts with the Commission and the EP are
advised, as well as more focused substantive meetings based upon common interests, according to respondents in the institutions. The European institutions do not support the creation of new instruments for national parliaments. For example, a “green card procedure” is perceived as undesirable, because even the European Parliament does not have any formal right of initiative. In addition, it should be taken into account that parliaments from larger member states may want to factor in population size in such a new instrument.
4 | Conclusion and recommendations

For a long time, national parliaments were considered the “losers” of European integration, given the transfer of policy competences to the European level combined with the strong position of national executives in European Union decision making. In response, parliaments have gradually ‘clawed back’ their powers, by developing rich toolkits for controlling EU policy making, primarily through their national governments. The Treaty of Lisbon has added instruments for direct control to this toolbox: the Early Warning System, consisting of the tools of the reasoned opinion and yellow card. The EWS supplemented the Barroso initiative, established in 2006, which provides for the possibility of political dialogue between national parliaments and the Commission.

Many parliaments actively use the newly acquired tools, which has resulted in the production of a great number of parliamentary contributions to the EU policy making process. Parliamentarians and their staff members have found their way to inter-parliamentary meetings, and produced two ‘yellow cards’. Rather quickly they have obtained a new position in the EU landscape that cannot be ignored. The Dutch Tweede Kamer is a case in point: it has realized a firm position in inter-parliamentary relations, producing a steady output of contributions to the EU policy process and an ambitious agenda.

Some effects of this new activity by national parliaments already become apparent. Arguably, the Commission has become more aware of the principle of subsidiarity. Furthermore, the EU Commission has opened up to national parliaments, welcoming their input- if preferably in an early stage of decision making. In various parliaments, the EWS has played a catalyzing role, leading to more substantive scrutiny of EU affairs beyond subsidiarity, and more EU awareness and activity. This image sharply contrasts with the initial critical and limited expectations about the EWS. Also, given the relative newness of the EWS, further strengthening of this position are not unthinkable, as indicated by respondents in the EU institutions.

Despite these assorted effects, the influence of individual reasoned opinions, let alone opinions, on EU policy making so far has been fairly limited. They have not fulfilled clear the
deliberative or representative functions, given the general absence of media coverage for reasoned opinions and yellow cards – not helped by the fact that much control activity takes place in hasty e-mail proceedings. In addition, the EWS has been hardly effective from the vantage point of legislative influence. The European Commission considers ROs, especially if not coordinated by parliaments, as just one input among many, MEPs often times not even registering them.

Furthermore, the passing of large numbers of ROs, as well as all-too frequent attempts to organize inter-parliamentary coalitions for yellow cards, may incur costs on parliaments, as borne out by our interviews. First, highly active parliaments might lose credence with the Commission and parliaments more hesitant to use the EWS. Secondly, active use of the EWS takes away resources from other types of scrutiny, e.g. of consultation documents earlier in the EU policy making process - a type of involvement explicitly welcomed by the Commission. Third, this study has indicated that frequent use of the EWS may affect relations with the government, and put a strain on the relationship with the EP. Highly active use may also be unsustainable ‘in house’, given the somewhat variant commitment of national MPs to actually use the EU instruments available, combined with limits on administrative capacity.

**Recommendation 1: An integrated but selective approach**

This picture of the EWS’ great potential – balanced by various constraints – warrants careful strategic positioning by the *Tweede Kamer*. From the point of view of effectiveness, when adopting an RO, the *Tweede Kamer* is recommended to channel time and resources into an integrated approach, bundling various instruments as is done in both Sweden and Austria. This integrated approach has three aspects. First, reasoned opinions should be seen as a complement to, rather than a replacement of, control over the government, which is seen by many parliaments as highly effective. Second, an integral approach to the EWS requires an active stance in inter-parliamentary cooperation, as well as follow-up of ROs with the Commission, EP, national parliaments, national government, and other stakeholders, including the media. An instrument that could be helpful to this end is the appointment of a rapporteur, as exemplified by the rapporteurship on the European Public Prosecutor’s Office, which is seen as a best practice in several other parliaments. Third, an integrated approach calls for scrutiny of Green and White papers, as done in Sweden, and explicitly welcomed by the European Commission.

At the same time, such an integrated approach (and especially rapporteurs) may be
unsustainable if used frequently, given the political and administrative capacity that is required. Hence, the Tweede Kamer is explicitly advised to reserve this integrated approach for highly salient dossiers, based on broad and explicit political will to “go all the way”. The key to a durable and effective engagement with Europe is, as one Austrian respondent put it, ‘Lust für Europa’- explicit political commitment. Dutch MPs have an important role to play in providing the political steering required for active follow-up of its ambitious EU-related strategy.

In addition, to enable channelling resources into a more integrated approach, a critical reconsideration of activities in the field of EU control that are less effective or visible is warranted. First, having an integrated approach does not equal an integral approach: the passing of high numbers of ROs or full scrutiny, as exemplified by the Swedish case, should not become an end in itself. Second, the Dutch scrutiny reserve, as shown in Figure 1 above, is a rather complicated instrument, requiring various procedural steps before actual substantive instructions can be formulated. The added value of the instrument over regular information rights and concomitant scrutiny instruments like questions and motions, or generalized information rights as available in several other parliaments, is not immediately apparent. In this regard, it must be noted that the existing indirect control instruments of the Tweede Kamer are weaker than the mandating rights various other parliaments have at their disposal, often combined with strong mechanisms for ex post accountability after Council negotiations. The Tweede Kamer is hence recommended to discuss internally whether the procedure can be made more efficient or replaced by more general information rights and/or a more binding instrument for controlling the government’s position. This also holds, mutatis mutandis, for the procedure for the subsidiarity test: the Tweede Kamer is advised to carefully discuss its efficiency and added value over regular instruments of parliamentary control like motions.

Concerning information rights, the Tweede Kamer could critically compare its information position to that of Germany, Poland, Italy, and Finland, which have structural access to documents about COREPER meetings, trilogues, and negotiation instructions. In these parliaments, parliament obtains more information than in the Tweede Kamer, mostly provided actively by the government.

Recommendation 2: Improving the EWS

In terms of proposals for a reform of the EWS procedure, two amendments constitute a minimalist agenda shared by all EU-28: an extension of the eight-week deadline to twelve, but preferably sixteen weeks; and enhanced responsiveness both over time and in substance of
the reactions by the Commission, although improvements in the latter respect are duly noted. The Tweede Kamer is advised to take the lead in these reforms during the upcoming Dutch Presidency of the EU in 2016. At the same time, it is recommended to follow up on its earlier proposal of developing a common opening paragraph for reasoned opinions. A more ambitious agenda of reforms, such as a right of initiative (“Green Card”), are far more controversial. Any proposal in that direction should take into account that parliaments from larger member states may want to factor in population size. Also, such a proposal might put a strain on the relations with the EP, which does not have a formal right of initiative.

**Recommendation 3: Inter-parliamentary cooperation**

Inter-parliamentary coordination has an important function for the adoption of yellow cards. Furthermore, those parliaments largely seeing their role in national control of EU-affairs, are interested in exchange of, primarily, substantive information on EU policy making, to decrease dependency on governmental information. The interviews therefore showed broad interest in more substantive inter-parliamentary conferences, like side sessions at COSAC meetings, or ‘cluster of interest’ meetings.\(^{131}\) Beyond this common denominator, the prospects of inter-parliamentary coordination are restricted, due to the variety of roles/capacities, and lack of parliamentary mandates. This leads to two sets of recommendations.

**Recommendation 3a: Like-mindedness**

Several parliaments lack the willingness and/or capacity to play an active role under the EWS. The role perceptions of parliaments per se and with respect to control over EU legislation differ widely. Whereas some parliaments prefer to take second seat to the national government, others share the Tweede Kamer’s appreciation of parliament’s autonomous role in EU affairs. Several parliaments are opposed to discussing more institutional questions inter-parliamentarily. In addition, capacity problems curtail the possibilities of various parliaments. In other words, like-mindedness is not only a matter of substantive agreement on the merits of a particular dossier at hand, but also of underlying role conception and capacity. Therefore, the Tweede Kamer is recommended to focus its attention on those parliaments willing and able to play an independent role at the European stage. At the same time, this is not the full story. Parliaments hesitant or incapable to use the EWS frequently might become active in specific dossiers, which makes them interesting parties to cooperate with. The Tweede Kamer is recommended to closely “watch” the activity of these parliaments, while realizing that
attempts to lobby them actively are not likely to be an effective strategy. Finally, turning to the operational level, it would be a good idea to stimulate the sharing of national priority lists and responses to Green Books and White Papers in IPEX, which could allow for faster identification of parliaments possibly planning to carry out subsidiarity tests.

**Recommendation 3b: COSAC meetings “new style”**

The potential of inter-parliamentary cooperation is limited by the absence of national parliamentary mandates and, in a related fashion, the fact that many parliaments cannot share information until it is official. Formal cooperation thus quickly runs into its limits. This fact necessitates ample opportunity for informal exchange at COSAC meetings, as requested by a majority of our respondents, as well as a reduction of speaking time for MEPs and Commissioners. Also, to increase the potential importance of COSAC meetings for obtaining yellow cards, these should have a certain agenda flexibility and openness to inputs from other parliaments than the one holding the presidency. The Tweede Kamer is advised to host COSAC meetings “new style” during the Dutch presidency, along the following lines: more room for informal exchange, the possibility of side meetings on substantive dossiers instead of having long plenary sessions, less central a role for representatives of EU institutions, and more agenda influence by other parliaments.
Appendix 1 | List of respondents

Country experts

- Eric Miklin, Assistant Professor University of Salzburg;
- Claudia Hefftler, research assistant, University of Cologne;
- Thomas Persson, senior lecturer, University of Uppsala.

Respondents

1. Mr Herbert Behrens, Member of Parliament, Member of the Standing Committee on Transport, Bundestag, Germany.
2. Mr Fred Bergman, Substitute Clerk of the Senate, the Netherlands.
3. Mr András Biró-Nagy, Member of Cabinet, Personal Assistant to the European Commissioner for Employment, Social Affairs and Inclusion Andor László, European Commission.
4. Ms Anna Blomdahl, Secretary, Committee on Transports and Communications, Riksdag.
5. Mr Michele Bordo, Member of Parliament, Chairman of the Committee on EU Policies, Italy.
6. Ms Karin Broms, Permanent Representative of the Parliament to the EU, Swedish Riksdag.
7. Ms Marjolijn Bulk, EU Specialist, Federation Dutch Labour Movement (FNV), the Netherlands.
8. Mr Ole Christensen, Member of the European Parliament, Rapporteur Monti II, Group of the Progressive Alliance of Socialists and Democrats, European Parliament.
9. Mr Carlos Demeyere, Administrator and Liaison Officer, EU Analysis Unit, Chamber of Representatives, Belgium.
10. Mr Thomas Dörflinger, Member of Parliament, Member of the Standing Committee on Transport, Bundestag, Germany.
11. Ms Ilse van den Driessche, Clerk, Committee on Asylum and Immigration/Justice and Home Affairs Council, Senate, the Netherlands.
12. Mr Martijn de Grave, Legal and Institutional Affairs, Co-ordinator for Justice and Home Affairs, Permanent Representation of the Netherlands to the EU.
13. Ms Susanna Haby, Member of Parliament, Member of the Committee on European Union
14. Mr Hans Hegeland, Head of Secretariat, Committee on the Constitution, Swedish Riksdag.
15. Ms Margareta Hjorth, Head of Secretariat, Committee on European Union Affairs, Swedish Riksdag.
16. Mr Hugo D’Hollander, Head of EU Analysis Unit, Chamber of Representatives, Belgium.
17. Mr Antonio Esposito, Counselor, Department for EU Affairs, Chamber of Deputies, Italy.
19. Ms Despoina Fola, Permanent Representative of the Parliament to the EU, Greece.
20. Ms Marie Granlund, Member of Parliament, Vice Chairwoman of the Committee on European Union Affairs, Swedish Riksdag.
21. Mr Guy Kerpen, Philips, the Netherlands.
22. Ms Mendeltje van Keulen, Clerk, European Affairs Committee, House of Representatives, the Netherlands.
23. Ms Caroline Keulemans, EU advisor, Committee on Infrastructure and Environment, House of Representatives, the Netherlands.
24. Mr Gerhard Koller, Head of European Relations Division, Austrian Parliament
26. Ms Joanna Kowalska, Official, Secretary of the EU Affairs Committee, Polish Sejm.
27. Ms Kaja Krawczyk, Head of the European Union Division, Polish Sejm.
29. Mr Pascal Leardini, Director, Directorate F Relations with Other Institutions, Secretariat General, European Commission.
30. Ms Carin Lobbezoo, Counsellor, Relations with the European Parliament/Coreper II files, Permanent Representation of the Netherlands to the EU.
31. Mr Peter Luyckx, Member of Parliament, New Flemish Alliance, Belgium.
33. Ms Riita Myller, Member of Parliament, Social Democratic Party, Finland.
34. Ms Suzanne Nollen, Permanent Representative of the House of Representatives to the European Parliament, the Netherlands.
35. Mr Jakob Nyström, Official, EU Coordination Office, Swedish Riksdag.
36. Ms Desirée Oen, Deputy Head, Cabinet of the European Commissioner for Transport Siim
37. Ms Kristina Ortenhed, Secretary, Committee on the Constitution, Swedish Riksdag.
38. Mr Markus Paschke, Member of Parliament, Member of the Standing Committee of Social Affairs, Germany.
39. Ms Vesna Popovic, Permanent Representative of the Bundestag to the European Parliament, Germany.
40. Ms Harmanda Post, Clerk, Committee on Social Affairs and Employment, House of Representatives, the Netherlands.
41. Mr Mattias Revelius, Head of Secretariat, Committee on Transports and Communications, Swedish Riksdag.
42. Mr Peter Saramo, Administrative Member of the Committee Counsel, Parliament of Finland.
43. Prof. Stefan Schennach, Member of Parliament, Social Democratic Party, Austria.
44. Ms Maria Schininà, Permanent Representative of the Chamber of Deputies to the EU, Italy.
45. Mr Marco Schreuder, Member of Parliament, Green Party, Austria.
46. Mr Hinrich Schröder, Administration Referat PE 2/EU, Bundestag, Germany.
47. Ms Magdalena Skrzynska, Polish Sejm Chancellery Representative to the EU, Poland.
48. Ms Kristi Sober, Head of the European Affairs Committee’s Secretariat, Parliament of Estonia.
49. Mr Florian Steininger, Policy Advisor, Social Democratic Party, Austria.
50. Mr Ard van der Steur, Member of Parliament, Committee on European Affairs, House of Representatives, the Netherlands.
51. Ms Tineke Strik, Member of Parliament, Chairwoman of the European Affairs Committee, Senate, the Netherlands.
52. Mr Björn von Sydow, Member of Parliament, Social Democrats, Sweden.
53. Ms Ewa Szymanska, Head of Unit F3 National Parliaments, Consultative Committees, the Ombudsman, Secretariat General, European Commission.
54. Mr Christoph Thum, Senior Member of Staff for European Affairs, Bundestag, Germany.
55. Ms Leonie Tijdink, Clerk, Committee on Infrastructure and Environment, House of Representatives, the Netherlands.
56. Ms Janneke Timmer, European Policy Advisor on Education, Culture and Migration/Asylum, House of Representatives, the Netherlands.
57. Ms Satu Tuomikorpi, Liaison Officer, Parliament of Finland.
58. Ms Christine Verger, Director, Directorate for Relations with National Parliaments, Secretariat, European Parliament.

59. Ms Valerie Wilms, Member of Parliament, Member of the Standing Committee on Transport, Bundestag, Germany.

60. Ms Katharina Würzner, Policy Advisor, Freedom Party, Austria.

61. Ms Eleni Zervou, Hellenic Parliament Representative to the European Parliament, Greece.¹³²
## Appendix 2 | Patterns in use of EU instruments

<table>
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<th>Parliament / chamber</th>
<th>Reasone(d) opinions (2010-2013)</th>
<th>Political Dialogue (2010-2013)</th>
<th>System</th>
<th>Role: European player(^{133})</th>
<th>National control role(^{134})</th>
<th>EU inst strength score(^{135})</th>
<th>Support for EU Membership in(^{136})</th>
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140 Staff

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### Appendix 3 | List of abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ACTA</td>
<td>Anti-Counterfeiting Trade Agreement</td>
</tr>
<tr>
<td>AfD</td>
<td>Alternative für Deutschland</td>
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<tr>
<td>AO</td>
<td>Algemeen overleg (general consultation)</td>
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<tr>
<td>BNC(-fiche)</td>
<td>Beoordeling nieuwe commissiewoorstellingen (judgement new committee proposals, Dutch Parliament)</td>
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<tr>
<td>CFSP</td>
<td>Common Foreign and Security Policy</td>
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<tr>
<td>COREPER</td>
<td>Committee of Permanent Representatives</td>
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<tr>
<td>COSAC</td>
<td>Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union</td>
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<tr>
<td>CSDP</td>
<td>Common Security and Defence Policy</td>
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<tr>
<td>EAC</td>
<td>European Affairs Committee</td>
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<td>ECB</td>
<td>European Central Bank</td>
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<td>EP</td>
<td>European Parliament</td>
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<td>EPPO</td>
<td>European Public Prosecutor’s Office</td>
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<td>EU</td>
<td>European Union</td>
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<td>EuDoX</td>
<td>Informationssystem für europarelevante Dokumente (Information database for relevant EU documents, German Bundestag)</td>
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<tr>
<td>EWS</td>
<td>Early Warning System</td>
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<tr>
<td>HoR</td>
<td>House of Representatives</td>
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<td>IPEX</td>
<td>Inter-parliamentary EU information exchange</td>
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<td>MEP</td>
<td>Member of the European Parliament</td>
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<td>Monday Morning Meetings</td>
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<td>MP</td>
<td>Member of Parliament</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organization</td>
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<td>OPAL</td>
<td>Observatory of Parliaments After Lisbon</td>
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<td>ÖVP</td>
<td>Österreichische Volkspartei (Austrian People’s Party)</td>
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<tr>
<td>PM</td>
<td>Policy Memorandum</td>
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<tr>
<td>RO</td>
<td>Reasoned opinion</td>
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<tr>
<td>SPÖ</td>
<td>Sozialdemokratische Partei Österreichs (Social-democratic party Austria)</td>
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TTIP Transatlantic Trade and Investment Partnership
UK United Kingdom
This report is based on our report of findings which is available via http://www.tweedekamer.nl/nieuws/kamernieuws/evaluatieonderzoek-lissaboninstrumenten and http://www.ru.nl/nsn/imr/our-research/themes/europeanization/

This second edition contains a number of small factual revisions to the original report, mainly concerning the Austrian, Belgian, and Swedish case.

Chapter 1: Introduction

The Lisbon Treaty also introduced a number of other provisions with regard to national parliaments. First, the Treaty for the first time made the European Commission responsible for forwarding consultation documents (green and white papers and communications), the annual legislative programme, and draft legislative acts. Second, national parliaments are attributed a role in treaty revision procedures. In the ordinary procedure, this involvement is modelled to the Convention on the Future of Europe. In the simplified procedure ("Passerelle Clause"), each national parliament has a veto power.


Parliamentary papers 2013-2014, 33901, nr. 1.

In this report, the term parliamentary control will also include parliamentary scrutiny.

Even though, strictly speaking, the political dialogue is not part of the Lisbon instruments, we do include this instrument in the research, because of its close relationship with the instrument of the Reasoned Opinion.


This approach assumes that the incentives for control are naturally given, because the parliament delegates tasks to the executive, which needs to be controlled.


Chapter 2: EU scrutiny in the Tweede Kamer

25 The Bundesrat, the Upper Chamber representing the Länder, uses the EWS more frequently. The case study, however, is limited to the Bundestag as the counterpart of the Tweede Kamer.


28 Ibid., p. 3.

29 Ibid., p. 19.

30 Ibid., p. 5.

31 Ibid., p. 9.

32 Ibid., p. 11.


34 Ibidem


36 Two yellow cards have been issued so far, namely in 2012 against the so-called “Monti II” proposal (about the right to strike), and in 2013 against the proposal for the creation of a European Public Prosecutor’s Office (EPPO).

37 Only the PVV voted against.
Chapter 3: Thematic Analysis

39 See chapter 2 of the report of findings.
49 See chapter 3 of the report of findings.
50 See chapter 3 of the report of findings.
51 See chapter 3 of the report of findings.
52 See chapter 3 of the report of findings.
53 See chapter 4 of the report of findings.
54 See chapter 4 of the report of findings.
55 See chapter 3 of the report of findings.
56 See chapters 3 and 4 of the report of findings.
57 See chapter 4 of the report of findings.

In order to measure the use of the Political Dialogue and the EWS, we used the official data published annually by the Commission in its reports on relations between the European Commission and national Parliaments. When interpreting the data, it is important to note that the Commission considers all documents sent by national parliaments as part of the Political Dialogue. Thus, all opinions send by national parliaments, including opinions under Protocol No. 1 to the Lisbon Treaty and all reasoned opinions sent under Protocol No. 2 to the Lisbon Treaty are included in the Commission’s data of the use of the Political Dialogue. The Commission treats reasoned opinions as a special kind of opinions. The Commission reports only those opinions which clearly state a breach of subsidiarity and which were sent within the eight weeks time frame as falling under the EWS.

See chapter 3 of the report of findings.
See chapter 3 of the report of findings.
See chapter 3 of the report of findings.
See chapter 4 of the report of findings.
See chapter 4 of the report of findings.
See chapter 3 of the report of findings.
See chapters 3 and 4 of the report of findings.
See chapter 4 of the report of findings.


In order to measure the use of the Political Dialogue and the EWS, we used the official data published annually by the Commission in its reports on relations between the European Commission and national Parliaments. When interpreting the data, it is important to note that the Commission considers all documents sent by national parliaments as part of the Political Dialogue. Thus, all opinions send by national parliaments, including opinions under Protocol No. 1 to the Lisbon Treaty and all reasoned opinions sent under Protocol No. 2 to the Lisbon Treaty are included in the Commission’s data of the use of the Political Dialogue. The Commission treats reasoned opinions as a special kind of opinions. The Commission reports only those opinions which clearly state a breach of subsidiarity and which were sent within the eight weeks time frame as falling under the EWS.


See chapter 5 of the report of findings.

See chapter 4 of the report of findings.

See chapter 5 of the report of findings.


See chapter 5 of the report of findings.

See chapter 5 of the report of findings.

See chapter 4 of the report of findings.


See chapter 5 of the report of findings.

See chapter 7 of the report of findings.

See chapter 4 of the report of findings.


See chapter 4 of the report of findings.


Handbook chapter 3.

See chapter 3 of the report of findings.

See chapter 4 of the report of findings.

See chapter 4 of the report of findings.

See chapter 3 of the report of findings.

C. Neuhold and J. Smith (forthcoming) ‘Conclusion: From ‘late-comers’ to ‘policy-shapers’? – The role of national parliaments in the ‘post-Lisbon’ Union’, in C. Hefftler et al. (eds) Palgrave Handbook of National Parliaments and the European Union (Basingstoke: Palgrave Macmillan). Data only available for Lower Chambers. European players included the lower houses in Sweden, the Netherlands, Denmark, Italy, Portugal, Luxembourg, Czech Republic, and Romania. Upper houses were not covered by this study.


See chapter 3 of the report of findings.

See chapters 3 and 5 of the report of findings.

International Politics: The European Union and Beyond (Colchester: ECPR Press), 17-32.


88 Ibidem.

89 Ibidem.

90 See voorop in Europa p. 24.

91 At the same time, the Austrian case displayed a certain willingness for doing so, to the point of supporting other parliaments on not too salient ROs like airoport noise.

92 See chapter 4 of the report of findings.

93 See chapter 4 of the report of findings.

94 See chapter 4 of the report of findings.

95 See chapter 4 of the report of findings.


98 See chapter 4 of the report of findings.


101 Ibid, p. 42.

102 See chapter 4 of the report of findings.

103 In 2014, this was done by the UK House of Lords and House of Commons, Sweden, the Czech Senate, Lithuania, the Dutch Tweede Kamer, and Denmark.

104 See chapter 5 of the report of findings.

105 See chapter 4 of the report of findings.

106 See chapter 5 of the report of findings.

107 See chapter 4 of the report of findings.

108 See chapter 5 of the report of findings.

109 See chapter 5 of the report of findings.

110 See chapter 4 of the report of findings.

111 See chapter 4 of the report of findings.

112 See chapter 5 of the report of findings.

113 See chapter 3 of the report of findings.

114 See chapter 3 of the report of findings.

115 See chapter 5 of the report of findings.


the European Union (Basingstoke: Palgrave Macmillan).

119 See chapter 4 of the report of findings.
120 See chapter 3 of the report of findings.
121 See chapter 4 of the report of findings.
122 See chapter 3 of the report of findings.
123 Internal review of the relations between parliamentary committees and national parliaments, prepared by the Conference of Committee Chairs, 29 November 2011.
124 See chapter 5 of the report of findings.
126 See chapter 5 of the report of findings.

Chapter 4: Conclusion and recommendations


Appendix 1: List of country experts and respondents

The interview presents the personal views of the interviewee.

Appendix 2: Patterns in the use of EU instruments

133 See ibidem. Data only available for Lower Chambers. This role encompasses the roles of policy shaper and government watchdog.


Two chambers together.

40 opinions were sent in 2013 of which 25 were sent without the Assemblée Nationale wanting a reply.

Cortes Generales.
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