

The Emergence of ‘Conflictual Cooperation’ amongst Parliaments in the Economic and Monetary Union

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Cristina Fasone

Abstract

The paper analyses the relationship amongst national parliaments (NPs) and between them and the European Parliament (EP) in the field of economic and monetary governance. In doing so it uses the principle of sincere cooperation and Chantal Mouffe’s account on “conflictual consensus” to elaborate a conceptual framework for the interparliamentary relationship in this particular policy area.

The paper argues that the relationship between the EP and NPs in the Economic and Monetary Union (EMU) is affected by the nature of the competence at stake, the mode and structure of decision-making and by the saliency of the policy. While in the field of monetary policy NPs and the EP tend to act independently of one another, in the economic governance "conflictual cooperation" among parliaments is emerging on the organization and functioning of interparliamentary relationships rather than on substantive policy options.

Despite the confrontational dynamic often underlying the relationship between the EP and NPs as well as the relationships amongst NPs, the value of the vertical (and horizontal) interparliamentary cooperation is not put into question by the same institutional actors. This “conflictual cooperation” is inherent and probably inevitable in EU interparliamentary relationships and its impact can be assessed on the grounds of the ability of interparliamentary cooperation to nonetheless redress the information asymmetries parliaments are facing in the EMU with a view to positively impacting on the individual and collective ability of legislatures to scrutinize the EU fragmented executive.

Keywords

European Parliament, national parliaments, interparliamentary cooperation, Economic and Monetary Union, conflictual cooperation, democracy

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1. Introduction

The European Parliament (EP) and national parliaments (NPs) are the two institutional pillars of representative democracy in the European Union (Articles 10, 12 and 14 TEU). They play a complementary role in the Union’s mechanisms of democratic scrutiny and accountability.¹ However, the balance of power between the EP and NPs is not fixed once and for all, but it largely depends on the Union’s competence and on the specific policy area.²

There is, however, an overarching principle under which such interparliamentary relationships should be framed regardless of the specific competence at stake: the principle of sincere cooperation. Indeed, as it will be elaborated in section 2, in its vertical dimension, i.e. in between the Union and its Member States, the principle requires domestic and EU institutions, including parliaments at any level of government, to assist each other in carrying out the tasks that derive from the Treaties, “in full mutual respect” (Article 4(3) TEU). Therefore, despite the variety of arrangements of interparliamentary relationships we might detect in the EU, in terms of power-sharing between parliaments according to the procedures and the policy areas analysed and in light of the more or less conflictual or competitive approach NPs and the EP can take, the general landscape for those relationship is set by the principle of sincere cooperation.

Within this framework, then, one can start assessing the share of powers held by NPs and the EP based on the nature of the relevant EU competence and of the Union decision-making structure. In general, in the fields of EU exclusive competence (Article 3 TFEU),³ it is clearly the EP that is expected to “prevail” over NPs concerning the powers to legislate, particularly in the post-Lisbon era with co-decision being the ordinary legislative procedure, and to scrutinize the EU executive(s).⁴ NPs can control their own governments for the EU-related activities carried out within the Council and the European Council. It follows that in areas of EU exclusive competence, NPs are expected to be more interested in cooperating and exchanging

¹ See B. Crum, Parliamentary Accountability in Multilevel Governance: What Role for Parliaments in Post-crisis EU Economic Governance?, 25(2) 2018, *Journal of European Public Policy* 268–286; D. Jancic, The Legacy of an Evolving Polity: Democracy, National Identity, and the Good Functioning of the EU, in D. Jancic (ed.), *National Parliaments after the Lisbon Treaty and the Euro Crisis: Resilience or Resignation?*, Oxford, OUP, 2017, 1–22; C. Fasone and N. Lupo, Introduction. Parliaments in the Composite European Constitution, in N. Lupo and C. Fasone (eds.), *Interparliamentary Cooperation in the Composite European Constitution*, Oxford, Hart Publishing, 2016, 1–19; D. Curtin, The Challenge of Executive Democracy in Europe, 77(1) 2014, *Modern Law Review*, 1–32.

² On the competence problem in the Union, see L. Azoulai, Introduction: The Question of Competence, in L. Azoulai (ed.), *The Question of Competence in the European Union*, Oxford, OUP, 2014, 1–16 and F. Mayer, Competences – Reloaded? The vertical division of powers in the EU and the new European Constitution, 3(2-3) 2005, *International Journal of Constitutional Law*, 493–515.

³ See K. Bradley, The Exclusive Competences of the European Union: Some Random Jottings, in S. Garben, I. Govaere (ed.), *The Division of Competences between the EU and the Member States. Reflections on the Past, the Present and the Future*, Oxford, Hart Publishing, 2017, 173–187.

⁴ The European Parliament tends to informally expand the scope of its action well beyond the strict allocation of competences: on the EU external action and trade policy, see, for example, K. Meissner, Democratising EU External Relations: The European Parliament’s Informal Role in the SWIFT, ACTA, and TTIP Negotiations, 21(2) 2016, *European Foreign Affairs Review*, 269–288 and K. Raube, J. Wouters, The Many Facets of Parliamentary Involvement and Interaction in EU External Relations, in D. Jancic (ed.), *National Parliaments after the Lisbon Treaty and the Euro Crisis: Resilience or Resignation?* Oxford, OUP, 2017, 281–298.

information with the EP than the other way around, the EP being in a dominant position compared to NPs.⁵

Conversely, in the field of EU non-exclusive competence, the assessment is more blurred. It depends on whether the competence at stake is shared (Article 4 TFEU) or if it is just meant to coordinate, support or supplement that of the Member States (Articles 5 and 6 TFEU). Although the use of the principle of subsidiarity has led to a “competence creep” in favour of the Union in all fields of non-exclusive competence (Article 5(3) TEU),⁶ one could foresee a more weighty role for the EP in policy making on shared competences, where the EU is able to ‘pre-empt’ national powers, than in the fields where the EU can just coordinate, supplement and support Member States’ policies, on which one could expect NPs to retain decision-making powers beyond the mere scrutiny of their own executives. In the latter case, then, if this outcome is confirmed, we might observe the EP, in a marginal position, to seek the cooperation of NPs.

Of course, this very preliminary conclusion must be matched with the actual inter-institutional balance deployed between parliaments and non-parliamentary actors both at the supranational and domestic level. In other words, the exclusive or shared nature of the EU competence may not lead to a central role of the EP if the decision-making structure of that particular policy area vests most powers on other institutions, e.g. executive, judicial, independent, within the same level of government. Should this happen, the secluded position of the EP may foster the cooperation with NPs against the initial backdrop envisaged. By the same token, even in areas where Member States formally retain powers and the EU just coordinates national policies, it might well be that those policies are not actually shaped by NPs but primarily by other national actors, in which case NPs might become more willing to cooperate with the EP. These considerations imply that we could ask ourselves at least three questions in order to determine the type of expected relationship between the EP and NPs and to assess that against the actual deployment of those relationships: 1) What kind of EU competence are we talking about; 2) What kind of decision-making procedures are in place in that particular policy area; and 3) What role and powers are really exercised by the competent parliament in the field. The answers to these questions help to understand which is the leading

⁵ O. Rozenberg, *The role of national parliaments in the EU after Lisbon: potentialities and challenges*. Study commissioned by the European Parliament for the AFCO Committee, Brussels, 2017, 31–32.

⁶ S. Weatherill, *Competence Creep and Competence Control*, 23(1) 2004, *Yearbook of European Law*, 1-55. As effectively highlighted, the way the EU competences are defined and classified (especially if compared to national federations), besides the case law of the Court of Justice, creates a series of legitimacy problems: see, e.g., G. Davies, *Democracy and Legitimacy in the Shadow of Purposive Competence*, 21(1) 2015, *European Law Journal*, 2–22. On the contentious nature of the principle of subsidiarity see, amongst many, G. De Búrca, *The Principle of Subsidiarity and the Court of Justice as an Institutional Actor*, in 36(2) 1998, *Journal of Common Market Studies*, 217–235 and R. Schütze, *Subsidiarity After Lisbon: Reinforcing The Safeguards of Federalism?*, 68(3) 2009, *Cambridge Law Journal*, 525–536. The Report of the Task Force on Subsidiarity set up in 2017, despite providing a model grid for the assessment of the principle (Annex V), confirms the difficulty of managing subsidiarity as a potential limit to the EU action: Report of the Task of on Subsidiarity, Proportionality and “Doing Less More Efficiently”, *Active Subsidiarity. A New Way of Working*, Brussels, European Union, 2018, available at https://ec.europa.eu/commission/sites/beta-political/files/report-task-force-subsidiarity-proportionality-doing-less-more-efficiently_1.pdf (last accessed January 2019).

Parliament, if any, and what is the rationale of the cooperation or competition between the EP and NPs.

In addition to this, we can also expect that the level of saliency and politicization of the issues covered by a certain policy,⁷ in principle, may foster cooperation between the EP and NPs to the extent that those issues are able to mobilize the public opinion and to intercept citizens' interests.⁸ Indeed, the Annual Reports of the EP on its relationships with NPs appear to confirm this hypothesis when looking at the number and topics of interparliamentary meetings organized by the EP with NPs, which show a shift of interest in the cooperation from economic governance (2012-2014) to migration and asylum issues (2015-2018).⁹ Yet, while the organization of interparliamentary meetings points to a common interest of EP and NPs in discussing specific problems of high saliency in the public debate, this is not conducive in itself to the existence of a truly cooperative attitude between the EP and NPs as the case of the interparliamentary cooperation on CFSP and CSDP shows.¹⁰

Interparliamentary cooperation here is not understood as to replace or substitute the two pillars of representative democracy in the Union – the EP and NPs that keep on fulfilling their own constitutional duties – but to complement their structural and procedural weaknesses in a context of multilevel, composite and intertwined decision-making processes between the domestic and the supranational.¹¹ To this end, interparliamentary cooperation is not considered to lead to any binding determination but it rather aims to reduce the information asymmetry that exists between parliaments: thus to promote the exchange of information and best practices between the EP and NPs with a view to foster their individual and collective ability to scrutinize the EU “fragmented executive” effectively.¹² In other words, interparliamentary cooperation would help NPs and the EP individually to carry out a better-informed and more exhaustive scrutiny on their own executive – in particular, the Commission for the EP and domestic governments for NPs – and collectively to perform a “joint scrutiny”¹³ of the executive instances – e.g. the European Council, some EU Agencies and, to some extent,

⁷ On the meanings of politicization, see P. De Wilde, No Polity for Old Politics? A Framework for Analyzing the Politicization of European Integration, 33(5) 2011, *Journal of European Integration*, 559–575.

⁸ See R. Bellamy and S. Kröger, The politicization of European integration: National parliaments and the democratic disconnect, 14(2) 2016, *Comparative European Politics*, 125–130.

⁹ The Annual Reports are available here: <http://www.europarl.europa.eu/relnatparl/en.html> (last accessed December 2018).

¹⁰ K. Raube, J. Wouters, Between Aspirations and realities - Interparliamentary cooperation in the EU's Common Foreign, Security and Defence Policies, 59(1) 2018, *Politique Européenne*, 170–193 and A. Herranz-Surrallés, The EU's Multilevel Parliamentary (Battle)Field: Inter-parliamentary Cooperation and Conflict in Foreign and Security Policy, 37(5) 2014, *West European Politics*, 957–975.

¹¹ C. Fasone, N. Lupo, Conclusion. Interparliamentary Cooperation in the Framework of a Euro-national Parliamentary System, in N. Lupo, C. Fasone (eds.), *Interparliamentary Cooperation in the Composite European Constitution*, Oxford, Hart Publishing, 206, 345–360; see also B. Crum, J. E. Fossum, Conclusion: Towards a democratic multilevel parliamentary field?, in B. Crum, J. E. Fossum (eds.), *Practices of Inter-Parliamentary Coordination in International Politics. The European Union and Beyond*, Colchester, ECPR Press, 251–268.

¹² See B. Crum, D. Curtin, The challenge of making European Union executive power accountable, in S. Piattoni (ed.), *The European Union: Democratic Principles and Institutional Architectures in Times of Crisis*, Oxford, OUP, 63–87.

¹³ On this idea, see E. Griglio, S. Stavridis, Inter-parliamentary cooperation as a means for reinforcing joint scrutiny in the EU: upgrading existing mechanisms and creating new ones, 10(3) 2018, *Perspectives on Federalism*, I – XVIII.

the Council – which combine by nature national and supranational elements and that tend to escape from a streamlined, purely domestic or European, accountability chain.¹⁴

2. ‘Conflictual cooperation’ between the European Parliament and national parliaments

The principle of loyalty or sincere cooperation “has been an under-researched subject in European Union law”.¹⁵ Yet it provides an important normative account through which the relationship between domestic and EU representative institutions, in particular NPs and the EP, can be investigated, similarly to what has been done for the dynamic between national courts and the Court of Justice.¹⁶

It has been recently recalled that the principle of sincere cooperation shows two different but intertwined dimensions, namely, the ‘positive’ duty of Member States to take any measure to fulfil EU obligations and the ‘negative’ obligation of EU countries to abstain from taking actions that could jeopardise the attainment of the Union’s objectives.¹⁷ This traditional understanding of the principle emphasises the burdens it creates for the Member States providing a ‘unitary’ or ‘integrationist’ twist for the European integration process.¹⁸ To refer this twist to the interparliamentary system would probably mean to strengthen the power and the role of the EP at the expenses of NPs. Indeed, from the EU side, loyalty has been used to extend “the scope of application of Union law rules” and to add “binding force to non-binding Union measures”.¹⁹

However, the way the principle of sincere cooperation has been formulated since the Treaty of Lisbon, with a brand new reference to the reciprocity between Member States and EU institutions in fulfilling the Union’s objectives and the mutual respect national and EU institutions deserve to each other,²⁰ may hint to the duty of the two levels of governments not to encroach upon their respective competences.²¹ This reading of the principle alongside the

¹⁴ On the Council, however, a new reading of its role as a genuine “Parliamentary Chamber” and its further parliamentarization have been recently envisaged by O. Rozenberg, *The Council of the EU: from the Congress of Ambassadors to a genuine Parliamentary Chamber?* Study commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs at the request of the AFCO Committee, Brussels, 2019, [http://www.europarl.europa.eu/RegData/etudes/STUD/2019/608855/IPOL_STU\(2019\)608855_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/608855/IPOL_STU(2019)608855_EN.pdf)

¹⁵ M. Klamert, *The Principle of Loyalty in EU Law*, Oxford, OUP, 2014, 1.

¹⁶ Although in the latter case the relationship is institutionalized through the preliminary reference procedure (Article 267 TFEU): see, amongst many, R. Dehousse, *The European Court of Justice*, London, St. Martin’s Press, 1998, 136–137

¹⁷ B. Guastafarro, Sincere cooperation and respect for national identities, in R. Schütze, T. Tridimas (eds.), *Oxford Principles of European Union Law. The European Union Legal Order*, Vol. I, Oxford, OUP, 2018, 355-359., There is also another side of the principle of sincere cooperation in the Union that refers to the relationships amongst EU institutions, according to Article 13(2) TEU and which remains outside the scope of this paper.

¹⁸ Ibid. 374-376.

¹⁹ M. Klamert, *The Principle of Loyalty in EU Law*, cit. 297.

²⁰ The previous lack of an explicit loyalty obligation of the Union vis-à-vis the Member States in the wording of the Treaties did not mean that such a duty was non-existent. As M. Klamert, *The Principle of Loyalty in EU Law*, cit., 5 and 20 affirms, the Court of Justice has acknowledged a sort of ‘reverse’ loyalty, “imposing obligations on the Union institutions instead of on the Member States.”

²¹ D. Chalmers, G. Davies, G. Monti, *European Union Law*, 3rd ed., Cambridge, Cambridge University Press, 2014, 213 and B. Guastafarro, *Sincere cooperation and respect for national identities*, cit. 380.

new display of the principle of presumed Member States' competence and the revised reference to national identities which the EU must respect, all of them in the same Article 4 TEU, can entail a "less integrationist-biased concept of sincere cooperation".²² Being more sensitive to Member States prerogatives, this approach could also appear more in line with NPs' interests and claims of authority vis-à-vis the EP. The acknowledgment of the NPs' role in the Union and the new powers they have been conferred by the Lisbon Treaty have strengthened the position of domestic legislatures towards their European counterpart and this can potentially lead to a more confrontational approach between the EP, particularly jealous of its prerogatives, and NPs as emerging, though not well-coordinated, actors in the EU decision making. The principle of sincere cooperation cannot prevent conflicts to arise,²³ but it delimits the boundaries within which the disputes and the disagreement between institutions placed at different levels of government should be solved as to ensure a common background and denominator not to be trespassed for the good functioning of the Union.

To a great extent interparliamentary cooperation can be seen as an operative tool stemming from the principle of sincere cooperation (Article 4(3) TEU). As this structural principle of EU law postulates that "the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties", likewise the EP and NPs cooperate with an aim to fulfil the Union's objectives pursuant to Article 12 TEU and Articles 9 and 10 of protocol no. 1 annexed to the Treaty of Lisbon.

This is why, despite the confrontational dynamic often underlying the relationship between the EP and NPs as well as the relationships amongst NPs, in particular on the procedures and organization of the interparliamentary venues, the value of the vertical (and horizontal) interparliamentary cooperation is not put into question by the same institutional actors.²⁴ That seems to recall the categories of agonistic pluralism and especially of "conflictual consensus" that Chantal Mouffe has used to describe the functioning of pluralist democracies;²⁵ notions that have already been adapted for studying the relationships among other institutional actors in the EU beyond parliaments, namely between the Court of Justice of the EU and national judges.²⁶ Indeed, the many parliaments of Europe are deemed to share common values and aims underpinning their relationship. However controversial this may be today when looking at the performance of certain national constitutional systems,²⁷ the EP and NPs share a common

²² B. Guastaferrro, *Sincere cooperation and respect for national identities*, cit. 380.

²³ M. Klamert, *The Principle of Loyalty in EU Law*, cit., 298.

²⁴ Even though the many problems and limits of interparliamentary cooperation, starting from its little institutional impact, have been clearly outlined by scholars. See, for example, C. Heffttler, K. Gattermann, *Interparliamentary Cooperation in the European Union: Patterns, Problems and Potential*, in C. Heffttler et al. (eds.), *The Palgrave Handbook of National Parliaments and the European Union*, London, Palgrave Macmillan, 2015, 94-115.

²⁵ C. Mouffe, *The Democratic Paradox*, London, Verso, 2000 and Id., *On the Political*, London, Routledge, 2005.

²⁶ G. Martinico, *Constitutional conflicts and agonistic pluralism: what can we learn from political theory?*, in G. Davies, M. Avbelj (eds.), *Research Handbook on Legal Pluralism and EU Law*, Cheltenham, Edward Elgar, 2018, 78–94.

²⁷ The literature on the rule of law crisis in the Union is vast. Amongst the many contributions, for an accurate analysis of the problems at stake and on how to tackle them, see C. Closa, D. Kochenov (eds.), *Reinforcing Rule of Law Oversight in the European Union*, Cambridge, CUP, 2018 (paperback ed.); in the framework of the RECONNECT project, see D. Kochenov, P. Bárd, *Rule of Law Crisis in the New Member States of the EU*, in *RECONNECT Working*

symbolic framework characterized by “human dignity, freedom, democracy, equality, the rule of law and respect for human rights” (Article 2 TEU), similar functions and the same constituents. Both are ultimately accountable to the same citizens-voters, depending on whether they vest the national or the European “hat”.

This is why, drawing on Chantal Mouffe’s elaboration on “conflictual consensus” we could refer to the relationship amongst the many parliaments of the Union as a case of “conflictual cooperation”, in particular when looking at the economic governance. Indeed, moving from the common premises that see the EP and NPs as allies on the promotion of fundamental values and of the European citizens’ interests there is then ample space for disagreement between the EP and NPs on how to concretely direct and organize interparliamentary cooperation. Disagreement is inherent and probably inevitable in EU interparliamentary relationships and its impact can be assessed on the grounds of the ability of interparliamentary cooperation to nonetheless redress the information asymmetry’s problem of parliaments in the Union and to fulfil a “joint scrutiny” of the executives where needed, despite the competing views of the EP and NPs.

3. Seclusion, cooperation and competition in Economic and Monetary governance

The two legs of the Economic and Monetary Union (EMU) could not be more different in terms of the nature of the relevant EU competence and decision-making structure. However, both have in common the limited role parliamentary institutions are given in terms of policy-making capacity, after the Eurozone crisis.

For the Member States adopting the euro, monetary policy is an EU exclusive competence (Article 3(1), lit. c, TFEU),²⁸ but the EP has little power to exercise. Indeed, the leading actors are the European Central Bank (ECB) and the European System of Central Banks (ESCB) (Articles 127 and 128 TFEU).²⁹ Although the EP was formally a co-legislator with the Council for laying down the measures necessary to use the euro as a single currency (Article 133 TFEU), this legal basis can hardly be used in light of the actual Euro governance structure once objectives and standards have been set. The EP tries to exert control on the ECB, but it can do so only to the extent that the statutory independence of the ECB is not violated.³⁰ In the Banking Union, and thanks to the Interinstitutional Agreement on the practical modalities of the exercise of democratic accountability and oversight on the tasks conferred to the ECB within the

Paper, 1, July 2018 and R. D. Kelemen, L. Pech, Why autocrats love constitutional identity and constitutional pluralism, in *RECONNECT Working Paper*, 2, October 2018.

²⁸ For the remaining countries, instead, monetary policy is administered domestically, even though the choices of monetary policy made at EU level are certainly highly influential anyway.

²⁹ See C. Zilioli, M. Selmayr, *The Law of the European Central Bank*, Oxford, Hart Publishing, 2001, chapter 2.

³⁰ On the issue of the accountability of the ECB, see F. Amtenbrink, The democratic accountability of central banks – A comparative study of the European Central Bank, Oxford, Hart Publishing, 1999; after the Euro-crisis, see T. Beukers, Constitutional Changes in the Euro Government and the Relationship Between the ECB and the Executive Power in the Union, in F. Fabbrini et al. (eds.), *What form of government for the European Union and the Eurozone?*, Oxford, Hart Publishing, 2015, 95–109 and R. Ibrido, *L’Unione bancaria europea. Profili costituzionali*, Torino, Giappichelli, 2017, 221–291.

framework of the Single Supervisory Mechanism (2013/694/EU), the EP has strengthened its position vis-à-vis the ECB,³¹ but the same does not hold true for purely monetary operations as the Outright Monetary Transaction Programme (OMT) and the Quantitative Easing (QE) have been “labelled” in EU case law.³² It has been observed, in this regard, that monetary policy is an exclusive competence only in name.³³ Indeed, these two tools OMT and QE, expected to provide financial support to some Eurozone countries under strict conditionality, prove how blurred is the boundary between economic and monetary policy, although the Court of Justice has confirmed that they fall in the remit of monetary policy exclusively.³⁴

Even more crucial for the assertion on the ambiguous nature of monetary policy as an EU exclusive competence is the design of the governance of this policy, which is not administered according to the EU traditional architecture but rather by the “Eurosystem” composed of the ECB plus the to date 19 national central banks, i.e. independent actors from legislatures and executives both in the EU and in the Eurozone countries. Based on Article 284(3) TFEU the EP has established a “monetary dialogue” with the ECB as a tool to hold the Central Bank accountable without encroaching upon its independent status.³⁵ NPs are excluded from it (unlike the case of the “banking dialogue”) even though the national components of the “Eurosystem” are not of little significance. Besides being part of the ESCB, national central banks are represented through their governors in the main ECB decision-making body, the Governing Council, and taken together they account for 72% of total voting rights in this body (compared to the 28% voting share held by the Executive Board members, including the ECB President).³⁶ Each NP in the Euro area has set its own procedure to scrutinize the national

³¹ See G. Ter Kuile, L. Wissink, W. Bovenschen, Tailor-made accountability within the Single Supervisory Mechanism, 51(1) 2015, *Common Market Law Review*, 155–189. For a more critical appraisal, see F. Amtenbrink, M. Markakis, Towards a Meaningful Prudential Supervision Dialogue in the Euro Area? A Study of the Interaction between the European Parliament and the European Central Bank in the Single Supervisory Mechanism, in *ADEMU Working Paper Series*, WP 2017/081, European University Institute, Florence, December 2017, available here <http://ademu-project.eu/wp-content/uploads/2018/01/0081-Towards-a-meaningful-prudential-supervision-in-the-euro-area.pdf> (last accessed January 2019).

³² See Court of Justice of the European Union (Grand Chamber), *Gauweiler et al.*, C-62/14, 16 June 2015, ECLI:EU:C:2015:400 and Court of Justice of the European Union (Grand Chamber), *Heinrich Weiss et al.*, C-493/17, 11 December 2018, ECLI:EU:C:2018:1000.

³³ M. Waibel, Monetary Policy: An Exclusive Competence Only in Name?, in S. Garben and I. Govaere (eds.), *The Division of Competences between the EU and the Member States. Reflections on the Past, the Present and the Future*, Oxford, Hart Publishing, 2017, 90-111. Likewise the strict separation between monetary policy and prudential supervision in the Banking Union has been called into question: see M. Goldmann, United in Diversity? The Relationship between Monetary Policy and Prudential Supervision in the Banking Union, 14(2) 2018, *European Constitutional Law Review*, 283–310.

³⁴ See A. Hinarejos, Gauweiler and the Outright Monetary Transactions Programme: The Mandate of the European Central Bank and the Changing Nature of Economic and Monetary Union: European Court of Justice, Judgment of 16 June 2015, Case C-62/14 Gauweiler and others v Deutscher Bundestag, 11(3) 2015, *European Constitutional Law Review*, 563-576; S. Baroncelli, The Gauweiler Judgment in View of the Case Law of the European Court of Justice on European Central Bank Independence: Between Substance and Form, 23(1), 2016, *Maastricht Journal of European and Comparative Law*, 79–98; M. Goldmann, *Alle Jahre wieder: die Geldpolitik der EZB vor Gericht*, *VerfBlog*, 12 December 2018, <https://verfassungsblog.de/alle-jahre-wieder-die-geldpolitik-der-ezb-vor-gericht/> (last accessed January 2019).

³⁵ S. Collignon, S. Diessner, The ECB’s Monetary Dialogue with the European Parliament: Efficiency and Accountability during the Euro Crisis?, 54(1) 2016, *Journal of Common Market Studies*, 1296-1312.

³⁶ M. Waibel, *Monetary Policy: An Exclusive Competence Only in Name?*, cit., 104.

central bank and governor at domestic level, but there are no formal or informal avenues of cooperation between NPs and the EP on monetary policy. They could be seen as potential allies in the scrutiny of EU monetary policy but in fact they neither cooperate nor compete. They simply act independently from one another.

A possible explanation of this lack of institutionalized relationships between the EP and NPs in this domain (see section 5 below) can depend on the very nature of the institutions subject to scrutiny. Indeed, it is already very difficult for each parliament individually to strike a fair balance between accountability mechanisms and independence of the central bank at stake, and thus, creating a structured coordination between NPs and EP on the control of the “Eurosystème” could hardly go beyond the interparliamentary exchange of information. On this point, for example, the involvement of NPs in the “monetary dialogue” has recently been proposed, along the lines of their participation in the “banking dialogue” side by side though not on an equal footing with the EP, although the presence of NPs in the “banking dialogue” from the very beginning can be explained by the real “mixed administration” created within the Single Supervisory Mechanism of the Banking Union.³⁷

Turning the attention to the economic leg of the EMU, here the much more dynamic relationship between the EP and NPs compared to monetary policy equally derives from the peculiar decision-making structure established in the aftermath of the Euro-crisis, with the reform of the economic governance, but is further fed by a number of legal and political asymmetries featuring the position of the Eurozone countries.³⁸ While in matters of monetary policy we can talk about secluded positions between NPs and the EP; in the economic governance the EP and NPs try to cooperate, though often they see each other as competitors.

On this policy “The Member States shall coordinate their *economic* and employment *policies* within arrangements as determined by this Treaty, *which the Union shall have competence to provide* (Article 2(3) TFEU, emphasis added; see also Article 119(1) TFEU). On the EU side, the powers of the EP in the implementation of the measures of economic governance are rather limited once the legal framework has been put in place. It is the Council that is expected to draft broad guidelines on economic policies, on recommendation from the Commission, and to report its findings to the European Council which endorses those guidelines (Article 121 TFEU). The EP is just informed by the Council. On multilateral surveillance, it is the Commission that interacts with the Member States and the Council can issue and make its recommendations to the States public. Both the Commission and the Council are required to report to the EP the results of multilateral surveillance and the President of the Council can be heard before the competent committee of the EP (Article 125 (5) TFEU).

³⁷ D. Fromage, R. Ibrido, The ‘Banking Dialogue’ as a model to improve parliamentary involvement in the Monetary Dialogue?, 40(3) 2018, *Journal of European Integration*, 295-308

³⁸ On the asymmetries, viewed from a political perspective, a EU legal perspective, and the national parliamentary perspective, see respectively, L. Morlino, F. Raniolo, *The Impact of the Economic Crisis on South European Democracies*, London, Palgrave Macmillan, 2017, 25 ff.; A. Hinarejos, *The Euro Area Crisis in Constitutional Perspective*, Oxford, OUP, 2015, 103–120; C. Fasone, Eurozone, non-Eurozone and “troubled asymmetries” among national parliaments in the EU. Why and to what extent this is of concern, 6(3) 2014, *Perspectives on federalism*, 6 ff.

On the excessive deficit procedure (Article 126 TFEU and Protocol no. 12), the EP is just consulted in the special legislative procedure set to amend and replace the relevant Protocol: monitoring, control and sanctions are managed by the Commission and the Council, with the EP being just informed. By the same token, no role whatsoever is formally envisaged for the EP with regard to the Euro Group in terms of scrutiny and accountability (Protocol no. 14). There are instances in which the ordinary legislative procedure is provided in favour of the EP, for example in the matter of multilateral surveillance of budgetary discipline (Article 121(6) TFEU) and strengthened multilateral surveillance for Eurozone countries only (Articles 126 and 136 TFEU), and the EP as a co-legislator has certainly exerted considerable influence by amending draft legislation in a crucial and dramatic juncture of the Euro-crisis,³⁹ the Council and the Member States (as well as the European Council despite lacking legislative powers), however, have been the leading forces behind the adoption of the new rules.⁴⁰

The situation of the EP is further complicated by the adoption of international agreements, like the Treaty on the European Stability Mechanism (TESM) and the Treaty on Stability, Coordination and Governance in the EMU (TSCG) adopted in the aftermath of the crisis and binding only for Eurozone countries (although the TSCG allow non-Eurozone Member States to commit themselves to respect most provisions of the Treaty anyway). The TESM, the main intergovernmental fund set up in the EMU to provide financial assistance to the countries of the Eurozone, does not even mention the EP, although it envisages a key role for the ECB (the ESM Board of Governors should make its annual report accessible to NPs, mentioned only in Article 30(5) TESM). Likewise, the TSCG substantially disregards the EP. Indeed, the EP is involved in the implementation of the Treaty through its President, who might be invited to be heard at the Euro Summit, by receiving the report of the Euro Summit's meetings (Article 12(5)), and together with NPs in the related Interparliamentary Conference (Article 13, on which see in particular section 4 of the paper). It should be highlighted, however, that the EP managed to obtain the inclusion of these two provisions in the TSCG thanks to its delegation, a "Troika" of MEPs – Elmar Brok (EEP), Roberto Gualtieri (S&D) and Guy Verhostadt (ALDE) – appointed to follow as observers the negotiations of the treaty, in particular the Sherpa meetings.⁴¹

There is, nonetheless, a more overarching problem concerning the role of the EP in the economic governance, when the coordination of the economic policies refers to the Euro area specifically. The EP, representing all European citizens (Article 14 TEU) regardless of any forms of differentiated integration – including the participation of MEPs elected in non-Eurozone

³⁹ See C. Fasone, European Economic Governance and Parliamentary Representation. What Place for the European Parliament?, 20(2) 2014, *European Law Journal*, 164–185 with regard to the amendments approved by the EP to the proposals comprised in the "six-pack" (EU Regulations no. 1177/2011 of 8 November 2011, no. 1173/2011, no. 1174/2011, no. 1175/2011 and no. 1176/2011 of 16 November 2011 and Directive no. 2011/85/EU of 8 November 2011, which is not a legislative act though) and in the "two-pack" (EU Regulation no. 472/2013 of 10 May 2013 and no. 473/2013 of 21 May 2013). Along the same lines, highlighting the EP successful strategy of self-empowerment (also) in the field of economic governance, see A. Héritier, C. Moury, M. G. Schoeller, K. L. Meissner, I. Mota, *The European Parliament as a driving force of constitutionalisation*. Study commissioned by the policy department for Citizen's Rights and Constitutional Affairs at the request of the AFCO Committee, Brussels, European Parliament, 2015, 64–74.

⁴⁰ E. Bressanelli and N. Chelotti, The European Parliament and economic governance: explaining a case of limited influence, 24(1) 2018, *The Journal of Legislative Studies*, 72-89.

⁴¹ A. Héritier et al., *The European Parliament as a driving force of constitutionalisation*, cit., 72.

countries on an equal footing with the other MEPs when decisions on the Euro area only are taken – is not seen as the democratic institution best suited to ensure the accountability of the Euro area governance because of the alleged mismatch between addressees of the Eurozone governance, the citizens of the Member States part of the EMU, and representatives who decide, coming both from within and outside the Eurozone.⁴² In other words, the EP is in an uncomfortable position when dealing with asymmetric areas of EU integration, like the EMU at present.

What about the role of NPs in this field then? In principle, NPs remain “sovereign” on economic policies as the EU is just meant to coordinate domestic actions. In practice, however, not only has the EU intervened on economic governance to a degree that could not have been foreseen before the financial crisis, defining a common budgetary timeline for all – the European Semester and the National Semester – but also the basic contents of draft budgetary plans thereby constraining the activity of parliaments as budgetary authorities. In addition to this and to an extent that varies significantly depending on the country, in many Eurozone Member States NPs have been completely side-lined during both the European and National Semesters.⁴³ Indeed, due to time and content constraints, NPs are forced to abide by what has been negotiated between national governments and the Commission, as the Member States’ executives are the interlocutors of the EU institutions in those procedures. There are some NPs, though, that in order to re-balance those constraints have gained new powers, to be informed and of scrutiny and oversight,⁴⁴ but this conferral of powers has taken place asymmetrically. Although there are exceptions, typically the parliaments of Eurozone countries receiving financial assistance or support (Cyprus, Greece, Ireland, Italy, Portugal, Spain) have been those most concerned by a significant loss of influence in budgetary matters. By contrast, the legislatures of some Eurozone countries regarded as fiscally virtuous, like Austria, Finland and Germany, have seen their budgetary powers, at least, safeguarded domestically in the constitutional framework emerging from the Euro-crisis.⁴⁵ This asymmetry also depends on the parliamentary system of scrutiny of the government and of EU affairs in particular in place before the crisis erupted, which affects significantly the range of parliamentary responses. The stronger the pre-crisis scrutiny ability of a parliament, the better the performance of parliament

⁴² See E. Griglio, N. Lupo, Towards an asymmetric European Union, without an asymmetric European Parliament, WP 20/2014, *LUISS SoG Working Paper Series*, 2014, and D. Curtin, C. Fasone, Differentiated Representation: Is a Flexible European Parliament Desirable?, in B. de Witte, E. Vos, and A. Ott (eds.), *Between Flexibility and Disintegration: The State of EU law today*, Cheltenham, Edward Elgar, 2017, 118-145.

⁴³ B. Crum, Saving the Euro at the Cost of Democracy?, 51(4) 2013, *Journal of Common Market Studies*, 614-630; S. Puntischer Riekmann, D. Wydra, Representation in the European State of Emergency, 35(5) 2013, *Journal of European Integration*, 565–582; C. Lord, How Can Parliaments Contribute to the Legitimacy of the European Semester?, 70(4) 2017, *Parliamentary Affairs*, 673-690; A. Maatsch, *Parliaments and the Economic Governance of the European Union: Talking Shops or Deliberative Bodies?*, London, Routledge, 2017, 36–54.

⁴⁴ B. Crum, Parliamentary accountability in multilevel governance: What role for parliaments in post-crisis EU economic governance?, 25(2) 2018, *Journal of European Public Policy*, 268-286; D. Jancic, National parliaments and EU fiscal integration, 22(2) 2016, *European Law Journal*, 225-249.

⁴⁵ See C. Fasone, *Eurozone, non-Eurozone and “troubled asymmetries” among national parliaments in the EU*, cit., 15–28.

in terms of scrutiny activity on the Euro-crisis measures and on the new budgetary procedures.⁴⁶

It follows that in the matter of economic governance NPs are far from being a homogenous and cohesive front of action vis-à-vis the EP. There is no such a thing like a NPs' unitary position on how to cope with the democratic weaknesses of the system of coordination of national economic policies. Next to the divide between Eurozone vs. non-Eurozone NPs, there are divides between parliaments of rescued countries and parliaments of the states that most prominently offered financial assistance and between parliaments of "Southern Europe", in favour of anti-cyclical policies,⁴⁷ and parliaments of "Northern Europe" supporting austerity measures. Interestingly but not unexpectedly, there are also diverging views among NPs on how interparliamentary cooperation should be structured and function in the field of economic governance. There are indeed "variable geometry" alliances: for example, on the design of the Interparliamentary Conference ex Article 13 TSCG the Lithuanian, the French, the Italian and a number of other NPs were willing to support the creation of a strong Conference with a broad mandate, while the German Parliament and the EP joined forces to defeat this project.⁴⁸ The EP is traditionally an advocate of loose forms of interparliamentary cooperation that do not limit its authority as the sole Union Parliament. In such a legally and politically fragmented landscape that the economic governance is, the EP seeks the consensus of the parliaments that institutionally are more reluctant to give up shares of powers in this domain. Hence, the common interest of the EP and the German Parliament to keep the Interparliamentary Conference as a mere forum of exchange of information and best practice.

We can then conclude that the EMU as shaped today is a multiform playground for the relationships between the EP and NPs, moving from a situation of respective seclusion of NPs and the EP in their own remit in the field of monetary policy, to a situation of multiple grounds of cooperation and competition that cross the relationships between NPs and the EP transversely.

4. Informal instances of vertical cooperation between the European and national legislatures: decline in interest and a missed opportunity

Despite the protean nature of interparliamentary cooperation in the field of economic governance, there appears to be a general consensus amongst parliaments, the EP and NPs,

⁴⁶ K. Auel, O. Höing, Parliaments in the Euro Crisis: Can the Losers of Integration Still Fight Back?, 52(6) 2014, *Journal of Common Market Studies*, 1184-1193 and A. Maatsch, Effectiveness of the European Semester: Explaining Domestic Consent and Contestation, 70(4) 2017, *Parliamentary Affairs*, 691-709. For an overview of domestic procedures, see European Parliament, *The role of national parliaments in the European Semester for economic policy coordination*, In-Depth Analysis drafted by K. Hagelstam, W. Lehofer, M. Ciucci, Directorate General for International Policies, Economic Governance Support Unit (Egov), PE 614.494, 5 April 2018, 4 ff.

⁴⁷ See S. Ragone (ed.), *Managing the Euro Crisis. National EU Policy Coordination in the Debtor Countries*, London, Routledge, 2018; L. Morlino, F. Raniolo, *The Impact of the Economic Crisis on South European Democracies*, cit., 109-122; A. Maatsch, *Parliaments and the Economic Governance of the European Union*, cit., 89-106.

⁴⁸ See I. Cooper, The Emerging Order of Interparliamentary Cooperation in the Post-Lisbon EU, in D. Jancic (ed.), *National Parliaments after the Lisbon Treaty and the Euro Crisis: Resilience or Resignation?*, Oxford, OUP, 2017, 227-246.

though not among scholars,⁴⁹ on the need to strengthen their reciprocal relationships in the field. In order to foster the interconnectedness of the parliamentary levels of government against the “democratic disconnect”⁵⁰ and to fill in the gaps of the chains of representation and accountability that feature the EMU, a certain degree of interparliamentary cooperation is seen by all parliamentary actors as desirable and perhaps inevitable.

In the budgetary and economic policy coordination, for example, the European Parliament is in a rather weak position: it has the power to set some of the rules for the economic governance framework as a co-legislator with the Council, but it is devoid of decision-making powers on their daily implementation and hardly able to effectively monitor the deployment of the European and National Semesters. It could be argued that in order to improve the democratic accountability of these procedures one could split the responsibility of the EP and NPs between the two semesters of the budgetary cycle: the EP guarding the European Semester and NPs looking after the National Semester. This is, however, an oversimplification of the reality.

The information asymmetries and the lack of effective and continuous control on the many executives intervening on the economic governance make it hard for a single layer of parliamentary government to keep track of what is going on. On the one hand, the EP finds it difficult to monitor national executives as well as the Euro Summit and the Euro Group alone; on the other hand, NPs are not able to hold the Commission accountable for its action, although the reform of the economic governance has introduced at EU level mechanisms – yet to be properly used – that allow domestic legislatures to hear and scrutinize Commissioners.⁵¹

It is not by chance that the increasing interdependence between the EU and the Member States’ economic policy-making and the inadequacy of the EP and NPs’ activity under the traditional modes of supranational and intergovernmental governance, respectively, have prompted scholars to devise new (de-territorialised) accounts of parliamentary representation that insist on the very much needed transnational nature of representation.⁵² Such insistence to favour transnational representation, “bridges” and interconnections among parliaments,

⁴⁹ Indeed, there are positions advocating for a unilateral reinforcement of the EP, e.g. F. Fabbrini, Representation in the European Parliament: Of False Problems and Real Challenges, 75, 2015, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 823-846 and F. Allemand, Taking Democracy Seriously in the Euro Area: Reinvigorating the European Parliament's Functions and Responsibilities, 1, 2018, Special Section on “Democratizing the Euro Area through a Treaty?”, *European Papers*, 33-43; and those criticizing the democratic credentials of EU law-making and proposing to enhance the role of NPs, either as veto-players, e.g. D. Chalmers, Democratic Self-Government in Europe. Domestic Solutions to the EU Legitimacy Crisis, in *Policy Network Paper series*, May 2013, available at <http://www.policy-network.net/publications/4399/Democratic-Self-Government-in-Europe> (last accessed in January 2019), 9–12, or as cooperative forces, e.g. R. Bellamy, S. Kröger, Domesticating the Democratic Deficit? The Role of National Parliaments and Parties in the EU’s System of Governance, 67(2) 2014, *Parliamentary Affairs*, 437–457.

⁵⁰ P. Lindseth, *Power and Legitimacy. Reconciling Europe and the Nation-state*, Oxford, OUP, 2010, 234.

⁵¹ See B. Crum, D. Curtin, The Challenge of Making European Union Executive Power Accountable, in S. Piattoni (ed.), *The European Union: Democratic Principles and Institutional Architectures in Times of Crisis*, Oxford, OUP, 2015, 63-87.

⁵² See L. Kinski, Whom to represent? National parliamentary representation during the eurozone crisis, 25(3) 2018, *Journal of European Public Policy*, 346-368 and L. Kinski, B. Crum, *Trans-national Representation in EU National Parliaments*, Paper prepared for the Workshop “Beyond the Inter-Governmental Union? Towards the Accountable and Sustainable Integration of Core State Powers”, Hertie School of Governance, Berlin, 14-15 December 2017.

particularly on EMU-related issues, has led a general institutional consensus to emerge on the development of procedures and tools of interparliamentary cooperation, acknowledged by EU primary law (Articles 12 TEU, 9 and 10, Protocol no. 1) as well as by the TSCG. As anticipated, following the principle of sincere cooperation and Mouffe’s critical account of “conflictual consensus”,⁵³ this emerging interdependent relationship between parliaments may be called “conflictual cooperation”. The law on interparliamentary cooperation remains deliberately vague on how this activity should be arranged in concrete terms (how interparliamentary bodies are composed, how often they should meet, with which powers, etc.) and leaves to the outcome of political negotiations these crucial aspects. This is so because of the conflictual views among parliaments, the EP and NPs, on the shape interparliamentary cooperation should take in the EMU.

The EP, which has traditionally acted as one of the leading forces for the promotion of interparliamentary cooperation, alongside COSAC and more recently the Parliamentary dimension of the Council Presidency of the Union,⁵⁴ has not involved NPs on a regular basis in interparliamentary committee meetings on economic governance, in particular at its ECON committee. To be more precise, beyond the Interparliamentary Conference ex TSCG taking place during the annual European Parliamentary Week in Brussels, over the last four years the EP has been quite reluctant to promote informal avenues of coordination with NPs on the EMU (informal meaning that the cooperation is not regulated and structured). Since 2013 an exchange of views with NPs on the European Semester has been organized by the EP under the form of an interparliamentary committee meeting at the ECON committee every year in September or October. It discusses structural reforms proposed by Member States and the related country-specific recommendations as well as the fiscal stance of the whole Euro area in light of the priorities set by the Annual Growth Survey. This outcome is consistent with a general trend registered in interparliamentary cooperation at large that sees the reform of the economic governance and of the Euro area not standing as top priorities in the interparliamentary agenda at least since 2015. For example, while in 2012-2013 three COSAC bi-annual reports (the 18th, 19th and 21st) dealt with EMU-related problems,⁵⁵ since 2014 issues affecting the economic governance and the Eurozone have no longer been debated in the framework of COSAC.

Likewise, looking at the annual reports of the EP on its relations with NPs, the same evaluation is confirmed. Compared to the number of interparliamentary committee meetings held on migration policy, civil liberties and women rights, the EP-driven and informal gathering of interparliamentary cooperation on EMU issues, especially since 2015, has become of little significance. The same holds true for the bilateral visits of NPs to the EP, that, according to the

⁵³ C. Mouffe, *The Democratic Paradox*, cit., 17–35.

⁵⁴ I. Cooper, *The Emerging Order of Interparliamentary Cooperation in the Post-Lisbon EU*, cit., 227–246.

⁵⁵ See COSAC Secretariat, *Eighteenth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny*, 27 September 2012, 16–20; *Nineteenth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny*, 17 May 2013, 4–20; *Twenty-first Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny*, 19 June 2014, 32–53, all available at <http://www.cosac.eu/documents/bi-annual-reports-of-cosac/> (last accessed in January 2019).

cited reports of the EP, do not have the ECON committee as a target (perhaps with the exception of the French National Assembly).

This can be explained also by the lack of interest NPs, particularly those of the Euro area, show in getting engaged in cooperation with the EP on the economic governance beyond the competent Interparliamentary Conference. Though not exclusively in this field, NPs rather prefer to informally meet amongst themselves in regional blocs, corresponding to different fiscal stances and attitudes vis-à-vis the Eurozone: “Northern” Parliaments, Parliaments from Southern Europe and Parliaments of the Visegrad Group, most of them still outside the Euro area.⁵⁶

One of the avenues that, in principle, could have been explored as an informal interparliamentary gathering between EP and NPs, the newly established “economic dialogues” between the EP and Member States, has not been used. Indeed, one of the most important prerogatives the EP has been assigned within the European Semester is to participate in the so-called “economic dialogues” with the Commission, with the President of the Council or of the Eurogroup and, significantly, with the Member State concerned in a variety of cases, regulated under the “six-pack” (Regs. 1175/2011 EU, 1173/2011 EU, 1174/2011 EU and 1176/2011 EU) and the “two-pack” (Reg. 472/2013), on which pros⁵⁷ and cons⁵⁸ have already been highlighted in the literature. In particular, the dialogue with the Member States could have potential here.

The “six-pack” and the “two-pack” provide the legal basis for the EP to invite representatives of a Member State, without clarifying from which national institution they could come – the government, the parliament or others – in an “economic dialogue” with the relevant EP committee, for example in the framework of the macroeconomic imbalance procedure, of the enhanced surveillance or macroeconomic adjustment programme and for the enhanced monitoring on draft budgetary plans. In addition to this, when there is no specific legal basis, the EP can still hear representatives of a Member State in the framework of an “exchange of views”. Although the EP’s invitation is not always accepted by the Member States, there is a high rate of compliance with the EP request and the number of “economic dialogues” and “exchanges of views” with Member States is considerable: 21 from 2012 to 2017; in Greece, Portugal and Spain more than once.⁵⁹ In none of these occasions has the national delegation included MPs. Of course, the EP could not interfere with the national choice on who should be

⁵⁶ See D. Fromage, Increasing Inter-Parliamentary Cooperation in the European Union: Current Trends and Challenges, 22(4) 2016, *European Public Law*, 749-772.

⁵⁷ See D. Jancic, *National parliaments and EU fiscal integration*, cit., 225-249 and B. Crum, *Parliamentary accountability in multilevel governance: What role for parliaments in post-crisis EU economic governance?*, cit., 268–286.

⁵⁸ See M. Hallerberg, B. Marzinotto, G. B. Wolff, *How Effective and Legitimate is the European Semester? Increasing the role of the European Parliament*, Briefing Paper. Study commissioned by the European Parliament's Committee on Economic and Monetary Affairs, European Parliament, Brussels, August 2011, 12 ff. and V. Kreiling, *Minimum standards for parliamentary participation in the European Semester*, Jacques Delors Institute Berlin Policy Paper, Berlin, 18 January 2019, 4–7, available at https://www.delorsinstitut.de/2015/wp-content/uploads/2019/01/20190118_Minimum-standards-Parl_Kreilinger.pdf (last accessed in January 2019).

⁵⁹ See European Parliament, Economic Governance Support Unit, *Economic Dialogues and Exchanges of Views with Member States under the European Semester Cycles*, PE 497.736, Brussels, December 2017.

sent to speak on behalf of the invited Member State. Yet, this appears to be a missed opportunity for NPs.

Especially in those countries where parliamentary scrutiny and oversight on the governments in EU affairs and in budgetary and economic policy is weak,⁶⁰ NPs could definitely benefit from being more closely associated to the European Parliament in the European (and National) Semester. This would support domestic legislatures to gain crucial information that often the national government does not provide and would help opposition and minority groups to be more engaged. The “association” with the EP, for example, could be put into operation in the EP “economic dialogues” and “exchange of views” with Member States’ representatives and EU institutions – the latter were only 41 from 2014 to mid-2018⁶¹ – by allowing national MPs from the country under scrutiny to participate in the relevant ECON committee meetings either as part of the national delegation or simply as attendees in the hearing. This way national MPs could get better information about the overall trends in the budgetary and macroeconomic policies in the Member State and on the EU political directions in this regard. Such an involvement of national MPs would not even request a change in the “six-pack” and the “two-pack” legislation and is actually consistent with the current formulation of the European Parliament’s rules of procedure which ensures the right of national MPs to participate in the European Parliament’s committee meetings with the right to speak but not to vote (Article 142 RoP).

5. The Interparliamentary Conference of Stability, Economic Coordination and Governance in the EU as a case of ‘conflictual cooperation’

In the field of economic governance the EP and NPs, thus, cooperate primarily through the *ad hoc* Interparliamentary Conference set up based on the TSCG.⁶² The Interparliamentary Conference on Stability, Economic Coordination and Governance in the EU has been established first of all in line with Article 9 of Protocol no. 1, on the EP and NPs’ joint organization of effective and regular interparliamentary cooperation, while the conditions set in Article 13 TSCG have only been partially met. Indeed, against the letter of that Treaty and due to the insistence of non-Eurozone parliaments, the Interparliamentary Conference does not just include delegations from the EP and from the NPs of the Contracting Parties (26), but it also comprises the Parliaments of the UK and of the Czech Republic that are not parties of the agreement.

⁶⁰ V. Kreiling, *National parliaments, surveillance mechanisms and ownership in the Euro area*, 110 Studies & Reports, Jacques Delors Institute, Berlin, 2016, 13 ff.; O. Rozenberg, *The role of national parliaments in the EU after Lisbon*, cit., 43-45; M. Hallerberg, B. Marzinotto, G. B. Wolff, Explaining the Evolving Role of National Parliaments Under the European Semester, 25(2) 2018, *Journal of European Public Policy*, 250-267.

⁶¹ European Parliament, Economic Governance Support Unit, *Economic Dialogue with the other EU Institutions under the European Semester Cycles*, PE 528.782, Brussels, July 2018.

⁶² See also Article 2.2. of the Rules of procedure of this Conference according to which this Conference shall replace the meetings of the chairpersons of relevant committees organized within the framework of the parliamentary dimension of the Presidency of the Council.

Likewise it happened for the Interparliamentary Conference on CFSP and CSDP;⁶³ the choice of Article 9 as the legal basis rather than Article 10, which would have led to following the COSAC model, depended on the pressure exerted by the EP not to be treated in the Conference, in terms of representation and powers, as any other Parliament. It wanted to better obtain a preferential treatment in the Conference and on its organisation. Indeed, the EP is the co-organiser and host of one of the two annual meetings of the Conference during the European Parliamentary Week (January or February every year) alongside the Parliament of the country holding the rotating presidency of the Council.

The setting up of the Interparliamentary Conference on Stability, Economic Coordination and Governance in the EU has proved to be very controversial, consistently with the approach of ‘conflictual cooperation’ highlighted above: everyone agreed that a regular venue of cooperation among parliaments should have been established on this policy domain, but parliaments were divided on how it should have looked.⁶⁴ The conflicts did not arise, then, on different stances surrounding the economic governance, but on a procedural and organizational level.⁶⁵

The first meeting of the Conference took place in Vilnius in October 2013 and since then and until the end of 2015 the Conference has been unable to adopt its rules of procedure, causing a series of spillover effects on the performance of this body, as it lacks any basic standards for its operation. Because of the gridlock, the EU Speakers’ Conference stepped in to try to address the problem of the delay in the adoption of the rules of procedure.⁶⁶ The Italian Parliament, holding the Presidency in the second half of 2014, proposed its own draft rules at the October 2014 Interparliamentary Conference on Stability, Economic Coordination and Governance in the EU, and, following the amendments submitted by other legislatures, prepared a compromise text in December 2014. At the EU Speakers’ Conference in April 2015 the revised draft rules were expected to be finally adopted, since they could count on the support of the European Parliament, the French and the German Parliaments, among others. However, other parliaments – for instance, the UK, Polish and the Dutch – stood against the approval of the new conference’s rules of procedure by the EU Speakers’ Conference, which would have required the consensus of all the Speakers. They objected that the Speakers’ Conference would have acted beyond its mandate, if it had adopted the rules of another conference. The debate on whether to defer the decision to the next Interparliamentary Conference on Stability, Economic Coordination and Governance in the EU entailed a reflection on the right balance to strike between the rule-making function of the Speakers’ Conference and the sectoral interparliamentary conferences’ autonomy; in the end the latter prevailed. In line with the

⁶³ See J. Wouters, K. Raube, The Interparliamentary Conference on Common Foreign and Security Policy: A Quest for Democratic Accountability in EU Security Governance, in N. Lupo, C. Fasone (eds.), *Interparliamentary Cooperation in the Composite European Constitution*, cit., 227–246.

⁶⁴ See E. Griglio, N. Lupo, The conference on stability, economic coordination and governance: filling the gaps of parliamentary oversight in the EU, 40(3) 2018, *Journal of European Integration*, 358-373; V. Kreiling, Interparliamentary cooperation and its challenges: The case of Economic and Financial Governance, in F. Fabbrini et al. (eds.), *What form of government for the EU and the Eurozone?*, cit., 271-288.

⁶⁵ I. Cooper, *The Emerging Order of Interparliamentary Cooperation in the Post-Lisbon EU*, cit., 227–246.

⁶⁶ Ibidem. See also C. Fasone, A ‘second youth’ for the EU Speakers’ Conference? A critical appraisal of its ‘quasi-constitutional’ role, 10(3) 2018, *Perspectives on federalism*, 95–98.

conclusions of the Speakers reached in 2011 and 2012 on the Interparliamentary Conference for CFSP and CDSP, the Speakers' Conference in Rome only agreed on a set of principles to "be transposed in detailed Rules of procedure by the next Interparliamentary Conference on Stability, Economic Coordination and Governance in the EU", as in fact happened in Luxembourg on 9-10 November 2015. The Speakers addressed issues such as the participating parliaments (from all the Member States and not just the contracting parties of the TSCG), the focus of the Conference, the timing and the linguistic regimes, but they did not touch upon the most debated questions of the size of the delegations and the relationship between the European Parliament and the national parliaments in the new forum, which has remained voluntarily unsettled lacking an agreement on the point. Each Parliament can unilaterally determine the size of its delegation to the Conference (Article 4.1 RoP).

This outcome also depends on the different visions that Parliaments have of how to render policymaking in the economic governance more accountable. Many Parliaments, for instance, were in favour of conferring upon the conference a sort of scrutiny power, but the EP and the German Parliament, very well coordinated on this point, stood against any rule that could move the Conference away from a forum of exchange of information and best practices on budgetary policies. The same applied to the proposal to include the parliamentary supervision of the Banking Union under the Conference's remit, which saw once again the opposition of the EP. By contrast, the French Parliament has always envisaged a method of cooperation among parliaments (not just in this policy area) that would follow the model of a "third chamber" of NPs thereby marginalizing the EP.⁶⁷ This is evident, for example, in the first version of the Draft Treaty on the Democratization of the Governance of the Euro Area (T-Dem) endorsed in 2017 by the then French Presidential candidate Benoît Hamon and put forward by a group of leading French scholars,⁶⁸ which excluded from the Parliamentary Assembly not only non-Euro area Parliaments (an exclusion also confirmed in the final draft) but the EP itself (eventually included in the final draft).

Once again asymmetries and multiple divides among the Parliaments of Europe have emerged on the functioning of the Interparliamentary Conference, identifying several "clusters of interest" or competing groups of parliaments, in which the EP can be included or marginalized depending on the specific issues at stake.⁶⁹

⁶⁷ This is reflected also in the first idea to establish an Interparliamentary Conference of parliamentary bodies specialized in European affairs, later on COSAC, by the then Speaker of the French National Assembly, Laurent Fabius, back in 1989: L. Fabius, *Les Parlements Européens dans la perspective de l'Europe de 1993. Le traitement des affaires communautaires et la collaboration entre les chambres*, presented at the meeting of the Speakers of the Parliaments of the EC-12, Madrid, 20 May 1989.

⁶⁸ The draft Treaty on the Democratization of the Euro Area Governance was first proposed in 2017 by Stéphanie Hennette, Thomas Piketty, Guillaume Sacriste and Antoine Vauchez. For commentaries on this Draft Treaty see, extensively, the Special Section – *Democratising the Euro Area Through a Treaty?* edited by S. Barbou des Places for the *European Papers*, 1, 2018, available here http://www.europeanpapers.eu/it/content/e-journal/EP_ej_2018_1 (last accessed in January 2019) and, in particular, A. Manzella, *Notes on the "Draft Treaty on the Democratization of the Governance of the Euro Area"*, 93–102.

⁶⁹ See A. Esposito, The Role of COSAC in EU Interparliamentary Cooperation: An (Endless) Quest for an Identity, in N. Lupo, C. Fasone (eds.), *Interparliamentary Cooperation in the Composite European Constitution*, cit., 325–334.

Due to the lack of a clear mandate, the indefinite size of the delegations and of the inclusion of all national parliaments and not just from the Eurozone (or from the contracting parties as Article 13 clearly states), this Interparliamentary Conference has been unanimously criticized for not having fulfilled the expectations in terms of democratic accountability surrounding its creation.⁷⁰ It is clear, however, that its reform is inextricably linked to the discussion about the ideas to either differentiate the EP internally between “Eurozone and non-Eurozone MEPs” or to create a Parliamentary Assembly for the Euro-area.

The idea to differentiate the EP according to the constituency of election of the MEPs, whether inside or outside the Eurozone, shows legal and practical limits – Treaty amendment is needed –and has been traditionally opposed by the EP.⁷¹ Moreover, especially if affecting the voting rights of MEPs the proposal would irremediably impair one of the fundamental principles upon which parliaments in constitutional democracies have been established: the principle of free mandate, and hence the legitimation that the European Parliament has been able to build upon. Finally, there are also huge practical limits in differentiating the procedures within the Parliament as to let some MEPs participate and vote while excluding others, even on the same legislative proposal: the only experience we have in the EU with the differentiation of MPs rights, the “English vote for English laws” mechanism (EVEL) in the UK House of Commons to counter the “West Lothian question”, to date has been largely unsatisfactory.⁷²

The “competing” proposal for the democratization of the Euro area, equally opposed by the EP, that of the creation of an *ad hoc* Parliamentary Assembly,⁷³ although fascinating from the point of view of constitutional engineering, presents many limits. The creation of a new parliamentary institution next to the EP would be highly problematic. The new institution, indeed, would definitely alter the institutional balance without having a clear *raison d’être* and identity (trying to merge representation of State interests, like in the Council, with representation of the European “people”). In the eye of the citizen, this would make the complexity of the EU institutional architecture and procedure even less understandable, especially if the Parliamentary Assembly is given legislative and budgetary powers as per the T-Dem, being enabled to overcome the veto of the Euro Group, and it would further delegitimize the European Parliament as a representative body.⁷⁴

Neither of the two proposals have been able to gather the consensus of the EP and of the NPs, with the array of different positions they support and thus any viable attempt to reform the

⁷⁰ See, amongst many, V. Kreilinger, *Inter-parliamentary cooperation and its challenges: The case of Economic and Financial Governance*, cit., 271-288; I. Cooper, A Separate Parliament for the Eurozone? Differentiated Representation, Brexit, and the Quandary of Exclusion, 70(4) 2017, *Parliamentary Affairs*, 655-672; C. Lord, *How can Parliaments Contribute to the Legitimacy of the European Semester?*, cit., 673-690; E. Griglio, N. Lupo, *The conference on stability, economic coordination and governance*, cit., 358-373.

⁷¹ D. Curtin, C. Fasone, *Differentiated Representation: Is a Flexible European Parliament Desirable?*, cit., 118-145.

⁷² See D. Gover, M. Kenny, Answering the West Lothian Question? A Critical Assessment of ‘English Votes for English Laws’ in the UK Parliament, 2018 *Parliamentary affairs* (early view), 1–23.

⁷³ D. Fromage, A Parliamentary assembly for the Eurozone?, WP 2018/134, *ADEMU Working Papers series*, May 2018 available here <http://ademu-project.eu/wp-content/uploads/2018/06/134-A-parliamentary-assembly-for-the-eurozone.pdf> (last accessed in January 2019).

⁷⁴ See N. Brack, O. Costa, A. Crespy, The “T-Dem” for Democratizing the Europe’s Economic and Monetary Union – A Critical Appraisal, 1, 2018, *European Papers*, cit., 45–57.

democratic governance of the Euro area at present seems to pass through a review of the existing mechanisms of interparliamentary cooperation.

6. Conclusion

The relationship between the EP and NPs on economic and monetary policies is affected by the nature of the competence at stake, the mode and structure of decision making and by the saliency of the policy, within the general landscape set by the principle of sincere cooperation. The exclusive nature of the EU competence on monetary policy, for Eurozone countries, the peculiarities of the “Eurosystème”, with strong independent institutions taking the lead, make it difficult for parliaments at the different levels of government to effectively control policy making and to coordinate their action. The EP and NPs are then secluded in their own domestic sphere and they neither cooperate nor compete.

The economic governance, instead, is featured by a regulated system of interparliamentary relationships between the EP and NPs, grounded on a general institutional consensus over the need to develop interparliamentary cooperation albeit witnessing multiple sets of alliances amongst parliaments, depending on the interest and the issue at stake. The front of NPs is extremely fragmented, in terms of powers and of engagement in interparliamentary cooperation, and the EP finds it convenient to compete or ally with different parliaments on a case-by-case basis. The saliency of the EMU-related issues has declined when looking at the interparliamentary agenda and parliaments prefer to cooperate through the sectoral Interparliamentary Conference rather than through more informal gatherings. This situation shows the emergence of ‘conflictual cooperation’ among parliaments on the organization and functioning of interparliamentary relationships rather than on substantive policy options, which creates a diversion from the fulfilment of the ultimate aim of interparliamentary cooperation in this domain: namely to redress the information asymmetries parliaments are facing with a view to positively impacting on the individual and collective ability of legislatures to scrutinize the EU fragmented executive.

RECONNECT is a four-year multidisciplinary research project on ‘**Reconciling Europe with its Citizens through Democracy and the Rule of Law**’, aimed at understanding and providing solutions to the recent challenges faced by the European Union (EU). With an explicit focus on strengthening the EU’s legitimacy through democracy and the rule of law, RECONNECT seeks to build a new narrative for Europe, enabling the EU to become more attuned to the expectations of its citizens. Bringing together 18 academic partner institutions from 14 countries, RECONNECT focuses on key policy areas: economic and monetary governance, counter-terrorism, international trade and migration.



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