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Research Article

## The French and the Italian Parliaments in EU Affairs Post-Lisbon: True Empowerment or Cosmetic Change?

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## Abstract

The role of national parliaments in EU decision-making has generally been considered marginal since national parliaments participate indirectly through national executives. The Lisbon Treaty, however, triggered important developments in this regard. Direct involvement of national parliaments through the Early Warning System and Political Dialogue has prompted internal reforms. This article argues that, because of the new procedures provided for by the Lisbon Treaty and the direct relationship between the Commission and national parliaments, certain legislatures such as the French and Italian have become stronger in their involvement in EU affairs. However, seven years of practice post-Lisbon show that the innovations brought about by the new Treaty have fallen short of fully satisfying national parliaments' thirst for active engagement. We also observe that changes at the national level have only been implemented progressively and have not yet been exploited to their full potential.

## Keywords

National parliaments; Lisbon Treaty; Scrutiny of EU affairs; Political dialogue; France; Italy

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The role of national parliaments (NPs) in EU decision-making has been considered as marginal. The influence of NPs has been understood to be indirect only, since such influence has been exerted only through national executives, even when Member States' parliaments were represented in the Parliamentary Assembly of the European Community (Maurer 2001: 27-75; Lindseth 2010: 81-188). The Lisbon Treaty, however, appears to have at least altered this landscape by creating a direct relationship between NPs and EU institutions, especially with the Commission. Furthermore, depending upon the way Member States implemented the Treaty provisions at the domestic level, the new Treaty might have contributed to the strengthening of parliamentary control over the decision-making process in both the Council and the European Council by instigating tighter scrutiny of governments and more frequent exchanges of opinions between the executive and legislative branches.

Since the entry into force of the Lisbon Treaty in 2009, national reforms have been enacted or procedures have been developed through institutional practice and customary rules. These new national rules empower NPs to direct the action of national executives within these intergovernmental institutions and to check national executives' compliance with parliamentary resolutions and conclusions passed beforehand. Moreover, the direct relationship between NPs and the Commission by means of the Political Dialogue (PD) has enhanced the previously minimal role that NPs held in EU affairs. The Commission first promoted the PD, launched in 2006, as a complement to the parliaments' policing role as 'subsidiarity gatekeepers', a role that the (failed) Constitutional Treaty had attributed to them. When compared to the Early Warning System (EWS), which endows NPs with the power to ask the Commission to amend or withdraw a legislative proposal, the PD is a more cooperative and proactive tool. Confirmed by the Commission on 1 December 2009 (European Commission 2009), the PD allows domestic legislatures to send their opinions to this institution at any time, based on any grounds (including merits, legal basis, subsidiarity, proportionality) and regarding any document received. It also entitles NPs to a reply from the Commission. As a consequence of this, as well as the direct transmission of all EU

documents provided for in Protocol 1 annexed to the Treaties, NPs have become more involved in EU affairs, as illustrated below.

With a focus on the French and the Italian Parliaments as case studies, this article considers whether changes provoked at the domestic and European levels by the Lisbon Treaty have modified these NPs' role in EU affairs. While traditionally French and Italian forms of parliamentary scrutiny over EU affairs have been considered weak, both parliaments' ability to control indirectly the Council and the European Council through their governments has been reinforced since the Treaty reform. Furthermore, the attitude of each individual parliamentary chamber (the National Assembly and the Senate in France and the Chamber of Deputies and the Senate in Italy) towards the PD and the Commission has changed dramatically in recent years.

This contribution is in line with recent studies on the role of NPs following the Lisbon Treaty (Auel and Christiansen 2015; Rozenberg 2017). It, however, aims to combine the analysis of NPs' participation in some EU procedures, like the EWS and the PD, with an analysis of domestic, though EU-related, procedures, like the scrutiny of Council and European Council's meetings. In doing so, it draws on the case study of two traditionally weak parliaments in EU affairs and provides an overall assessment of those legislatures' involvement as 'European actors' after the last Treaty reform. Against this background, this article first analyses how NPs have tried to exert influence through their governments before it highlights how, since the entry into force of the Lisbon Treaty, they also have sought to gain influence through the Commission.

### **NATIONAL PARLIAMENTS' ABILITY TO PARTICIPATE INDIRECTLY IN EU DECISION-MAKING THROUGH THEIR EXECUTIVES**

Since the beginning of the European integration process, NPs have traditionally tried to exert influence on EU decision-making through their governments. The need to strengthen their scrutiny ability over EU affairs and their participation rights at both the domestic and the supranational level is often seen as a way to counter the long-standing problems of the 'democratic disconnect' (Lindseth 2010), of the 'representation deficit' (Bellamy and Kröger 2013), and of the weakness of political constitutionalism in the EU's constitutional construction (Glencross 2014).

Indeed, the Parliamentary Assembly of the European Community, where NPs were originally represented, as only a consultative body, had a marginal role in shaping European legislation and in making fundamental decisions for supranational policymaking. When the voting rule in the Council was only unanimity, before the Single European Act, NPs could hold their national government accountable for its voting behaviour at the supranational level. However, most national legislatures at that time did not perform such a thorough scrutiny of the executives' EU activities. NPs did not have other tools for direct involvement in EU affairs, except for their ability to exercise a veto on Treaty revisions. At that time, it was understood that 'classical' international treaties ruled the European Communities, explaining the long-held belief that NPs could be put aside without raising any major difficulties.

In this context, national legislatures have tried to exert their control indirectly over EU law-making and in particular over the Council. Undoubtedly, the extent to which this parliamentary control was and still is effective relies upon the national mechanisms and procedures to hold the national government accountable before the parliament, as well as upon the party system and the composition of the government. Furthermore, the political culture of each Member State plays a role in allowing NPs to be involved.

By no means has the Lisbon Treaty's recognition of NPs' direct involvement in EU law-making, in particular in relation to the Commission, led to an abandonment of the indirect channel of influence through national governments. Rather the opposite has occurred: the frequency, the proceduralisation (even if by institutional practice), the level of in depth-analysis reached by the parliamentary scrutiny of the Council and, even more so, of the European Council, has increased in both the French and the Italian Parliaments over the past seven years. Hence, the direct interaction between parliaments and the Commission, as analysed below, does not replace, but rather complements the indirect relationship between parliaments and EU intergovernmental institutions established through the executives. The former can also be considered an incentive to strengthen the latter in order to preserve the specific features of national forms of government in EU affairs: parliaments that act as autonomous players in the EU can be seen as a threat to the stability of the domestic legislative-executive relationship. Additionally, the introduction of the PD – and the EWS – has provided NPs with comprehensive information on EU matters without the need to depend entirely on their governments, allowing legislatures to control the executives better.

### *France*

Parliamentary scrutiny of EU activities carried out by the Executive has usually been very weak in France. Consequently, the ability of the two Chambers, in particular of the National Assembly on whose confidence the prime minister is dependent, to influence EU decision-making indirectly through the government has been similarly weak. The weakness of parliamentary scrutiny derives, at least as regards the scrutiny of the European Council, from an evident feature of the French semi-presidential form of government: the President of the Republic, who sits in the European Council, is not democratically accountable to either chambers and can only send written messages to them. Thereby, the president is prevented by the Constitution itself from entering the chambers' buildings, meaning that the president can neither be heard before the European Council's meetings nor report to the Parliament afterwards. Neither the Constitution – as it was amended in 2008 on both the Parliament-Government relationship and the Parliament's participation in EU affairs in general in order to incorporate the novelties of the Lisbon Treaty – nor the relevant legislative provisions have been formally revised in order to specifically strengthen parliamentary control over the summits of the intergovernmental institutions in the EU.

Despite the lack of constitutional and legislative reforms, parliamentary practice and internal rules have recently enhanced parliamentary scrutiny, especially of the European Council. Both parliamentary assemblies allow for the establishment of control procedures on the Council and the European Council. This is because both internal rules foresee the possibility of organising governmental hearings. Moreover, the Ordonnance du 17 novembre 1958, n. 1958-1100 on the functioning of the parliamentary assemblies, which allows for the transmission of documents forwarded to the Council, plays an important role in guaranteeing the Chambers' access to information. As the President of France has been from the same political majority as the Prime Minister and his government (and the National Assembly) since the last cohabitation period ended in 1995, the prime minister has been able to report on the European Council's meetings to the Chambers on behalf of the President (Fromage 2014: 158).

Notwithstanding the lack of a legal obligation on the part of the government to inform the parliament about European Council and Council meetings,<sup>1</sup> a practice has developed since the failed referendum on the Constitutional Treaty: the parliament is involved both before and after European

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<sup>1</sup> By contrast, according to art. 88-4 Fr. Const., the Government has a duty to transmit EU legislative proposals and acts, regarding which the Chambers can pass resolutions addressed to the Executive.

Council meetings (Wessels and Rozenberg 2013: 46). In both chambers, debates with a representative of the government – the Secretary of State or the Minister Delegate to the Minister for Foreign Affairs with the responsibility for European affairs – are organised before European Council meetings. The Secretary of State or the Minister makes a statement before the plenary session of each chamber before the floor is opened for discussion with senators and MPs who pose questions to the government (Fromage 2014: 168). Parliamentary scrutiny of the European Council's meetings also takes place *ex post* by means of committee hearings, usually held before the Committee on EU Affairs of the National Assembly and the Senate, which sometimes arrange joint meetings for that purpose.

Note, however, that while the Senate had been much more involved in the *ex ante* scrutiny in a plenary session in the past (21 debates in the Senate *v.* eight debates in the National Assembly from 2010 to 2014), in 2015 and 2016, all formal European Council meetings were preceded by a debate in a plenary session in the Senate (Sénat *n/d*) and the National Assembly also organised debates almost systematically.<sup>2</sup> The National Assembly, through its Committee on EU Affairs, had been much more active in holding the Government to account on the European Council's meetings *ex post* (15 committee meetings and hearings in the National Assembly *v.* seven in the Senate from 2010 to 2014) (Fromage 2015<sup>3</sup>). However, such important a difference could no longer be observed so clearly in 2015 and 2016 (minutes of the meetings of the European Affairs Committees of both assemblies). Hence, the level of involvement of the two assemblies is now high and similar both *ex ante* and *ex post*.

Equally informal, but far more recent, is the practice that has developed since October of 2014 in the National Assembly of holding hearings of Ministers before the Council's meetings. The hearings are organised primarily by the Committee on EU Affairs, sometimes in conjunction with sectoral committees whose competence includes the subject matter concerned and take place behind closed doors. The timing of these hearings is contemporaneous to the discussion of the agenda of the next Council's meeting and the national position to be supported in Brussels. It is uncommon for *ex post* scrutiny to be organised concerning the Council's meetings; although it may be touched upon during non-specific ministerial hearings. Following this example, the Senate has also considered the introduction of a similar procedure.

For the sake of exerting an influence on EU decision-making, based on art. 6-bis and Annex II of the Ordonnance du 17 novembre 1958, n. 1958-1100 and the governmental Circulaire of 21 June 2010 (French Government 2010), the National Assembly and the Senate receive a series of documents that enable them to control the activity of the government in EU matters. Examples of documents that the government regularly transmits to the chambers include the agendas of Council meetings and the programme of the six-month Presidency of the EU and the documents of Council working groups. However, when the Council meeting's agendas are transmitted, they are not annotated and hence indicate neither the position the government intends to take nor the position of other Member States. Instead, this type of information is either provided upon the parliamentary chambers' request or as part of the bi-annual updates the chambers receive on the current dossiers under discussion at the beginning of a new EU presidency.

Additional means for the chambers to obtain information lie in the position papers, which the French Government sends to the French MEPs, or in the impact assessment provided by the government or, for the National Assembly at least, the use of the 'diplomatic telegrams'. Besides

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<sup>2</sup> See Assemblée nationale, Rapport d'information no. 3195 'L'Assemblée nationale et l'Union européenne: quel bilan? Quelles perspectives?' 2015: 23.

<sup>3</sup> See table on p. 168 in Fromage 2015.

this, when the European Council's agendas are transmitted, they are usually very basic. The draft conclusions are forwarded approximately one week in advance. The French Parliament has four weeks to examine these documents and to send its own conclusions (potentially adopted by the Committee on EU Affairs) and resolutions (potentially adopted by the plenary session or sectoral committees) to the government.

Since the entry into force of the Lisbon Treaty and the reforms it has fostered, the Committees on EU Affairs of both parliamentary chambers are at the very centre of the parliamentary scrutiny of EU affairs. In practice, these bodies pass most documents – conclusions – adopted by the two French Chambers and addressed to the French Government and the Commission. Moreover, upon the initiative of their chairman or of the government, the Committees on EU affairs are entitled to receive any document from the Executive that is deemed necessary for the scrutiny and to be constantly informed about the ongoing European negotiations (art. 6-bis of the Circulaire of 2010). Such a development is, to a certain extent, a novelty: until 2008, the Committees on EU Affairs, then known as Delegations on EU Affairs, had a marginal role in this field despite the thoroughness and the quality of their analyses. They were in fact dependent on the (permanent) sectoral committees: only if one of the sectoral committees endorsed the resolution of the Delegation on EU Affairs, could it become a resolution of the chamber. By contrast, today, if a sectoral committee does not examine the resolution adopted by the EU affairs committee within a certain timeframe, the resolution is deemed adopted and automatically becomes a resolution of the chamber in question.

To sum up the discussion of the French Parliament's indirect influence on EU decision-making through the national Executive, since the failure of the Constitutional Treaty, and even more so after the adoption of the Lisbon Treaty, a series of customary rules and institutional practices have compensated for the lack of official procedures to exercise influence on the agenda and the outcomes of the Council and the European Council's meetings. The ability of the French Parliament to impact on the actions of its Executive in the EU intergovernmental institutions has grown significantly in the last few years. The European Council appears more carefully scrutinised than the Council, upon which the National Assembly only recently began to exercise an *ex ante* scrutiny. This may be explained by the fact that the legislative proposals discussed at Council level have already been scrutinised and may have been the object of resolutions prior to being discussed in the Council. It follows in any case that the scrutiny exercised in the French Chambers is still far from equivalent to a true parliamentary mandate; rather, the chambers give political direction through hearings and resolutions.

### *Italy*

Like the French Parliament, traditionally, the Italian Parliament had been perceived as practising a weak form of scrutiny on the national Executive's involvement in EU affairs (Cavatorto 2015). The Italian public and the legislature's usual pro-European attitude had been paralleled by a loose, if not sporadic, parliamentary check on the ministerial action in Brussels, in particular within the Council and the European Council (Wessels and Rozenberg 2013: 10).

The Lisbon Treaty and the Eurozone crisis changed this status quo. The Italian Parliament and especially the Senate, which is also tied to the Executive through a confidence relationship, have become more autonomous from the government in EU affairs due to the direct conferral of powers by the EU and, in particular, the EWS and the PD. Right after the entry into force of the Lisbon Treaty, one (problematic) episode confirmed the autonomy the Parliament had newly gained through greater availability of information and through inputs given in the EU decision-making process. In contrast to the view of the Executive, which was patently in favour of the proposal, the

Italian Senate, with the adoption of its first reasoned opinion (r.o.), claimed that the Council Decision on the import of fishery products from Greenland violated the principle of subsidiarity (COM (2010) 176) (European Commission 2010). In other words, taking advantage of its new European power, the Senate tried to influence EU law-making regardless of the standpoint of the government or of the Chamber of Deputies. Once the Executive realised that a stronger coordination with the legislature should exist to avoid the fragmentation of the representation of Italian interests in the EU, both institutions (ultimately) started playing the 'European game' in a cooperative manner. It was only at the end of 2012, following the initial marginalisation of the Italian Parliament during the adoption of the Euro-crisis measures and the strenuous insistence of the parliament on reforming legislation, that a new law regulating Italy's participation in EU affairs was finally adopted.<sup>4</sup>

Law 234/2012 (Italian Republic 2012) makes the possibility of divergent positions between the parliament and the Executive highly unlikely, just as it should be in any parliamentary system and extends the involvement of the parliament beyond the powers already granted to NPs by the EU Treaties. For instance, prior to the meetings of the European Council, the Italian Government is now bound to inform the two Chambers of the position it intends to follow during the next European Council and must also take into account the preferences expressed by the Parliament through the resolutions it approves at the end of the parliamentary debate. This debate enjoys great visibility since the Italian President of the Council of Ministers gives a speech before the Plenum and, in contrast to most parliamentary procedures dealing with EU affairs, the plenary session is at the very centre of this procedure.

At the request of the competent standing committee, the government must inform the committee about the dossiers under examination and its position before the meeting of the Council. When compared, however, to the systematic pre-European Council's debates in plenary session, the hearings of the competent minister or the Minister for EU affairs prior to the meetings of the Council are only episodic and rely upon the initiative of each committee.<sup>5</sup> The application of some provisions of Law 234/2012 has reinforced the ability of the parliament to make its voice heard by the Executive acting within the EU institutions. For example, the government is now required to ensure that the Italian position it represents within the Council and in other EU institutions and bodies is consistent with the opinions and the resolutions adopted by the Italian Parliament on the same issue (Art. 7.1). Moreover, should the government deviate at EU level from the directions provided by parliament beforehand, the president of the Council of Ministers or the minister competent on the subject matter must promptly inform the parliament and provide reasons as to why the deviation has occurred (Art. 7.2). Furthermore, the information given to parliament must be provided within fifteen days of the relevant meeting (Art. 4.1).

Legal provisions and parliamentary practice nonetheless often diverge and while the scrutiny on the European Council's meetings can be regarded as effective and systematic, the scrutiny on the different Council configurations is not really significant yet. The government regularly reports through the Minister or Under-Secretary for European Affairs to the Parliament about the outcomes of European Council meetings. However, this report does not occur in plenary session, as is usually the case prior to the European Council meetings, but rather before sectoral committees, most often before the Committees on Foreign Affairs and on EU Policies of the two chambers in joint session (Esposito 2013: 36-9). At times, the report is not sent to parliament within the required fifteen days.

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<sup>4</sup> There was already a Law, 11/2005, on the participation of Italy in EU affairs, which provided, however, for a limited influence on the Government by Parliament.

<sup>5</sup> The information provided in this section is based on interviews of parliamentary officials in the Italian Chamber of Deputies and Senate. The data collected is based on the transcript of committee meetings in both Chambers from 2013, when Law no. 234/2012 entered into force, to 2016.

By contrast, scrutiny of the Council meetings has only been carried out occasionally. In recent years, a practice has been established in which the Minister or the Under-Secretary on EU affairs and the Minister of the Economy and Finance is called to appear before the competent committees at a hearing and to give evidence about the results of the Council meetings. The scrutiny on the Council normally takes place *ex post* and the parliamentary committees do not adopt resolutions before the relevant Council meeting is held at the EU level. Hence, the implementation of Law 234/2012, as regards the Council's activities, is still partial.

Since the entry into force of Law 234/2012, the Italian Parliament has tried to extend its influence on the position the government takes within the European Council and (although to a lesser extent) the Council, overcoming its past reluctance to act. These procedures also make crucial information about the Council and European Council meetings publicly available. Yet, the scrutiny of the Council has proven to be more difficult in light of both the sectoral nature of the meetings and the ongoing development of a parliamentary culture. This supports the control of ministerial activities in EU affairs in the sectoral standing committees, which are key players in the scrutiny of the Council's formations.

The indirect influence that the Italian Parliament tries to exert on EU decision-making through the Italian Government is now based on a double channel. The first avenue is the traditional document-based scrutiny: particularly important in this field are the Planning Document of the Executive on its prospective activity in the EU during the coming year, which is examined alongside the Commission's Annual Work Programme (AWP) and the Annual Report on the activity the Government has carried out in the EU over the past year. Even though the delay in drafting such Planning Documents and Reports has been gradually reduced (and in 2017 the Government delivered them almost on time), the second avenue of influence, based on the hearings of ministers and of the president of the Council of Ministers following Council and European Council's meetings, has become increasingly important, especially since the entry into force of Law 234/2012.

#### **THE AVENUES AND THE ATTEMPTS OF NATIONAL PARLIAMENTS TO DIRECTLY INFLUENCE EU DECISION-MAKING THROUGH POLITICAL DIALOGUE**

In the post-Lisbon regime, NPs are entitled to receive, particularly from the Commission and in addition to what their governments already transmit to them, any EU draft legislative act and document in their respective official language. Nevertheless, according to the wording of Protocols 1 and 2, the procedure defined as the EWS, which gives NPs the power to signal violations of the principle of subsidiarity, only applies to legislative proposals falling outside the sphere of the EU's exclusive competence. This group of legislative proposals represents a very small proportion of legal acts enacted by the EU every year. Furthermore, the NPs' power of review, before the legislative procedure formally starts, is substantively limited to the principle of subsidiarity alone and must take place within the short period of eight weeks from the transmission of the translated documents.

Within the EWS, NPs are designed as 'quasi-veto players' in the EU: they can object, on the grounds of the subsidiarity principle, to the proposed change of the status quo, and as a collective actor they can delay or impose further conditions on the carrying out of EU legislative procedures (Cooper 2012; *contra* Lupo 2014). Indeed, a 'yellow card', issued when the number of NPs' r.o. is at least equal to one third of the votes cast (18 out of 56 votes), obliges the Commission to review the legislative proposal at stake, to decide to withdraw, amend, or maintain the original proposal and to explain the reasons for doing so. Thus far, raising a 'yellow card' has been challenging as the required threshold has been met only three times. Moreover, only on the first occasion, regarding

the Proposal for a Council Regulation on the right to take collective action in the field of the freedom of establishment and to provide services (European Commission 2012), the Commission finally decided to withdraw the legislative proposal. Even then, the Commission denied that any violation of the principle of subsidiarity had occurred (Fabbrini and Granat 2013; Goldoni 2014). It did so for political reasons, given the widespread opposition against such a measure (including on the part of the national executives) and as the Regulation would have required unanimity at the Council level. By contrast, the second yellow card, on the establishment of the European Public Prosecutor's Office, did not affect the Commission's attitude towards the proposal (European Commission 2013). The Commission simply decided to maintain the proposal without any revisions, since its compliance with the principle of subsidiarity was confirmed (Fromage 2016). This scenario repeated itself with the third yellow card, on the revision of the Posted Workers Directive (European Commission 2016; Jančić 2017). Hence, the impact of the second and the third yellow cards on EU law-making and on the Commission's agenda has been non-existent and the role of NPs as 'quasi veto players' in the EWS has proved thus far to be quite limited.

Nevertheless, as mentioned above, since the launch of the PD in 2006, NPs are now in direct contact with the Commission not only to object to its legislative actions, but also by means of contributions,<sup>6</sup> to draw its attention to their specific issues of concern and to trigger a change in the order of the Commission's priorities. Indeed, in addition to EU draft legislative acts subject to the EWS, NPs' contributions are addressed and delivered to the Commission within the PD. Lacking a recognition in EU primary law, the Commission has no Treaty-based obligation to follow these opinions, as the PD is based on an institutional 'self-commitment'.

Although some NPs, like the Swedish *Riksdag*, only send r.o. to the Commission (i.e. no contributions are submitted), since 2009, NPs have favoured the use of the PD as a tool to influence the position of the Commission in its law-making. This is evident by the results from the number of opinions and contributions received by the Commission since 2010 (Table 1).

	r.o.	Contributions
<b>2010</b>	34	353
<b>2011</b>	64	558
<b>2012</b>	70	593
<b>2013</b>	88	533
<b>2014</b>	21	485
<b>2015</b>	8	342
<b>2016<sup>7</sup></b>	64	487

Table 1: Contributions in the framework of the PD and r.o. (2010-2016)

Notwithstanding this success, the PD has largely disappointed NPs, which perceive their participation in the PD to have a limited impact despite the high expectations the PD created when it was first launched in 2006. The Commission's replies to parliamentary contributions remain extremely vague

<sup>6</sup> Contributions is the official denomination used by the European Parliament to catalogue all NP opinions other than r.o. on the grounds of the principle of subsidiarity.

<sup>7</sup> Data from 2016 is an estimation. Lacking the Commission Reports 2017 on the relations between the Commission and national parliaments and on the application of the principle of subsidiarity, the analysis is based on the IPEX database, [www.ipex.eu](http://www.ipex.eu); the European Commission - Relations with national parliaments' database, [http://ec.europa.eu/dgs/secretariat\\_general/relations/relations\\_other/npo/index\\_en.htm](http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm), and the French and the Italian Chambers' websites, which allow us to point to the trends in recent evolution.

and do not enhance NPs' awareness and more in depth understanding of the Commission's standpoint. While President Barroso had even committed to providing an answer within three months and while President Juncker made a good relationship with NPs one of his priorities, the Commission fails to respect this, causing NPs to criticise its behaviour on numerous occasions.<sup>8</sup>

In this context, the general decrease in NPs' participation in the PD in 2014 and 2015 may have been linked to their dissatisfaction, although the decrease in the number of legislative proposals since 2014 surely played a role as well. From the legislatures' point of view, the Commission should explicitly point out the impact, if any, of NPs on EU law-making. In this regard, the UK House of Lords has provided direction for future developments. This parliamentary chamber has detected three main avenues to enhance the influence of Member States' legislatures in the EWS and PD. It proposes that the Commission should make the link between parliamentary opinions and EU policy outputs more explicit by:

- (i) identifying national parliament contributions in summary reports on consultation exercises and in subsequent communications on the policy, including how the policy has been shaped or modified in response;
- (ii) responding promptly to national parliament contributions under the general political dialogue, usually within three months; [and]
- (iii) using its annual report on relations with national parliaments to identify the impacts of national parliament engagement (UK House of Lords 2014, § 40).

There is indeed a consensus among NPs that their role should go beyond the adoption of r.o. on draft legislative acts, which may block those acts. This new role would involve a more positive, thoughtful and holistic view of the contribution that NPs could make to the good functioning of the EU democracy. For example, NPs could invite the Commission to develop legislative proposals which they believe to be necessary or to review and adapt existing proposals for specific stated reasons (COSAC 2013a, point 31). In other words, what NPs have started to envision is a 'green card' – the power, through the enhancement of the PD and without a Treaty revision, to ask the Commission to present a draft legislative act on their behalf. The scope, the timeframe, and the effects of such a 'green card' still remain, however, largely undefined and the issue is at present the subject of discussion among parliaments (Fasone and Fromage 2016).

In 2016, the involvement of NPs in the PD (as well as in EWS) has started to rise again, perhaps as a result of a more committed Commission towards NPs' contributions and of the controversial dossiers under scrutiny during that year (on asylum, social protection and taxation). This increased participation in the PD may also be linked to the change, which started in 2015, in NPs' focus from legislative proposals to non-legislative proposals. The levels of participation in the upcoming years will in any case have to be monitored before any conclusion can be drawn. Based on this overview of the general framework of interaction between NPs and the Commission through the PD, the next section examines the peculiar cases of the French and Italian Parliaments' participation in the PD.

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<sup>8</sup> For instance, COSAC 2015: 17.

## DO THE FRENCH AND THE ITALIAN PARLIAMENTS MAKE USE OF POLITICAL DIALOGUE?

The use of the PD by the French and the Italian Parliament has varied significantly since 2006 and between their two chambers,<sup>9</sup> especially in France. Instead, there appears to be a common trend to push for a reform of the PD by the Commission and the use of other informal mechanisms to influence the Commission's positions. Of the four parliamentary chambers in the French and Italian Parliaments, the latter Senate is by far the most active in the PD, both in terms of opinions delivered to the Commission and in the number of cases in which it asks for the Commission's reply.

The Italian Senate's participation in the PD started slowly and multiplied by a factor of four in one year (2010) following the entry into force of the Lisbon Treaty, when the EWS was also officially introduced.<sup>10</sup> Since then, the number of opinions reached an apex in 2012, then dropped dramatically due to a combination of factors, among which was a dissatisfaction with the low impact of the contributions on the Commission's agenda. In addition, such a decrease was caused by the phase of political instability determined by the December 2012 resignation of the Monti Government, followed by the parliamentary election in February 2013, and the subsequent deadlock with the delay in the election of the head of State and the resulting appointment of the new government in May 2013. Consequently, the parliament not only operated without a fully empowered government in office for almost six months, but was also dissolved.

It is not by chance that the Chamber of Deputies, faced with the same lack of political direction from the Government as the Senate, signed the lowest number of opinions sent within the PD in 2013. Since then, the number of opinions transmitted by the Italian Chambers to the Commission increased in 2014 and then decreased in 2015, as the parliament was mainly engaged with reforming the Constitution and passing new fundamental bills (e.g. the new electoral law). It rose again in 2016, especially in the Senate. By contrast, the Chamber of Deputies has never considered the PD as a primary way to influence EU decision-making. It has instead paid more attention to the scrutiny of the government and to carefully selecting certain documents that are subject to in-depth examination.

When compared to the overall number of contributions transmitted to the Commission, the Italian Chambers have issued a small number of r.o. challenging compliance with the principle of subsidiarity, which exhibits a rather cooperative attitude vis-à-vis the Commission. At the opposite end of the spectrum stands the French Senate, which, until 2009, was the most active chamber engaged in the PD with the Commission. This high level of engagement in the PD was, however, influenced by the fact that pre-Lisbon r.o. were counted as contributions whose number was thereby automatically increased. Its participation in the PD significantly diminished with the entry into force of the Lisbon Treaty, as it has mostly focused on the EWS. It also clearly seeks to exert its influence at a very early stage – like the National Assembly – and this might explain its belated interest in the PD (COSAC 2013b: 143 and 152). In 2015, its level of participation in the form of contributions was, however, similar to that of the Italian Chamber of deputies and in 2016 it has increased even more, so that the difference in their involvement appears to become narrower.

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<sup>9</sup> This analysis is carried out based on the Annual Reports of the Commission on the relations between the Commission and national parliaments published from 2007 onwards. For the year 2016 only, data is an estimation as indicated above.

<sup>10</sup> See Table 2.

	FR Nat. Ass.	FR Senate	IT Chamber of Dep.	IT Senate
<b>2006</b>	1	18	1	0
<b>2007</b>	1	22	0	0
<b>2008</b>	0	13	6	8
<b>2009</b>	2	12	9	17
<b>2010</b>	0	3 (3 r.o.)	25	71 (1 r.o.)
<b>2011</b>	2 (1 r.o.)	4 (1 r.o.)	28 (2 r.o.)	76 (3 r.o.)
<b>2012</b>	0	19 (7 r.o.)	15	96 (1 r.o.)
<b>2013</b>	40 (1 r.o.)	8 (4 r.o.)	6	36 (2 r.o.)
<b>2014</b>	34 (1 r.o.)	4 (2 r.o.)	15	62 (1 r.o.)
<b>2015</b>	23	8	7	25
<b>2016</b>	24 (1 r.o.) <sup>11</sup>	20 (7 r.o.) <sup>12</sup>	10	81 (2 r.o.)

Table 2: Number of contributions (and r.o.) sent by the French and the Italian Parliaments to the Commission through the PD since 2006

The standpoint of the National Assembly regarding the PD is less clear. If one looks at the number of opinions sent to the Commission, it would seem straightforward to conclude that, until 2013, the National Assembly had not taken part in the PD or in the EWS. In practice, however, interviews with parliamentary officials demonstrate that since the entry into force of the Lisbon Treaty, this chamber has entertained a direct and steady relationship with the Commission. Such a relationship was simply not evident in these channels among other reasons because of a technical problem that prevented the Commission from counting the Assembly's opinions as submitted within the PD. The Assembly's actions were additionally focused on trying to influence the Commission's legislative agenda at a very early stage of development, through, for instance, consultation documents such as white or green papers before they were turned into legislative proposals and through committee hearings of Commissioners.

In 2013, following a commitment to make the National Assembly's activism in EU affairs more visible to the public and, by the same token, to dispel the view of the National Assembly as a weak player given the absence of contributions sent to the Commission, this chamber managed to demonstrate a very active engagement in the PD (jumping from zero to 40 opinions in one year, although 25 of

<sup>11</sup> Data extracted from the French Assembly's website: <http://www2.assemblee-nationale.fr/14/autres-commissions/commission-des-affaires-europeennes/>

<sup>12</sup> Data extracted from the French Senate's website: <http://www.senat.fr/europe/index.html>

these opinions did not request any reply from the Commission). In fact, the Assembly started using the channel of the PD to transmit more documents. It is now usual for the French National Assembly's EU Affairs Committee to transmit its conclusions to the Commission 'on its own initiative' without necessarily requesting any reply from the Commission.

In recent years, the number of contributions submitted by the French and the Italian Parliaments has therefore varied significantly. The decrease observed in 2015 could have pointed to their dissatisfaction with the PD, in particular due to the lack of any clear acknowledgment of which policy outputs, if any, are influenced by their opinions and contributions. However, the 2016 increase may be explained by the choice of the French National Assembly to transmit the resolutions addressed to its government also to the Commission. More generally, and as detailed above, such an increase may also be explained by the political salience of the affected issues and by a change in NPs' focus towards non-legislative proposals. NPs' – in particular the French Parliament's – mixed feelings vis-à-vis this procedure is confirmed by the case of the PD on the Commission AWP. As the main planning document, the AWP (usually published in November) describes the fields of EU legislative action for the following year. An in-depth examination of this Programme, if carried out without delay, can help the relevant chamber in pre-selecting the most important dossiers that should be subjected to scrutiny in the coming year. In addition, such an in-depth scrutiny can also serve to exert an immediate influence on the Commission before the legislative proposals are published.

The information contained in the IPEX database indicates that, since the Commission's AWP for 2007, the French Senate has only transmitted its opinion on three occasions, in 2014, 2016 and 2017. These recent initiatives of the EU Affairs Committee to adopt a resolution – i.e. addressed to the government – on the Commission AWP for 2015, for 2016 and for 2017, alongside an opinion addressed to the Commission through the framework of the PD, might indicate a change in this field. The situation is similar in the French National Assembly, where the former Delegation for European Affairs only adopted conclusions on the 2007 and 2008 AWPs. Yet, like the Senate, in 2015 and 2016, the Assembly also participated and examined the AWP for 2015 and 2016 on which a resolution and conclusions by the EU Affairs Committee were adopted respectively.

In the Italian Parliament, the situation does not significantly differ: the Chamber of Deputies only participated in the PD with the Commission on the AWP in 2009, 2010 and 2011. When this document is examined, the procedure is rather solemn as all sectoral committees are involved. This is in addition to the involvement of the Committee on EU Policies of the plenary (in the Chamber of Deputies), which also adopts a resolution at the end of the process. Interestingly, because of the internal procedures of this chamber, which have been in place since 2010, the Commission's AWP is examined alongside the Planning Document of the Executive, detailing its prospective activity in the EU for the coming year.

By contrast, since 2009, the Committee on EU Policies in the Italian Senate has been regularly engaged (except in 2013 because of the phase of political turbulence it faced) in the PD on the AWP with the Commission by passing resolutions to which the EU institution provides its reply. However, it should be noted that the Senate has never been involved in the plenary session. The only significant difference with the ordinary scrutiny of EU documents and legislative acts lies in the fact that all sectoral committees are also competent to deliver an opinion to the Committee on EU Policies.

The way in which the French Parliament and the Italian Senate have used the PD for the purpose of the AWP confirms that NPs consider the PD to be a valuable tool. Nevertheless, it can, and should, be reformed and enhanced as is advocated by many national legislatures (Jančić 2017: 308-312).

## **CONCLUSIONS: RECONCILING THE DIRECT AND INDIRECT INVOLVEMENT OF NATIONAL PARLIAMENTS**

The Lisbon Treaty created the first basis for the direct involvement of NPs in EU decision-making. It accomplished this by means of the EWS and an informal initiative, the PD, which has allowed NPs to engage in a broader dialogue with EU institutions, and, in particular, with the Commission. However, as the analysis of the French and the Italian Parliaments has shown with conclusions that can be extended to most NPs to a great extent, these two procedures, as the two Barroso Commissions conducted them in particular, are not yet satisfactory nor able to convert NPs into true 'European actors'. Therefore, NPs are advocating for the reform of the PD through the creation of a 'green card' that would eventually allow them to place certain topics on the Commission's agenda. NPs also increasingly seek to engage in the scrutiny of the AWP.

On the other hand, these possibilities when coupled with the direct transmission of EU documents to NPs, have triggered (partly because of the Eurozone crisis) the strengthening of parliamentary scrutiny on intergovernmental institutions via national executives. Consequently, new procedures have been introduced, such as procedures for better coordination between parliaments and governments, new possibilities for parliaments to hold their governments accountable in EU affairs, and new ways for parliaments to pass resolutions *ex ante*. Even if these resolutions are far from being equivalent to some Member States' existing mandates, they at least bind governments to report and justify the positions they adopt in Brussels. In the two states examined here, these procedures are tighter and more evident in the framework of European Council meetings than in those of the Council. Hence, the involvement of both parliaments in the framework of Council meetings still needs to be strengthened.

To conclude, at present, the direct involvement of NPs as 'European actors' through the Commission must be seen as complementary to the indirect control exerted through national governments on the European Council and, gradually, on the Council. By no means are these new avenues for a direct participation of parliaments in the EU going to replace the parliamentary scrutiny of the executives that is still perceived as crucial by the Italian and French (and other) national legislatures.

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