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THE EUROPEAN PARLIAMENT AND THE  
'OPINIONS' OF NATIONAL PARLIAMENTS

*Subsidiarity scrutiny, 'political dialogue', and the adaptation of the rules  
of procedure*

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**ABSTRACT**

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National Parliaments forward opinions to the European Parliament in the context of the subsidiarity control procedure, as well as by reason of the political dialogue policy introduced by the European Commission in 2006. The paper aims at analyzing the procedures whereby the European Parliament receives and examines national Parliaments' opinions, especially after the entry into force of the Lisbon Treaty and the modifications made to the internal rules of the European Parliament. Moreover the interesting case-study of the CAP reform has been taken into consideration, which not only has triggered a great number of reasoned opinions of national Parliaments, but also the organization of an inter-parliamentary meeting at which the national Parliaments and the European Parliament representatives have taken part. The national Parliaments' opinions are particularly important because if the dialogue among the Union Parliaments and the European Parliament develops and strengthens, it can become a way to reduce the European Union's democratic deficit.

*Keywords: National Parliaments, reasoned opinions, European Parliament, the CAP reform*

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## **INTRODUCTION**

While the attitude of the European Commission towards a greater involvement of national Parliaments is well known, since the so-called “Barroso procedure” began, driving it forward from 2006 to the present day with great determination, the same cannot be said for the European Parliament, which, indeed, for a long time has maintained a “hostile” attitude towards the participation of the national Parliaments in the European decision-making.

The political dialogue established today not only between the Commission and national Parliaments, but also between them and the European Parliament, can represent a way to clear this distrust of the European Parliament, even thanks to its considerable flexibility. In fact in this short essay, the thesis is supported that the same control of the principle of subsidiarity has been partly introduced with the aim of developing political dialogue: a test of subsidiarity, therefore, used as a “leverage” to establish an increasing, constant and fruitful political dialogue.

Moreover, while the new functions and powers recognized to the national Parliaments by the new art. 12 TEU, even though at the same time considerably heterogeneous, all set out an “oppositional” or “protective” function of national prerogatives, including the control of subsidiarity, the same cannot be said for the political dialogue that on the contrary must have a constructive purpose, although not included in the text of the Treaty.

The paper aims at verifying first of all the legal bases that allow national Parliaments to send reasoned opinions to the European Parliaments, then the procedural rules whereby the European Parliament receives and considers these opinions. It concludes with an analysis of a case study: the reform of the CAP, the Common Agricultural Policy, of which there are four proposals for regulations and in November 2012 there was a meeting at which the opinions were discussed, which had been formerly forwarded by national Parliaments to the European Union.

## **1. NATIONAL PARLIAMENTS, REASONED OPINIONS AND THE PRINCIPLE OF SUBSIDIARITY IN THE EUROPEAN TREATIES**

In the Lisbon Treaty the national Parliaments are mentioned 47 times. In the Constitutional draft for the United States of Europe (Altiero Spinelli draft Treaty, 1984), these were absent as it was inspired by a vision of federalism and the national Parliaments were considered only in relation to

the respective Cabinet; in the Treaty of Lisbon<sup>1</sup>, shortly after the rejection of the European Constitution, which could be the first decisive step towards a true federalism, the national Parliaments become a democratic resource, a way to decrease that democratic deficit which the European Union is still being accused of<sup>2</sup>.

To be precise, the national Parliaments are mentioned for the first time in art. 5 of the TEU<sup>3</sup>, as modified by the Lisbon treaty; in this article it is established that the national parliaments oversee the respect of the principle of subsidiarity<sup>4</sup>. Nevertheless, it is the new art. 12<sup>5</sup> TEU that is the fundamental nucleus of the new role of the national Parliaments following the coming into force of the Lisbon treaty.

The relation between the national Parliaments and the European Parliament is regulated by the Protocol annexed to the treaty, in particular by Protocol No. 1 on the role of national Parliaments in the European Union and by Protocol No. 2 on the application of the principles of subsidiarity and proportionality.

If, on the one hand, the European Union institutions (and among these the European Parliament) may send draft legislative acts to the national Parliaments, as established for example, for the European Parliament, by art. 2, clause 4 (“Draft legislative acts originating from the European Parliament shall be forwarded to national Parliaments directly by the European Parliament”) and by art. 4, clause 2 of Protocol No. 2 on the application of the principles of subsidiarity and proportionality (“The European Parliament shall forward its draft legislative acts and its amended drafts to national Parliaments”), on the other hand even the national Parliaments, following art. 3 of Protocol No. 1 “may send to the Presidents of the European Parliament, the Council and the

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<sup>1</sup> On the Treaty of Lisbon, see Ziller 2007.

<sup>2</sup> On the concept of democratic deficit, see Bellamy and Kröger 2012; Violini 2003. Instead on the concept of democratic disconnect, see Lindseth 2010.

<sup>3</sup> More precisely: they are mentioned for the first time in a Treaty text, but were already been mentioned in Declarations No. 13 and No. 14, attached to the Treaty of Maastricht and in Protocols No.1 and No. 2, attached to the Treaty of Amsterdam.

<sup>4</sup> On the concept of subsidiarity, see Craig 2012.

For a review on the control of subsidiarity in the various Member States of the European Union, see European Parliament, 2013.

<sup>5</sup> Art. 12 TEU: “National Parliaments contribute actively to the good functioning of the Union: (a) through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union; (b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality; (c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article 70 of the Treaty on the Functioning of the European Union, and through being involved in the political monitoring of Europol and the evaluation of Eurojust’s activities in accordance with Articles 88 and 85 of that Treaty; (d) by taking part in the revision procedures of the Treaties, in accordance with Article 48 of this Treaty; (e) by being notified of applications for accession to the Union, in accordance with Article 49 of this Treaty; (f) by taking part in the inter-Parliamentary cooperation between national Parliaments and with the European Parliament, in accordance with the Protocol on the role of national Parliaments in the European Union”.

Commission a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity, in accordance with the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality”<sup>6</sup>. In fact, “national Parliaments are invited to check EU legislative proposals against the principle of subsidiarity and to send a letter called reasoned opinion to the Brussels institutions if they believe that the principle is violated” (Kiiver 2011).

The ability of national Parliaments to send opinions to the EU institutions and the European Parliament prescribed by the Treaties is inextricably linked to the control of the principle of subsidiarity by the draft legislative acts of the European Union. In fact, there is a time window of eight weeks for the national Parliaments to send their opinions before the draft legislative act is included on the provisional agenda of the Council, as required by art. 4<sup>7</sup> of Protocol No. 1. The national Parliaments have eight weeks to send the reasoned opinion on the compliance with the principle of subsidiarity by the draft legislative act. In fact, as outlined in art. 7, paragraph 2, of the Protocol on the principles of subsidiarity and proportionality, when the opinions of national Parliaments reach certain thresholds, we can have two different effects. If the reasoned opinions of the national parliaments on the breach of the principle of subsidiarity reach one third<sup>8</sup> of the votes of the national Parliaments<sup>9</sup>, the “yellow card mechanism” is applied and the project will necessarily have to be reviewed. After being reviewed, the project can be maintained, amended or withdrawn, stating the reasons.

If, however, the negative opinions of national Parliaments reach a simple majority, the “orange card mechanism” begins. In this case, the project can be maintained, amended or withdrawn. If the Commission decides to maintain the draft legislation, it must do so in a reasoned opinion, and taking into account the views of national Parliaments. In this case the European Parliament and the Council both have the ability to block the draft legislative act: the European Parliament by a simple majority and the members of the Council by a 55% majority respectively.

Should it reach the threshold of the orange card, the behavior of the European Parliament is not

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<sup>6</sup> Art. 3, Protocol No. 1.

<sup>7</sup> Art. 4, Protocol No. 1: “An eight-week period shall elapse between a draft legislative act being made available to national Parliaments in the official languages of the Union and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure. Exceptions shall be possible in cases of urgency, the reasons for which shall be stated in the act or position of the Council. Save in urgent cases for which due reasons have been given, no agreement may be reached on a draft legislative act during those eight weeks. Save in urgent cases for which due reasons have been given, a ten-day period shall elapse between the placing of a draft legislative act on the provisional agenda for the Council and the adoption of a position”.

<sup>8</sup> This threshold shall be a quarter in the case of a draft legislative act submitted on the basis of Article 76 of the Treaty on the Functioning of the European Union on the area of freedom, security and justice.

<sup>9</sup> It’s worth to notice that according to the art. 1 of the Protocol on the subsidiarity: “Each national Parliament shall have two votes, shared out on the basis of the national Parliamentary system. In the case of a bicameral Parliamentary system, each of the two chambers shall have one vote”.

easily predictable: in fact, if from the one hand it may seem unlikely that the European Parliament will return to the member State a judgement of which had been entrusted to, on the other hand, it cannot be precluded an “alliance” between the European Parliament itself and national Parliaments on specific measures, for example those affecting the rights of European citizens (Fasone and Lupo 2012).

On the other hand, it is difficult to imagine how “placed directly in front of the opinions expressed by the national Parliaments of which, in one sense or another, must take into account, and in the case of a Parliamentary large and compact front against the adoption of a act, the Council and the European Parliament would hardly perform a test of force” (Armanno 2010).

Moreover, it is necessary to note that in reality the attainment of these thresholds is far from easy: in fact, in the first two and a half years following the entry into force of the Lisbon Treaty only once has the threshold for the “yellow card” been reached. This demonstrates that the early warning system was intended “as a mean whereby each individual Parliament has expressed its views on the impact of legislative proposals on their own national situation, thus using the procedure as a “leverage” to favor the inclusion of national public opinion in the European decision-making” (Fasone and Lupo 2012).

It should be remembered that actually for a long time the European Parliament was rather critical towards the involvement of national Parliaments in the European decision making process (Cannizzaro 2009; Fasone and Lupo 2012). This attitude could be explained, probably, bearing in mind the notion that an increase in the powers of national Parliaments must necessarily correspond to a decrease in the powers of the European Parliament.

If so, the innovation work of the Lisbon Treaty would have been nonetheless impossible, which has simultaneously increased the powers of the European Parliament and extended the prerogatives of national Parliaments.

With the Treaty of Lisbon and, before that, with the beginning of the so-called Barroso procedure, the European Parliament's attitude changed, opening up a cooperative logic “going along with” the Barroso procedure and establishing a dialogue with national Parliaments (Fasone and Lupo 2012).



## 2. THE ROLE OF NATIONAL PARLIAMENTS: A DEMOCRATIC NETWORK TO OVERCOME THE DEMOCRATIC DEFICIT

The increasing involvement of national Parliaments since Maastricht, was seen and used as a tool to bridge part of the democratic deficit which the European Union is often accused of. For some observers, however, the new role of national Parliaments<sup>10</sup> and European democracy does not increase the reference to fundamental European values, “such as democracy, or principles of political organization, such as subsidiarity, reveals not so much a desire to protect the values in question disguised as a desire to preserve a number of national and local prerogatives” (Goulard and Monti 2012). In this sentence, the contrast can already be seen between those who, in the new role of national Parliaments, only see a new possibility of vetoes to European policies, and who, instead, see the broadening of the role of these as one of the antidotes to the democratic deficit.

In this setting of a strengthening in the role of national Parliaments in increasing national prerogatives, albeit veiled ones, is opposed another way of understanding the question. In fact, “a reconstruction sometimes proposed in the Union's institutional practices tends to conceive the national Parliaments as an articulation of European Parliamentarianism [...] This perspective evokes a vision of Parliaments as typical places of political representation, conceived as homogeneous in structure and function. This vision, in short, seems to indicate a vision of the Parliamentary system as a network of interests” (Cannizzaro 2009).

The relations between the European Parliament and national Parliaments could be organized on the basis of a sort of “network of democracy”<sup>11</sup>. The European Union is located in what has been called "multilevel constitutionalism" and that can also be defined after the innovations of the Lisbon Treaty, “multilevel Parliamentarianism”: it can be said then that “a leading role is today played by their national Parliaments, which operate not only on the individual level but also, and increasingly, on the universal one, not just through the necessary filter the national executives - and then through an indirect channel - but also directly, through a dialogue, “*omisso medio*”, with the Community institutions” (Armano 2010).

Moreover, the same principle of subsidiarity, as MacCormick claims, may endorse that view, since “rational legislative subsidiarity, in particular, deals with the effectiveness of European representative democracy, which is considered to be found in the direct and indirect involvement of European legislatures at all levels (regional, State and European level)” (Fasone 2013).

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<sup>10</sup> On the role of national parliaments in the European Union before and after the Lisbon Treaty see: Fasone 2008; Manzella 2008; Esposito 2009; Caretti 2010; Gianniti 2010; Olivetti 2012; Lupo 2013.

<sup>11</sup> See Manzella 2013.

### 3. THE SCRUTINY PROCEDURE OF THE REASONED OPINIONS WITHIN THE EUROPEAN PARLIAMENT: THE NEW RULE 38A

The Rules of Procedure of the European Parliament<sup>12</sup> have been changed to coincide with the entry into force of the Treaty of Lisbon<sup>13</sup>. In fact, the substantial increase in the powers of the European Parliament has necessitated the adjustment of European Parliamentary procedures. They modified the Rules of Procedure even before the entry into force of the Treaty: while the latter entered into force December 1, 2009, regulatory changes date back to November 25, when the European Parliament unanimously approved the proposed review of the Rules of procedure made by the Committee on Constitutional Affairs (AFCO). In fact, amendments to the regulations had already been conceived in the previous legislature with a proposal for amendment that was very similar in content to the one that was then approved.

It is worth remembering that the procedure for the amendment of Regulation of the European Parliament is foreseen by art. 212<sup>14</sup> of that Regulation.

With the changes related to the Lisbon Treaty, even in the Rules of Procedure of the European Parliament enter national Parliaments, to which a number of provisions are now dedicated governing the relationship between these and the European Parliament.

While one of the most significant changes is the new art. 38a (*infra*, par. 5), which states that the European Parliament shall examine the reasoned opinions of the national Parliaments with regard to the compliance with the principle of subsidiarity, the new Title V is also very important, which deals with the relations with the national Parliaments. In particular, art. 130<sup>15</sup> relates to the

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<sup>12</sup> It is article 232 of the Treaty, about the functioning of European Union, which gives the European Parliament the faculty of adopting its own internal rule.

<sup>13</sup> On the composition of the European Parliament after the Treaty of Lisbon, see Fabbrini 2011.

<sup>14</sup> “Rule 212: Amendment of the Rules of Procedure: 1. Any Member may propose amendments to these Rules and to their annexes accompanied, where appropriate, by short justifications. Such proposed amendments shall be translated, printed, distributed and referred to the committee responsible, which shall examine them and decide whether to submit them to Parliament. For the purpose of applying Rules 156, 157 and 161 to consideration of such proposed amendments in Parliament, references made in those Rules to the 'original text' or the proposal for a legislative act shall be considered as referring to the provision in force at the time. 2. Amendments to these Rules shall be adopted only if they secure the votes of a majority of the component Members of Parliament. 3. Unless otherwise specified when the vote is taken, amendments to these Rules and to their annexes shall enter into force on the first day of the part-session following their adoption”.

<sup>15</sup> This is the whole text of article 130: “1. Parliament shall keep the national parliaments of the Member States regularly informed of its activities. 2. The organization and promotion of effective and regular Interparliamentary cooperation within the Union, pursuant to Article 9 of the Protocol on the role of national parliaments in the European Union, shall be negotiated on the basis of a mandate given by the Conference of Presidents, after consultation of the Conference of Committee Chairs. Parliament shall approve any agreements on such matters in accordance with the procedure set out in Rule 127. 3. A committee may directly engage in a dialogue with national parliaments at committee level within the limits of budgetary appropriations set aside for this purpose. This may include appropriate forms of pre-legislative and post-legislative cooperation. 4. Any document concerning a legislative procedure at Union level which is officially transmitted by a national parliament to the European Parliament shall be forwarded to the committee responsible for the subject-matter dealt with in that document. 5. The Conference of Presidents may give a mandate to

exchange of information, contacts and reciprocal facilities. Within the article it was established that the European Parliament shall regularly inform national Parliaments about its activities and the organization and the promotion of interparliamentary cooperation to be established with a mandate given by the Conference of Presidents, after consulting the Conference of Committee Chairs.

Moreover, paragraph 3 states that a committee of the European Parliament now has the ability to directly launch a dialogue with a panel of one of the national Parliaments<sup>16</sup> to initiate both pre-legislative and post-legislative forms of cooperation, thus enabling the committee of the national parliament to intervene both in the ascending phase of the creation of Community law and in the descending one, for a more accurate, informed and timely implementation of European standards.

Paragraph 4 of art. 130 contains another important provision since it takes into account the opinions that the national Parliaments may send to the European Parliament on legislative procedures but also outside the early warning procedure. In fact, it is foreseen that “any document concerning legislative procedures at Union level which is officially transmitted by a national Parliament to the European Parliament shall be forwarded to the committee responsible for the subject-matter dealt with in that document”. It goes on to outline a very different procedure from the one used for the reasoned opinions concerning subsidiarity that are regulated by the new art. 138 of the Regulation of the European Parliament and that involve other parties.

The proposed amendment of the regulation was issued in 2009 by the Commission for Constitutional Affairs EP contained other provisions on the relationship between the European Parliament and national Parliaments: the provisions were then withdrawn at the meeting, at the informal request of national Parliaments “which would have preferred to define these issues in the context of the Conference of the speakers of the Parliaments of the Union<sup>17</sup>” (Fasone and Lupo 2012).

These other provisions which were then withdrawn, concerned for example a closer link between the committees of the European Parliament and the committees of the national Parliaments, to the point of foreseeing regular meetings of the various committees dealing with the same sector. Furthermore, the pre and post legislative link between the European Parliament and national parliaments was proceduralised, through the involvement of the speakers, the shadow rapporteurs, the coordinators of the committees of the European Parliament with the chairpersons and

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the President to negotiate facilities for the national parliaments of the Member States, on a reciprocal basis, and to propose any other measures to facilitate contacts with the national parliaments”.

<sup>16</sup> The paragraph also clarifies that this must happen within the limits of budget allocations reserved to this aim.

<sup>17</sup> In which also the President of European Parliament participates. It takes place once a year and has a coordination role in the inter-parliamentary cooperation of the European Union.

rapporteurs of the national Parliamentary committees with individual contacts and meetings (Fasone and Lupo 2012).

As pointed out, however, only a faint trace of this remained in art. 130, paragraph 3 of the Rules of the EP. As a general procedure new practices are still developing; for example, national parliamentarians are invited more often to participate in the formal meetings of the European Parliament committees. A central role is being played also by contacts and bilateral visits, because “bilateral visits continued to be a flexible ad hoc formula that was used rather frequently and recent technical developments should give an additional boost to videoconferencing as a tool for interparliamentary dialogue” (European Parliament 2012).

A new instrument of cooperation between the national Parliaments is art. 13 of the “Fiscal Compact”: “As provided for in Title II of the Protocol (No.1) on the role of National parliaments in the European Union annexed to the Treaties of the European Union, the European Parliament and the national Parliaments of the Contracting Parties will jointly decide on the organization and promotion of a conference representatives of the relevant committees of the European Parliament and of the representatives of the relevant committees of the national parliaments to discuss the budgetary policies and other matters falling within the scope of this Treaty”<sup>18</sup>.

#### **4. A COMPARISON; THE REFORM OF RULES OF PROCEDURE OF THE EUROPEAN PARLIAMENT AND THE LACK OF REFORM OF THE RULES OF THE ITALIAN CHAMBER OF DEPUTIES AND THE SENATE**

The entry into force of the Lisbon Treaty with the new role, which is set down by the national Parliaments has nevertheless led to a change in the internal order at national level.

As we have just mentioned, the European Parliament itself has adapted its rules of procedure to prepare the appropriate procedures that meet the new prerogatives that the Treaty of Lisbon has given to national Parliaments. This inevitably leads to a reflection on the organization and in particular to one on the Italian Parliamentary law.

In fact, at national level and in the various Member States, a lot has been debated about which was the most appropriate source to transpose the provisions of the Treaty of Lisbon. While some countries, such as France and Germany, have opted primarily for amendments to those Constitutions, then intervening at legislative level, others have chosen not to revise the

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<sup>18</sup> Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, “Fiscal Compact”.

Constitutions intervening only with ordinary laws and reforms of Parliamentary rules<sup>19</sup>. Whatever the source to adapt their choice of procedure to the novelty of Lisbon, there is undoubtedly a fundamental intervention in the Parliamentary rules. Since the Treaty gives new powers to national Parliaments, they are forced to set up *ad hoc* procedures. In fact, common acts, albeit providing new powers to the Parliament, could not determine which organs, functions and within what deadlines the internal proceedings of Parliament should intervene.

In Italy, however, so far this has only taken place in the case of act 234/2012, which is certainly a major reform of the system that redesigns the participation of Italy in the European Union both in terms of the upturn and the downturn, by incorporating the innovations of the Lisbon Treaty into national Parliaments. However, that turns out to be a belated intervention, as it comes after four years of the entry into force of the Treaty<sup>20</sup> and, above all, because it was not accompanied by a necessary reform of Parliamentary rules. This sounds even more ironic when the fact is considered that it is the same law, for example when dealing with the procedure for monitoring compliance with the subsidiarity principle, to postpone the procedures laid down in the Parliamentary regulations: procedures that are actually absent from the latter.

Therefore, in order to remedy this lack of reform two experimental procedures have been implemented. In particular, the opinions of Committee<sup>21</sup> rules date back to 6<sup>th</sup> October 2009 and 14<sup>th</sup> July 2010, and they are aimed at interpretatively enriching the intervention instruments of the Chamber of Deputies in community decisions.

The 6<sup>th</sup> October 2009 opinion deals with issues regarding linking procedures between the Chamber of Deputies and the European institutions. Besides confirming already existent procedures, this opinion interpretatively enlarges the number of community acts assigned to commissions and regulates the procedures of the related scrutiny: article No. 127, paragraph 1 of the Chamber's Rules took into consideration the legislative acts of the Council of Ministers and the European Commission, or the plans for these acts, stating that they were to be submitted to the competent Committee's examination with the opinion of the European affairs Committee. The

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<sup>19</sup> See Fasone 2010.

<sup>20</sup> Whereas other countries have adapted their Constitutions, legislations and parliamentary rules before the entry into force of the Treaty or in the immediately following period.

<sup>21</sup> The Rules Committee is composed of ten or more members appointed by the President of the Assembly both in Chamber and in Senate. This unit is in charge of promoting and examining proposals of rules modification, before these proposals are examined by the article 64 of Constitution. Besides this function, the Committee is also in charge of important consultative offices. In fact, "on any matter concerning the rules interpretation, the President can consult the Rules Committee, whose opinions end up by being real records, stating interpretations which sometimes integrate rules disposals and discipline unexpected cases" (Gianniti and Lupo 2013). This is the case: the two Committee's opinions discipline cases which were contemplated by act No.11 in 2005, but were not borne out by parliamentary rules.

Rules Committee's opinion, interpreting this provision, enlarges the amount of acts to be submitted to the committees<sup>22</sup>.

The opinion also includes a discipline for the reservation of parliamentary scrutiny, which was introduced by act No.11 in 2005, but has never been put into effect by parliamentary rules. It is stated that upon the sector Committee's demand, the Speaker of the Chamber of Deputies "communicates to government the start of the parliamentary scrutiny of an act in order to submit it to its fulfillments". To consider the scrutiny as actually begun, the mere addition to the agenda is not seen as a sufficient condition. The actual start of the discussion is also necessary. With the opinion, moreover, an experimental procedure for the scrutiny of the subsidiarity profile is created. The conformity control to the subsidiarity principle of draft legislative acts is bestowed upon the XIV Committee.

The 14<sup>th</sup> July 2010 opinion integrates the 2009 opinion, especially with reference to the Assembly's scrutiny of the motivated document of the XIV Committee containing the evaluation of conformity with the subsidiarity principle<sup>23</sup>.

In the Senate, a first experimental procedure to give application to the Treaty of Lisbon, at least with reference to the evaluation of the subsidiarity principle is to be found in a letter of the Speaker of the Senate to the Presidents of Committees, dated 1<sup>st</sup> December 2009 (date of the entry into force of the Treaty of Lisbon). This experimental procedure, moreover, is lacking in publicity: as a matter of fact the text of the letter has never been published.

With the above mentioned letter, all the Senate's Committees "have been enabled to express their opinion about European laws proposals, yet keeping the role of committee for the European Policies driving force" (Capuano 2011, p. 7): in fact the draft legislative acts of the European Union will be directly transmitted by the Senate's Speaker to the subject-competent Committees not only upon the Committee's request as had been usual until that period. The European affairs Committee, in the case of inactivity of the other Committees, can take their place in Government orienting, according to article 144, paragraph 5, S.r.

The ordinary procedure, which has been developing in the Senate, was that of not limiting itself to the analysis of the subsidiarity profile on European Union draft legislative acts, but to formulate, within the terms of political dialogue, also observations about the proposal's content, carrying out a

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<sup>22</sup> Including all draft legislative acts and reference documents, also end procedural ones, transmitted both by Government and by European institutions.

<sup>23</sup> This document can be submitted to the Assembly upon request of one fifth of the same Committee's components (or of equal number of representatives of groups in Committee) or of one tenth of the Assembly components (or of presidents of groups of the equal number of components). The request must be made within five days after the document's deliberation by the XIV Committee, which "must compulsorily end the subsidiarity control within forty days from the Community law plan's assignment". If the remission to the Assembly is required, the Speaker of the Chamber adds the Committee document to the Chamber's agenda within the term of eight weeks time.

complete and detailed examination: totally adherent to the European Commission's position, according to which the "mechanism of subsidiarity control and the political dialogue are two sides of the same coin, because the subsidiarity principle is part of a larger relationship between the Commission and the national Parliaments". So "it clearly stands out how the subsidiarity principle's control procedure of Government orientation, coexist in the same parliamentary exam made by Senate Committees" (Capuano 2011, p. 7).

## **5. THE EUROPEAN PARLIAMENT'S SCRUTINY ON THE REASONED OPINIONS: THE COMMITTEE OF LEGAL AFFAIRS (JURI)**

As mentioned earlier, the reform of the Rules of Procedure of the European Parliament<sup>24</sup> has focused in particular on the procedures to analyze the opinions of national Parliaments with respect to the principle of subsidiarity, by introducing a new specifically dedicated article: art. 38a. So when a national Parliament sends the President of the European Parliament a reasoned opinion on the compliance with the principle of subsidiarity, this document shall be referred to the committee responsible for the subject and also transmitted to the committee responsible for compliance with the principle of subsidiarity. The scope of this immediately perceivable innovation of the Treaty and Regulation is without doubt to "enrich the preliminary legislative and more accurately to assess whether the action is appropriate with respect to the Union's objectives" (Fasone and Lupo 2012). The committee responsible for matters shall examine the opinion of the national Parliament, but did not proceed to vote before they are past the eight weeks provided for by art. 6 of Protocol No. 2, except in urgent cases<sup>25</sup>.

Paragraphs 5 and 6 of art. 38a include cases in which the thresholds are reached that trigger respectively yellow and orange cards. In fact, paragraph 5 provides that when the negative reasoned opinions, which then argue that we have not adhered to the principle of subsidiarity, representing one third of the votes allocated to national Parliaments<sup>26</sup>, the European Parliament will not take any decision until at least the author of the proposal legislative act does not state how it intends to proceed, that is, whether to confirm, change or withdraw the draft.

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<sup>24</sup> On the European Parliament see Corbett, Jacobs, Shackleton 2011; Costa and Saint Martin 2011; Lupo and Manzella 2006.

<sup>25</sup> In accordance with art. 4 of Protocol No. 1.

<sup>26</sup> Or a quarter in the case of a draft legislative act submitted on the basis of Article 76 of the Treaty on the Functioning of the European Union.

If, however, the negative opinions reach a simple majority of the votes allocated to national Parliaments, then the committee responsible for the matter, after consideration of the views of both the national Parliaments of the European Commission, and also having heard the views of the committee responsible for compliance the principle of subsidiarity, may recommend to Parliament or reject the proposal because it violates the principle of subsidiarity, or submit to Parliament a recommendation which may include suggestions to amend the proposal and make it adhere to the principle, attaching in this case the opinion of the committee responsible for compliance with the principle of subsidiarity in this recommendation. In this case, the recommendation is presented to the plenary session of the European Parliament for discussion and vote. If the House approves a recommendation to reject a majority, the President shall declare the procedure, and the proposal is automatically canceled. If, however, the recommendation aimed at the partial amendment of the text of the proposal and the Parliament approved by a majority, the procedure continues and the other EU institutions should take into account the recommendation of Parliament.

When the Regulation refers to the committee responsible for compliance with the principle of subsidiarity it refers to the Committee on Legal Affairs (or JURI). This committee deals specifically with the examination of the subsidiarity check, together with the Committee of the field according to subject matter as required by regulation. This committee, after consideration of the opinion of the national Parliament may make a recommendation to the Committee of the field, on which voting, then, the same committee in the sector. It is important to note that the recommendation of the Committee on Legal Affairs may also report any violations of the principle of proportionality (Fasone and Lupo 2012), although the control of the compliance with the principle of proportionality is not delegated to the opinions of the national Parliaments. It is clear that in this case you are using a fairly generous interpretation of the standard (Fasone and Lupo 2012), making this also fall into the proportionality and the examination of the merits of the proposal, once again on the basis of the Barroso procedure.

## **6. THE EUROPEAN PARLIAMENT, THE “BARROSO” PROCEDURE AND THE OTHER “OPINIONS”**

The opinion sent by national Parliaments to the European Parliament do not come to an end with the early-warning procedure. In fact, with this procedure, national Parliaments today have also the opportunity to send opinions that do not deal with violations of the subsidiarity principle, which then analyze the law proposal in detail or which arrive after the eight week deadline. This type of



reasoned opinions in the terminology of the European Union, and in particular by the European Parliament, are called “Contributions”.

With the Treaty of Lisbon, the opinions of national Parliaments in the respect of the principle of subsidiarity become a prerogative prescribed by the Treaties. In 2006, however, the President of the European Commission, Jose Manuel Barroso, initiated the procedure known as the “Barroso procedure”.

So “effectively the application of this subsidiarity check already had started well before its official entry into force” (Kiiver 2011). The European Commission had decided to independently send draft legislation to national Parliaments and to be ready to receive responses triggered by these, thus starting the so-called political dialogue.

The political dialogue, launched by the Commission in its relations with the national Parliaments, then extended to the other institutions of the European Union. The same control of subsidiarity can be considered to have been introduced by the Lisbon Treaty as a “leverage” to develop a political dialogue.

In fact, it is worth noticing how the control of subsidiarity was introduced only after the beginning of the political dialogue, but it should be also noted that the EU Commission encourages national Parliaments to send only one opinion to the EU institutions, containing remarks both on the profile of subsidiarity and on the merits of the proposal, calling therefore to merge the two instruments: in this way the political dialogue incorporates the control of subsidiarity, although one is called for in the Treaties and the other not. The political dialogue has never been included in the Treaties, and you can perhaps assume that this has also been positive for the development of the mechanism. During the work of Lisbon they were not ready to include it, probably fearful for the recent failure of the European Constitution, but the non-inclusion before its further development may have benefited the political dialogue, because it has remained a more flexible instrument: with regard to the flexibility that is historically lost within the mechanisms introduced in the Treaties, it suffices to think of the early warning system and such high and almost unattainable thresholds that distinguish it.

The opinions that the national Parliaments may send to the European Commission and the European Parliament, however, differ from the opinions on the observance of the principle of subsidiarity to some fundamental aspects: first, they should not only relate to the profile of subsidiarity, but they can enter into the merits of the measure and secondly, can also be sent after the eight weeks foreseen for profiles of subsidiarity.

It is worth mentioning another aspect of the opinions falling into the political dialogue. In fact, the proportionality control is not the prerogative of national Parliaments, based on art. 12 TEU, but

falls instead into the political dialogue. In the opinion of the Italian Senate, for example, the control of the principle of proportionality is carried out together with the control of the principle of subsidiarity and analysis with regard to the proposal, bringing together in a single document the political dialogue and control of subsidiarity, as often required by the European Commission and as further evidence of the fact that the control of subsidiarity is used as a tool to develop political dialogue.

If the mechanism provided for by the Treaty of Lisbon of control by each chamber of each national parliament on the respect of the principle of subsidiarity is developed, consolidating the practice initiated by the European Commission since 2006, “it will be resolved by one side in a strengthening the European Commission which will use the findings and observations made since the time of formation of the initiative in order to facilitate its subsequent process, and improve quality even in view of a more effective and simple transposition. On the other side induce governments to be more attentive to the addresses of the respective parliaments in preparing the national position, in the ascending phase” (Gianniti 2010).

The political dialogue has grown year after year and “thus the greatest majority of Parliamentary opinions transmitted to the Commission is referred to the ‘political dialogue’, while reasoned opinions reach only 10% of the total number. The Commission, furthermore, has been committed to replying to all these opinions, often raising very different issues one from another, aiming at improving its relationship with Parliamentary institutions as well as the legitimacy of its action” (Fasone 2013).

It is necessary to note that “so far national Parliaments have not used the early warning mechanism with the intention of obstructing the European legislative process, since they have rarely found draft legislative acts in breach of the principle of subsidiarity, but they have sent a considerable amount of opinions to the Commission, in particular within the “political dialogue”, as a cooperative tool” (Fasone 2013).

When the European Parliament receives this kind of opinions by national Parliaments, it processes them as “assessments” and at least “theoretically” it examines them. The scrutiny procedure of this assessment is provided today by art. 130, paragraph 4, of the internal Rules of the European Parliament, as modified with regard to the entry into force of the Lisbon Treaty.

According to article 130, paragraph 4 “any document concerning a legislative procedure at Union level which is officially transmitted by a national Parliament to the European Parliament shall be forwarded to the committee responsible for the subject-matter dealt with in that document”. Hence, in contrast with the opinions on the subsidiarity principle, in this case the opinion is only

forwarded to the sector commission, without being sent to the legal business Commission, which does not have to express its own opinion about subsidiarity.

It is necessary to mention another procedural difference between the two types of opinions; when the Commission's legislative projects passed by the Assembly of the European Parliament, the two types of opinions of national Parliaments have a different fate: indeed, while the reasoned opinions in the report are automatically attached to the report submitted by the Commission to the Assembly, the opinions that relate to the political dialogue are attached only to the request of the Assembly.

Another difference is the language of the two types of opinions: while the reasoned opinions are translated into all the official languages of the European Union, the opinions of the political dialogue are only in their original language; it is the competence of the various national Parliaments to draft them not only in their own language but also in English. These last two differences must find their origin most likely in the different kind of legal legitimacy that the two types of opinions pose: the control of subsidiarity is provided for by the Treaties, and the opinions of national Parliaments must therefore be known and understood by all members of the Assembly; opinions of the political dialogue is a “voluntary” practice and not yet mandatory.

## **7. A CASE STUDY: THE CAP REFORM**

It can be interesting here to analyze a case-study with reference to the opinions which Parliaments regularly forward to the European Parliament in the field of the subsidiarity principle control and the respect of “political dialogue”. To this aim one of the most relevant reformation proposals of the last years in the European context – which has also seen the development of an interesting dialogue procedure among the several not only European, but also national institutions – has been taken into consideration: the CAP reform. This particular topic has been chosen because CAP comes under the concurrent competence of the European Union (art. 4 TFEU) and for this reason it is entirely submitted to the control of subsidiarity. Furthermore, in some Member States, like Italy for example, for agricultural policies a “shared” competence with regional levels of government and with regional legislative Assemblies is also considered; in the opinion of the Italian Senate, which will be later analyzed, the resolutions forwarded to the Senate itself by some Italian regional Councils are taken into consideration (*infra*, par. 7-2).

After ten years since the last reform, “the EU's Common Agricultural Policy is going to be adapted to face new challenges such as extreme price volatility, climate change, biodiversity and

soil quality, while at the same time delivering on its traditional objectives of food security, fair incomes for farmers and reasonable prices for consumers” ([www.europarl.europa.eu](http://www.europarl.europa.eu)).

The idea of a CAP reform starts to materialize in 2010, when Dacian Ciolos, the European Commissar responsible for Agriculture and rural development, organized a public debate on the CAP’s future after 2013. In order to facilitate the debate an Internet website was created to which more than five thousand and fifty contributions were sent, thus becoming one of the biggest debates guided by the Commission until today<sup>27</sup>.

A number of documents of EU institutions followed this public debate: a resolution on the common agricultural policy after 2013 dated 8<sup>th</sup> July 2010 by the European Parliament; a communication on the CAP toward 2020 by the European Commission dated 18<sup>th</sup> November 2010; on the 17<sup>th</sup> of March 2011 the European Council approved conclusions of the President about the Commission’s communication; on the 23<sup>rd</sup> of June 2011 another European Parliament resolution; to end up with the 12<sup>th</sup> of October as the date of the presentation of the draft laws by the European Commission.

For the first time since the entry into force of the Lisbon Treaty, in fact, the common agricultural policy will be submitted to the ordinary legislative procedure, and the European Council and the European Parliament will be co-legislators on this subject

Without going into the matter of the CAP reform in too much detail, considered the numerous aspects of the reform as well their complexity, it suffices to remember that the proposals of reformation of the common European agricultural policy were four: the regulation establishing rules for direct payments to farmers (Direct Payments Regulation) (7183/13); the regulation establishing a common organization of the markets in agricultural products (Single CMO Regulation) (7329/13); the regulation on support for rural development (Rural Development Regulation) (7303/13); the regulation on the financing, management and monitoring of the CAP (Horizontal Regulation) (7304/13).

## **7.1 InterParliamentary Committee Meeting European Parliament and National Parliaments of 2012**

For the reform of the CAP an inter-parliamentary meeting was later organized aimed at discussing the reform with the members of the national Parliaments and the European Parliament.

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<sup>27</sup> The debate is centered around four main themes: Why do we need a common agricultural policy?; What do citizens expect from agriculture?; Why reform the CAP?; What tools do we need for the CAP of tomorrow?

The choice to organize an inter-parliamentary meeting can be seen in terms of more resolutely fixing the inter-parliamentary cooperation to the control of subsidiarity.

These kinds of “meetings (ICM) remain a most appropriate format for Members of specialised EP committees and corresponding committees of national Parliaments, including EP rapporteurs and their counterparts in national Parliaments, to meet on specific dossiers. The right timing for such meetings is crucial” (European Parliament 2012).

The juridical basis for this kind of meeting can undoubtedly be traced back to article 9 of Protocol No.1 attached to the Lisbon Treaty. Article 9 states, in fact, that the European Parliament and national Parliaments agree upon arranging the organization and the promotion of an effective and regular inter-parliamentary cooperation inside the Union”.

The possibility to organize meetings of this kind is also covered by the European Parliament rule, article 132. This deals with Conferences of Parliaments, stating that “the Conference of Presidents shall designate the members of Parliament's delegation to any conference or similar body involving representatives of parliaments and shall confer a mandate upon it that conforms to any relevant Parliament resolutions. The delegation shall elect its Chair and, where appropriate, one or more Vice-Chairs”.

The meeting reunited the European and national members of Parliament belonging to agriculture Committees, in order to have a clearer vision of the several debates at a national level and at the level of the different national Parliaments. The meeting took place in Brussels on 25<sup>th</sup> June 2012. The meeting was chaired by Paolo De Castro, chairman of the European Parliament Committee on agriculture and rural development. At the meeting were the MP Paolo Russo, representative of the Italian Parliament, president of the Agriculture Committee of the Deputy Chamber and Senator Paolo Bonazza Buora, member of the Agriculture Committee of the Senate.

During the inter-parliamentary meeting the various Chambers taking part in it with their representatives had the opportunity to present and discuss the previously approved opinions, which were also transmitted to the other institutions of the Union. With regard to the opinions of other national Parliaments it is interesting to note that while the majority of the committee led opinions have already been sent to the European institutions, the Hungarian Parliament and in particular the delegation of the Committee on Agriculture of the Hungarian National Assembly on the Reform of the Common Agricultural Policy prepared an opinion especially for the Inter parliamentary Committee Meeting European Parliament - national Parliaments (Budapest, June 5, 2012).

It is also worth noting that all Member States have sent their opinions directly or in English or in two languages (both national and English) while the Bundestag and Bundesrat only in German. Even the length of the opinions is very different, some of them covering one page (such as the

Republic of Latvia), others, such as the Parliament of the Republic of Ireland (Houses of the Oireachtas) set down on 56 pages, due to the annotations with the transcripts of the hearings held in committee, or even the report of the House of Commons with 83 pages.

The very contents of the opinions is quite varied too. Although nearly everyone agrees that the proposal falls within the competence of the European Union and does not violate the principle of subsidiarity, such as the opinion of the House Standing Committee on Agriculture and Natural Resources on the Reform of the Common Agricultural Policy of the House of Representatives of the Republic of Cyprus specifies that it is part of the political dialogue, but does not refer to the subsidiarity profiles.

The only opinion that challenges the due observance of the subsidiarity principle is that of the House of Commons, which concludes the discussion by stating that "For These Reasons Given above the House of Commons concludes that this proposal does not respect the principle of subsidiarity"<sup>28</sup>.

## **7.2 The opinion of the Italian Senate**

With reference to the Italian Parliament, the Chamber of Deputies proceeded first to the hearing of the Minister of Agriculture (on 29<sup>th</sup> September, 26<sup>th</sup> October and 14<sup>th</sup> December 2011), to the hearing of Dacian Ciolos himself, European commissar for agriculture and rural development (on 18<sup>th</sup> November 2011) and the hearing of the Chairman of the AGRI Committee of the European Parliament and its Italian members (on 24<sup>th</sup> November 2011).

The opinion of the Italian Parliament lodged with the inter-parliamentary meeting in 2012 turns out to be, however, a Senate resolution: in particular, the resolution of the 9<sup>th</sup> Standing Committee, the Agriculture and Food Production Committee, approved during the 18<sup>th</sup> April 2012 session, on the several proposals of EU rule on the matter.

The resolution mainly deals with the respect of the subsidiarity principle, clarifying that "the proclaimed objectives cannot be adequately realized by the single member states, thus calling for an intervention in European area of interest" then it expresses, according to Protocol No. 2, an opinion with regard to the subsidiarity principle. It is also declared that the proposals appear to adhere to the proportionality principle, even though, as is well-known, the control over this principle is not up to the national Parliaments.

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<sup>28</sup> House of Commons European Scrutiny Committee 2011.

In the actual opinion, which follows the resolution, the juridical basis is also “accepted” according to which the EU institutions declared that they were legitimated to intervene, i.e. articles 42 and 43 of the Treaty on the European Union functioning, dealing with the possibility of adopting measures for the common organization of agricultural markets, other provisions necessary for the achievement of a common agricultural policy and measures for the pricing of withdrawals, aid and quantity limitations, with reference to the applicability of competition rules.

But the very heart of the resolution is the fact that the proposals go into the matter as foreseen by the political dialogue which is now so central in the relationships among national Parliaments and the European Union. As a matter of fact the Senate’s resolution mostly focuses on the merit of the proposals for rules, with its own observations and suggestions.

The resolution also takes into consideration those adopted by regional legislative Assemblies and in particular the resolutions on the “new agricultural policy” pack, voted and transmitted to the Parliament by the regional Councils of Emilia-Romagna<sup>29</sup>, Veneto<sup>30</sup>, Marche<sup>31</sup>, Calabria<sup>32</sup> and Sardinia<sup>33</sup>.

The fact that the Senate’s opinion considers the regional Councils’ resolutions is particularly revealing: in fact, by so doing and then taking the opinion into the inter-parliamentary meeting, the European Parliament becomes the place where, directly or indirectly, all the legislative assemblies of the European Union, both at a national and regional level, debate.

## 8. CONCLUSIONS

National Parliaments regularly forward their motivated opinions to the European Parliament and to the other institutions of the Union. They do it firstly in the respect of the subsidiarity principle control procedure, whereas they can make remarks, if they consider that the principle is violated by the draft legislative act. But the opinions forwarded by parliaments do not end with this procedure, because, thanks to the political dialogue, the chambers can forward to the European Union institutions any document which is useful for the definition of European policies.

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<sup>29</sup> Resolution of 9<sup>th</sup> November 2011.

<sup>30</sup> Deliberation No. 96 of 30<sup>th</sup> November 2011.

<sup>31</sup> Resolution of 6<sup>th</sup> December 2011.

<sup>32</sup> Resolution of 5<sup>th</sup> December 2011.

<sup>33</sup> Resolution of 13<sup>th</sup> December 2011.

The European Parliament adapted its own internal rule in order to state the scrutiny procedure of the opinions forwarded by national Parliaments. The dialogue among both national and European Parliaments, as well as the regional legislative Assemblies, which can be consulted by national Parliaments, thus creates a parliamentary network which can contribute, when strengthened and consolidated, to reducing the democratic deficit, which the European Union is often charged with. For these meetings to have decisive effects on the European decision-making, however, it is likely that they must end with the vote of a political document, which may in some way, if not restrained, at least influence the other institutions of the European Union, clearly establishing the position of national parliaments on a specific issue.

The CAP reform, with the inter-parliamentary meeting of 2012, is the demonstration of how helpful this democratic network can be in the dialogue among the different national experiences. Moreover it can somehow be a counterpoint to the intergovernmental method which, especially during the economic-financial crisis, seemed to be dominating as a decisional method in the relationships among the Member States of the Union.



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