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Sixteenth Bi-annual Report:
Developments in European Union
Procedures and Practices
Relevant to Parliamentary Scrutiny



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Table of Contents

BACKGROUND.....	4
ABSTRACT.....	5
CHAPTER 1: MULTIANNUAL FINANCIAL FRAMEWORK FOR EUROPE 2020 STRATEGY.....	11
1.1 Involvement of Parliaments in establishing the position of their Governments	11
1.1.1 Scope of parliamentary scrutiny, procedures	12
1.1.2 Future involvement of national Parliaments	14
1.2 Proposal to shorten the duration of the MFF from seven to five years	15
1.3 Proposal to reduce the GNI-based contributions of Member States to the EU budget	16
1.4 New system of EU own resources.....	18
1.4.1 EU own resources	18
1.4.2 Financial Transaction Tax	20
1.5 Support for the Europe 2020 Project Bond initiative	21
1.6 Implementation of the goals of the Europe 2020 Strategy through the MFF 2014-2020...	22
1.7 Structure of EU budgetary expenditure in the MFF 2014-2020	23
1.7.1 Transfer of funds from Sub-heading 1b to Sub-heading 1a	24
1.8 Unspent EU funds.....	24
CHAPTER 2: TWO YEARS AFTER THE ENTRY INTO FORCE OF THE TREATY OF LISBON - PARLIAMENTARY EXPERIENCE	26
2.1 Reasoned opinions	26
2.1.1 Reasoned opinions adopted since the entry into force of the Treaty of Lisbon	26
2.1.2 Publication of reasoned opinions on IPEX.....	31
2.1.3 Replies from the European Commission on reasoned opinions	32
2.1.4 Quality of the Commission's replies to reasoned opinions.....	33
2.1.5 Dealing with the Commission's replies in national Parliaments.....	33
2.1.6 Reflection of reasoned opinions in EU draft legislative acts	34
2.1.7 Continued dialogue with the Commission after receiving its replies	35
2.1.8 Sufficiency of the eight-week period for the evaluation of EU draft legislative acts..	35
2.1.9 Lack of a legal basis and lack of (or insufficient) subsidiarity justification	37
2.1.10 Impact assessments of EU draft legislative acts	41
2.1.11 Internal subsidiarity control mechanisms of national Parliaments	46
2.1.12 Treatment of reasoned opinions and contributions by the European Parliament	49
2.1.13 Reasoned opinions and contributions in documents of the European Parliament.....	51
2.2 Informal political dialogue	52
2.2.1 Number of contributions sent to the Commission	52
2.2.2 The Commission's replies to contributions	53
2.2.3 Quality of the Commission's replies to the contributions.....	54
2.2.4 Dealing with the Commission's replies in national Parliaments.....	54
2.2.5 Further informal political dialogue after receiving Commission's replies	55
2.3 Parliamentary scrutiny and delegated acts under Article 290 of the TFEU	55
2.3.1 Opinions on proposals that provide for delegated acts	55
2.3.2 Possible cooperation with the EU institutions for monitoring delegated acts.....	60

BACKGROUND

This is the Sixteenth Bi-annual Report from the COSAC Secretariat.

COSAC Bi-annual Reports

The XXX COSAC decided that the COSAC Secretariat should produce factual Bi-annual Reports, to be published ahead of each ordinary meeting of the Conference. The purpose of the Reports is to give an overview of the developments in procedures and practices in the European Union that are relevant to parliamentary scrutiny.

All the Bi-annual Reports are available on the COSAC website at: <http://www.cosac.eu/en/documents/biannual/>

The two chapters of this Bi-annual Report are based on information provided by the national Parliaments of the European Union Member States and the European Parliament. The deadline for submitting replies to the questionnaire for the 16th Bi-annual Report was 26 August 2011.

Both chapters of this Report begin with relevant parts of the outline adopted by the meeting of the Chairpersons of COSAC, held on 11 July 2011 in Warsaw.

As a general rule, the Report does not specify all Parliaments or Chambers whose case is relevant for each point. Instead, illustrative examples introduced in the text as "e.g." are used.

The COSAC Secretariat is grateful to the contributing Parliaments/Chambers for their cooperation.

Note on Numbers

Of the 27 Member States of the European Union, 14 have a unicameral Parliament and 13 have a bicameral Parliament. Due to this combination of unicameral and bicameral systems, there are 40 national parliamentary Chambers in the 27 Member States of the European Union.

Although they have bicameral systems, the national Parliaments of Austria, Belgium, Ireland and Spain each submitted a single set of replies to the questionnaire circulated by the COSAC Secretariat.

The COSAC Secretariat received replies from all 40 national Parliaments/Chambers of 27 Member States and the European Parliament. These replies and their annexes are published in a separate Annex to this Bi-annual Report which is available on the COSAC website at: <http://www.cosac.eu/en/documents/biannual/>.

ABSTRACT

CHAPTER 1: MULTIANNUAL FINANCIAL FRAMEWORK FOR EUROPE 2020 STRATEGY

About **half** of the national Parliaments/Chambers have **not yet discussed** the different **aspects of the Multiannual Financial Framework for 2014-2020** (hereinafter referred to as "the MFF"). However, a majority of the Parliaments/Chambers expect the MFF to be on the agenda of their respective Committees on EU Affairs **during the autumn session of 2011**. So far, the MFF has been mainly discussed in the **Committees on EU Affairs**, sometimes in **joint meetings with other competent committees**, to which Government representatives have been invited. Some Parliaments/Chambers have organised **public hearings** and **meetings with Members of the European Commission** and **Members of the European Parliament**. The issue of the MFF has also been dealt with in a number of parliamentary reports.

Most Parliaments/Chambers are **against** the proposal to shorten the duration of the MFF. It is argued that the present **seven-year period guarantees long-term consistency and stability**, while a five-year period would jeopardize the sustainability of the EU planning process with potential disadvantages outweighing possible benefits. Proponents of the five-year period, including the European Parliament, advocate that it would **match the tenure** of the European Parliament and of the European Commission (hereinafter referred to as "the Commission"), thus increasing **democratic responsibility, accountability and legitimacy**.

The proposal to reduce GNI-based contributions of Member States to the EU budget has not been thoroughly considered by the majority of Parliaments/Chambers, although the **prevailing view** is in favour of **preserving the present level** of GNI-based contributions.

As far as the question of the **new system of EU own resources** is concerned, **a quarter** of Parliaments/Chambers are **against** introducing new taxes, some of them underlining that the tax policy is an area of sovereign competence of the Member States. The Financial Transaction Tax (hereinafter referred to as "the FTT") is viewed by some Parliaments/Chambers as a **tool of generating significant fiscal revenues**. Other Parliaments/Chambers oppose the measure fearing that the introduction of the FTT might drive investors towards countries with more liberal tax regimes.

A **majority** of the Parliaments/Chambers that have discussed **the Europe 2020 Project Bond** initiative believe it is **a good idea**. This is, however, not without reservations. Several of them warn that the initiative of attracting private sector financing for the promotion of individual infrastructure projects must **not lead to the need for the EU to provide additional funds** beyond what was originally allocated to the project.

There is a **consensus** among Parliaments/Chambers which have already discussed the issue that the MFF should allow for **the full implementation of the goals of the Europe 2020 Strategy**. A majority of Parliaments/Chambers do, however, argue that the focus on the goals of the Europe 2020 Strategy in the MFF should be balanced with other EU priorities and the **individual situation of Member States**.

Concerning the Commission's proposed structure of the EU budgetary expenditure in the MFF, the **majority** of Parliaments/Chambers, which have discussed the subject, do **not think it is sufficiently specific** as it combines several different policy areas under one general heading. Furthermore, **the lack of a special heading for cohesion** is a **common concern** of the **majority** of Parliaments/Chambers.

Balance is again the **key focus** for Parliaments/Chambers which have discussed the issue of transferring funds from Sub-heading 1b (Cohesion for growth and employment) to Sub-heading 1a (Competitiveness). Although the **majority** of Parliaments/Chambers that have replied do **not support the suggestion**, several point out that it is a matter of striking the right balance between the two areas, thus combining **efficiency and solidarity**.

With regard to the question of **unspent EU funds being used as EU own resources**, the majority of Parliaments/Chambers have yet to discuss the issue. However, **more than half** of the remaining Parliaments/Chambers **do not support** the suggestion that unspent EU funds should be used in future accounting periods as EU own resources instead of following the current practice where the unspent funds are returned to the Member States.

CHAPTER 2: TWO YEARS AFTER THE ENTRY INTO FORCE OF THE TREATY OF LISBON - PARLIAMENTARY EXPERIENCE

Since the entry into force of the Treaty of Lisbon a **majority** of national Parliaments/Chambers, i.e. **29**, have **adopted at least one reasoned opinion**. Out of **40** national Parliaments/Chambers **eleven** have **not adopted** any reasoned opinion yet.

The **largest number of reasoned opinions**, i.e. **eight**, has been adopted by the **Polish Senat**.

The **most frequently contested draft legislative acts** with regard to their compliance with the principle of subsidiarity are the proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) (**COM(2011) 121**) and the proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment (**COM(2010) 379**). **Nine** national Parliaments/Chambers issued **reasoned opinions** on these draft legislative acts.

Most national Parliaments/Chambers indicate that the Commission **replies to all reasoned opinions**.

As to the Commission's self-imposed **three-month time-limit** for replying to reasoned opinions, national Parliaments/Chambers indicate that usually the time-limit is **not respected**. From among 19 Parliaments/Chambers that have adopted reasoned opinion at least three months before the deadline for the replies to the questionnaire for this report¹, a **majority** (i.e. **13**) note that the three-month deadline was **not met** in at least one case. In some cases, national Parliaments/Chambers have had to **wait** for the Commission's reply **for four to six months**.

Four Parliaments/Chambers are **satisfied** with the quality of the Commission's replies, without any reservations. Some Parliaments/Chambers note that the quality of replies has **not (yet) been**

¹ 26 August 2011

debated. However, several national Parliaments/Chambers are **critical** of the quality of the replies believing them to be **too short and too general.**

The practices of dealing with the Commission's replies in national Parliaments/Chambers vary. Out of 40 national Parliaments/Chambers, **17** responded with their experience and practices. For instance, in **four** Parliaments/Chambers information on the replies is provided only to the **Committees on EU Affairs** and/or other relevant **specialised committees.** The group of recipients of the Commission's replies is sometimes wider, including staff of political groups. Several Parliaments/Chambers state that they **publish** the replies on their **websites,** print them as official documents, include them in **weekly reports** on documents received from the Commission or make them available in their **libraries.**

The issue of how **reasoned opinions** are reflected in the content of EU draft legislative acts is difficult to examine at this stage because of the **limited available material.** Nevertheless, **two** national Parliaments/Chambers find **potential reflection** of their reasoned opinions in one draft legislative act, i.e. in the proposal for a Directive of the European Parliament and of the Council on Deposit Guarantee Schemes COM(2010) 368.

None of the 40 national Parliaments/Chambers state that they have **continued dialogue** with the Commission after receiving the Commission's replies to their reasoned opinions.

Parliaments/Chambers **are divided** on the issue of the **sufficiency of the eight-week period** for the assessment of the compliance of EU draft legislative acts with the principle of subsidiarity according to Protocol 2 on the application of the principles of subsidiarity and proportionality of the Treaty of Lisbon (hereinafter referred to as "Protocol 2"). **Ten** Parliaments/Chambers **are satisfied** with the time-frame of Protocol 2, **14** although generally satisfied, have various **reservations,** **ten** find it **insufficient or problematic** and the remaining five provide general comments without taking a formal position. The 24 Parliaments/Chambers which voice reservations and general dissatisfaction with the eight-week period as (potentially) too short point out the **need to verify other aspects** of draft legislative acts, such as their compliance with the principle of proportionality, adequacy of the legal basis and substantive provisions as well as the time needed to comply with internal procedural requirements, such as the need to hear opinions of specialised committees or to have reasoned opinions voted in the plenary.

Almost half of the national Parliaments/Chambers (i.e. **16 out of 33**) which have sent in their replies, indicate that they have **found the lack of a legal basis and/or lack of (or insufficient) subsidiarity justification** to be an **infringement** of the principle of subsidiarity and have as a consequence adopted **reasoned opinions.**

A significant number of national Parliaments/Chambers (i.e. **17**) comment on the consequences of the **lack of or insufficient justification** of draft legislative acts with regard to the principle of subsidiarity. They point out that it is the **obligation of the initiator** of an EU draft legislative act, in most cases, **the Commission** to produce proper justification of the acts in compliance with the requirements of Article 5 of Protocol 2, in particular a detailed statement, including an assessment of a financial impact and implications for national rules. On numerous occasions Parliaments/Chambers have **criticised the justification as insufficient, lacking in substance, or absent all together.**

As to the **Commission's impact assessments,** Parliaments/Chambers generally consider them **useful and necessary** for the parliamentary scrutiny of EU draft legislative acts. However, **12**

Parliaments/Chambers voice **criticism** with regard to the **quality** of the impact assessments, at times finding them **schematic and lacking in substance**, while **four** Parliaments/Chambers voice **concerns** with their **independent nature**, advocating, *inter alia*, the independence of the Commission's Impact Assessment Board.

Furthermore, **more than a half** of Parliaments/Chambers (i.e. 15 out of 24) that have expressed their views on the subject are of the opinion that the **full text of impact assessments should be translated into all official languages of the EU**. A further nine Parliaments/Chambers see limited or no added value in this exercise.

Out of 39 national Parliaments/Chambers which have replied to the question on the amendments to their internal subsidiarity control mechanisms, **20 consider them satisfactory**. An equal number of Parliaments/Chambers report that such amendments have been introduced due to the new role of national Parliaments in the EU enshrined in the Treaty of Lisbon. This Bi-annual Report details several examples of such amendments.

Following the entry into force of the Treaty of Lisbon, the **European Parliament amended its Rules of Procedure** in order to implement the new mechanism under Protocol 2 and **set up an internal procedure for dealing with reasoned opinions and contributions** from national Parliaments. According to the European Parliament's **definitions** "reasoned opinions" are submissions of national Parliaments on the non-compliance of a draft legislative act with the principle of subsidiarity that are communicated to the European Parliament within the eight week deadline referred to in Article 6 of Protocol 2, while "contributions" are any other submissions which do not fulfil the criteria for a reasoned opinion.

Upon receipt, all **reasoned opinions** are referred to the committee(s) responsible for the draft legislative act and forwarded to the Committee on Legal Affairs (JURI), which examines them and has them **translated into all official languages of the EU**. Reasoned opinions are **distributed to all Members of the competent committees**, are **included in the file** for the committee meeting and **published on the committee website page** under the heading "meeting documents". Furthermore, **the text of draft legislative resolutions must make reference to any reasoned opinions received** in relation to their subject matter. In its reply to the questionnaire for the 16th Bi-annual Report the European Parliament also gives a detailed account of the **procedure** to be followed in case the requisite "**yellow card**" and "**orange card**" thresholds are reached.

Upon receipt, **contributions** - which may also be submissions which positively assess a given legislative proposal's compliance with the principle of subsidiarity - are **referred to the committee(s) of the European Parliament that is responsible** for the file. Transmission to the relevant committees is done by the Directorate for Relations with National Parliaments. Committee secretariats are then responsible for the transmission of contributions **to the respective committee Chairs and/or rapporteurs** who may request translation.

Furthermore, the European Parliament's Directorate for Relations with National Parliaments circulates to all committee secretariats, political groups and any other interested European Parliament services a **monthly summary table** and an explanatory note **outlining the reasoned opinions and contributions** of national Parliaments received during the preceding month. The Conference of Committee Chairs receives these documents for information.

It is noteworthy that the European Parliament is the **only EU institution to translate all reasoned opinions** (and potentially contributions) **in all EU official languages**, thus allowing its Members to fully take into account the views expressed by national Parliaments. The European Parliament underlines that its **legislative reports systematically make reference to reasoned opinions received** in the context of Protocol 2 and gives four recent examples.

The **informal political dialogue** (also known as "the Barroso initiative") was launched in 2006 with the aim of encouraging national Parliaments to express their opinions on the Commission's initiatives not only in relation to the principles of subsidiarity but also in a more general way. This tool has been in use ever since and its use is on the increase since the entry into force of the Treaty of Lisbon, as the Annual Report 2010 from the Commission on relations between the European Commission and national Parliaments confirms. The **activity** of Parliaments/Chambers within the framework of the informal political dialogue, however, **greatly differs**, with the number of contributions ranging from 0 to 220. **Nine** Parliaments/Chambers have **not yet used** this opportunity.

The number of the Commission's replies to the contributions of national Parliaments/Chambers does not coincide with the number of submitted contributions. The **highest number of replies** has been given to the Czech *Senát*, i.e. 32 replies to its 52 contributions.

Concerning the **quality** of the replies of the Commission, **the majority** of Parliaments/Chambers consider them **satisfactory**. A **group** of Parliaments/Chambers finds them **too general** or report that sometimes they are **sent too late**.

In most cases, the Commission's replies to the contributions submitted within the framework of the informal political dialogue are **dealt with in the same manner as the responses to reasoned opinions** under Protocol 2. In addition to being distributed to the Members of the Committees on EU Affairs they are sometimes sent to competent specialised committees and published on the websites of respective Parliaments/Chambers as well.

Out of the large majority of Parliaments/Chambers that have replied to the questionnaire many have not (yet) discussed the issue or have not (yet) adopted an official **position** on delegated acts. **Core elements of concern** for numerous Parliaments/Chambers are the potential **excessive use** of delegated acts, possible **scrutiny problems**, the difficulty to **define and assess non-essential elements**, and the possible **weakening of national Parliaments** as a result of the improper application of Article 290 of the TFEU. A few Parliaments/Chambers highlight the monitoring role of the **EU legislator**, referring to the Common Understanding between the Commission, the European Parliament and the Council. Four Parliaments/Chambers refer to their **resolutions** in which they have voiced their concerns.

In a few Parliaments/Chambers specific **concerns related to the actual subject** of delegated acts have not yet been raised. Numerous Parliaments/Chambers voice their concerns, often in resolutions, reasoned opinions or other documents, and include examples, e.g. on the Citizens' Initiative regulation. Several Parliaments/Chambers insist that delegation of power to the Commission should be "kept to a strict minimum".

On the issue of the adequate **description of essential features** of delegated acts only a handful of Parliaments/Chambers have not yet identified problems. Others address a range of **issues that are of concern**, such as the lack of sufficient evidence to **proof the need** to resort to delegated

acts, the **vague** nature of the objectives, the **imprecise** description of the content, the presence of **essential elements** in delegated acts, the **insufficiently explicit** definition of the scope and the **indeterminate period** of delegation of power to the Commission compounded by the narrow time frame for EU legislators to react.

Views on whether and how to cooperate with EU institutions range from **prudence** to **support** for the idea. Some Parliaments/Chambers do **not** consider it **as a first option** or state that the EU legislators and finally the Court of Justice of the European Union (hereinafter referred to as "the Court of Justice") have a specific role to secure uniform application of the criteria. Other Parliaments/Chambers urge **closer cooperation between governments and national Parliaments** or see, *inter alia*, **reasoned opinions** and the **political dialogue** as useful tools.

Several Parliaments/Chambers say that they are **generally open to (informal) cooperation** and/or find it **(very) useful**, most of them without going into detail. **Cooperation with the European Parliament** in particular is advocated by **four** Parliaments/Chambers, while the European Parliament itself will **assess the Common Understanding** with the Commission and the Council one year after it became operational and possibly initiate a revision of it.

CHAPTER 1: MULTIANNUAL FINANCIAL FRAMEWORK FOR EUROPE 2020 STRATEGY

With the publication of the Commission's proposal on the MFF on 29 June 2011, a debate has started.

One of the aims of the 16th Bi-annual Report is to assess the present and future role of national Parliaments as regards cooperation with and scrutiny of their governments throughout the process of developing the new MFF in view of the targets outlined in the Europe 2020 Strategy.

Contrary to common hopes and expectations the European economic and financial crisis has not been fully overcome. Growing economic disparities between Member States and a lack of appropriate measures to remedy this situation lead to controversial views, such as the need to build a multiple-speed Europe. Attempts to save the euro area by rationalising the EU budgetary spending at the expense of the cohesion policy provoke unnecessary divisions within the European Union. In principle, the successive EU budgets have been adjusted to their respective goals. Therefore, the new financial framework should make it possible to finance all the objectives set in the Europe 2020 Strategy, including the consolidation of the EU's internal market.

Given the serious challenges currently facing the EU, it would be advisable to define the role and powers of national Parliaments and the European Parliament in co-creating and scrutinising key EU policies in the post-Lisbon era. This would require a concerted action by all decision-makers, both at the national and the EU level. European solidarity, which is one of the corner stones of today's European Union, requires the achievement, without delay, of a broad consensus on the full involvement of national Parliaments and the European Parliament in the EU governance process, especially in order to prevent further global crises.

1.1 Involvement of Parliaments in establishing the position of their Governments

Out of 41 Parliaments/Chambers that have replied on the issue, **18²** have so far been **actively involved** in establishing their Governments' position on the MFF, while some other Parliaments/Chambers are planning to get involved.

Two Parliaments/Chambers neither have been involved nor plan to do so in the future³.

The Committees on Finances of the Belgian *Chambre des représentants* and *Sénat* discussed the MFF in two joint hearings on 27 and 29 April 2011. However, as the hearings were initiated by the Parliament, the Government was not actively involved. On the other hand, the Federal Advisory Committee on European Affairs of the Belgian *Chambre des représentants* and *Sénat* has regularly discussed the MFF with the Belgian Prime Minister.

² I.e. the Austrian *Nationalrat* and *Bundesrat*, the Czech *Senát*, the Estonian *Riigikogu*, the Finnish *Eduskunta*, the German *Bundestag* and *Bundesrat*, the Dutch *Tweede Kamer*, the Greek *Vouli ton Ellinon*, the Italian *Camera dei Deputati*, the Latvian *Saeima*, the Polish *Sejm* and *Senat*, the Portuguese *Assembleia da República*, the Romanian *Camera Deputaților*, the Spanish *Cortes Generales* and the UK *House of Lords*

³ I.e. the Maltese *Kamra tad-Deputati* and the Slovenian *Državni svet*

1.1.1 Scope of parliamentary scrutiny, procedures

Parliaments/Chambers have been mainly involved in the work on the MFF through their **respective Committees on EU Affairs** which sometimes closely cooperate with **other specialised committees in organising** debates, joint committee meetings, at times with the participation of Government representatives.

The EU Affairs Committee of the Estonian *Riigikogu* considered the future MFF as early on as 9 April and 26 November 2010 in meetings attended by the Minister of Finance. Also, the German *Bundestag* discussed different aspects of the MFF with the federal Government. The German *Bundesrat* adopted detailed opinions on the Commission Communication "Reforming the budget, changing Europe"⁴ on 14 March 2008 and on the Communication "The EU Budget Review"⁵ on 17 December 2010. The Federal Government was required to take these opinions into account in **establishing its negotiating position**.

The Committee on European Affairs and the Committee on Budget of the Italian *Camera dei Deputati* started a joint **scrutiny** of the Commission proposal on the MFF on 27 July 2011. On 28 July 2011, the Minister of Foreign Affairs reported on the MFF to a joint meeting of the Committees on Budget, the Committees on EU Policies and the Committees on Foreign Affairs of the Italian *Camera dei Deputati* and *Senato della Repubblica*.

The Italian *Camera dei Deputati* expressed some general views on the revision of the EU budget in its resolution, approved on 13 July 2010, in which it urged the Government to, *inter alia*, ensure that during the negotiations on the MFF the relationship between the EU policy priorities and their **spending is clearly and transparently defined**, and reaffirm the **principle of solidarity** and parity among Member States, as well as securing an amount of resources considerably higher than the one envisaged in the MFF for 2007-2013, while maintaining the funding for cohesion policies at the level envisaged in the current MFF.

The Committee on European Affairs of the Latvian *Saeima* gives a mandate to the Government on all Latvia's official positions on EU matters. In this case, the first position of the committee was adopted on 28 July 2011. Moreover, the *Saeima* in its extraordinary plenary sitting of 14 July 2011 adopted statements on "the Equitable Common Agricultural Policy of the EU after 2013" and on "the EU Budget Financing for Reducing Social and Economic Disparities after 2013".

The Committee on European Affairs and the Committee on National Economy of the Polish *Senat* were briefed by representatives of the Ministry of Foreign Affairs and the Ministry of National Economy on 27 July 2011 on the subject of "the Real and Potential Sources of Finance for the Europe 2020 Strategy Goals in the Context of Proposals for the MFF 2014-2020". The Committee on EU Affairs of the Polish *Senat* cooperates with competent ministers within the framework of the MFF. The Committee on European Affairs, the Committee on Local Self-Government and the Regional Committee of the Polish *Sejm* held a joint meeting during which they approved the Government's information on the future of the cohesion policy and the new MFF in connection with the Communication from the Commission to the European Parliament,

⁴ http://ec.europa.eu/budget/reform2008/library/issue_paper/consultation_paper_en.pdf

⁵ http://ec.europa.eu/commission_2010-2014/president/pdf/eu_budget_review_en.pdf

the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank Conclusions of the fifth report on economic, social and territorial cohesion: the future of cohesion policy⁶. On 16 February 2011 the Committee on European Affairs of the Dutch *Tweede Kamer* held a public **videoconference with the Dutch Members of the European Parliament** from *inter alia* the Special Committee on policy challenges and budgetary resources for a sustainable European Union after 2013 (SURE)⁷, during which, *inter alia*, the possibility of new EU taxes and the Dutch position on 1 billion euro extra rebate were discussed.

Similarly, on July 7 2011, the Committee on European Affairs of the Greek *Vouli ton Ellinon* held a meeting on this topic. The alternate minister for Foreign Affairs, competent for European Affairs gave an account of the Government's first reactions to the Commission's proposals, its positions and envisaged steps. The Committee on European Affairs also held a joint meeting with the Committee for Trade and Production, which focused on the MFF of the common agricultural policy.

On 23 May 2011, the Austrian Parliament held a **public hearing** with Government representatives, experts and stakeholders on the future of the common agricultural policy, the results of which were debated during the plenary session of both the *Nationalrat* and *Bundesrat* in June 2011. Moreover, the European Affairs Committees of the *Nationalrat* and *Bundesrat* intend to discuss the Commission's proposal on the MFF in September 2011, and may decide on the Austrian position which will be binding on the Government.

A few Parliaments/Chambers organized **meetings** on the future MFF **with Members of the Commission**. On 3 March 2011 the Committee on EU Affairs of the Polish *Sejm* held a meeting with the Commissioner for Financial Programming and Budget Mr Janusz LEWANDOWSKI on the Commission Communication on the EU Budget Review⁸. In addition, on 1 April 2011, the EU Affairs Committee, the Committee on Economy and the Committee on Environment Protection, Natural Resources and Forestry of the Polish *Sejm* held a joint meeting with the Commissioner for Climate Action Ms Connie HEDEGAARD. In June 2011, the Committees on European Affairs of the Romanian *Camera Deputaților* and *Senatul* in a joint meeting with the Commissioner for Agriculture and Rural Development Mr Dacian CIOLOȘ discussed the future MFF. Also, the Italian *Camera dei Deputati* decided to hold a meeting with Commissioner Mr Janusz LEWANDOWSKI.

The Danish *Folketing*, for its part, reports that there is a **general agreement among political parties** in Denmark concerning the MFF. Although the *Folketing* has not been directly involved in establishing the position of the Government, the latter will have to obtain a mandate from the European Affairs Committee of the *Folketing* before signing up to the MFF in the Council.

In total, eight Parliaments/Chambers have **produced reports dealing with the MFF** or will do so in future. On 5 April 2011, the EU Select Committee of the UK *House of Lords* published the report "EU Financial Framework from 2014"⁹. On 6 June 2011, the French *Sénat* adopted an informative report by Mr François MARC¹⁰. Reports on the MFF were also produced as a result of the joint hearings on 27 and 29 April 2011 in the Belgian *Chambre des représentants* and

⁶ http://ec.europa.eu/regional_policy/sources/docoffic/official/reports/cohesion5/pdf/conclu_5cr_part1_en.pdf

⁷ <http://www.europarl.europa.eu/activities/committees/homeCom.do?language=EN&body=SURE>

⁸ http://ec.europa.eu/commission_2010-2014/president/pdf/eu_budget_review_en.pdf

⁹ <http://www.publications.parliament.uk/pa/ld201011/ldselect/ldcom/125/125.pdf>

¹⁰ <http://www.senat.fr/rap/r10-738/r10-738.html>

Sénat. Another report concerning the meeting held by the Federal Committee on EU Affairs of the Belgian *Chambre des représentants* and *Sénat* with the Belgian Prime Minister on 26 June 2011 dedicated to the results of the Euro- zone summit will be published shortly.

The European Parliament with a view to establishing the political priorities for the next MFF created a **Special Committee** on policy challenges and budgetary resources for a sustainable European Union after 2013 (SURE) which ended its work on 8 June 2011 following the adoption in the plenary of the resolution on "Investing in the future: a new Multiannual Financial Framework (MFF) for a competitive, sustainable and inclusive Europe" (rapporteur Mr Salvador GARRIGA POLLEDO)¹¹.

The Spanish *Cortes Generales* adopted their report on 14 June 2011 after a number of hearings with the participation of Government ministers and high ranking officials of the EU institutions. The Lithuanian *Seimas* is also drafting a report on the MFF, and an associated review of EU horizontal policies. The report will be submitted for consideration to the *Seimas* in the autumn session of 2011.

The reports of the Lithuanian *Seimas* and the Spanish *Cortes Generales* are prepared by **working groups** that were established by their respective Committees on European Affairs. The working group of the Lithuanian *Seimas* is composed of the Members of the Committee on European Affairs, the Committee on Rural Affairs and the Committee on Budget and Finance, assisted by the staff of the Office of the *Seimas* and invited experts.

1.1.2 Future involvement of national Parliaments

Although **almost a quarter of** Parliaments/Chambers have **not yet discussed the MFF** yet, some of them due to the summer recess, they plan to do so in the future¹².

Due to the parliamentary recess no official consultation has to date taken place between the Hungarian *Országgyűlés* and the Government. However, it will oversee the Government's position via the scrutiny procedure. The MFF will also be on the agenda of the so-called Consultation Meeting, during which ahead of the European Council meetings, the Prime Minister will present the position of the Government to be represented at the European Council. With the aim of raising public awareness and intensifying parliamentary debates, the Hungarian *Országgyűlés* is considering organising an "**open day**" **dedicated exclusively to the MFF** during the autumn session.

The Italian *Senato della Repubblica* has not been actively involved in establishing the Government's position so far, but it intends to debate the MFF in the framework of its oversight of Government action and as a part of its political dialogue with the Commission.

The Romanian *Senatul* foresees regular meetings with representatives of the Government as of September 2011. Also the Joint Committee on EU Affairs of the Irish *Houses of the Oireachtas*

¹¹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0266+0+DOC+XML+V0//EN>

¹² I.e. the Cypriot *Vouli ton Antiprosopon*, the Dutch *Eerste Kamer*, the Hungarian *Országgyűlés*, the Luxembourg, *Chambre des Députés*, the UK *House of Commons*, the Slovak *Národná rada*, the Dutch *Eerste Kamer*, the French *Assemblée nationale*, the Luxembourg *Chambre des Députés*

intends to fully engage in consideration of the MFF and will consult with the Government and other stakeholders in the autumn 2011.

Debates on the MFF are also foreseen in the Czech *Poslanecká sněmovna* (on 8 September 2011), the Lithuanian *Seimas* (during the autumn session of 2011), in the Committee on Finance of the Swedish *Riksdag* (in September), the Committee on EU Affairs and the plenary of the Slovenian *Državni zbor* (in September 2011), in the Bulgarian *Narodno sabranie* (end of September), the German *Bundesrat*. The Committee on EU Affairs of the Greek *Vouli ton Ellinon* will hold another joint meeting with other committees of joint competence at the end of September, during which competent ministers will report on developments and progress of discussions.

Also, the Committee on European Affairs of the Slovak *Národná rada* will continuously deal with the legislative acts issued within the context of preparation of the MFF after year 2013. By the end of the year, the Committee on European Affairs of the French *Assemblée nationale* should present its position in a draft resolution, which will then be examined by the Committee on Budget.

On 20 September 2011, the Committee on Finances and Budget of the Luxembourg *Chambre des Députés* intends to discuss the Commission's proposal on the MFF, while on 27 September 2011, the Committee on European Affairs of the Dutch *Tweede Kamer* will have a debate with the Government on how the latter will inform the *Tweede Kamer* about the course of the negotiations on the MFF.

1.2 Proposal to shorten the duration of the MFF from seven to five years

As regards the debate on shortening the duration of the MFF from seven to five years, **13 Parliaments/Chambers¹³ do not support it**, underlining that **stability and long-term planning are necessary preconditions** for success.

The Bulgarian *Narodno sabranie* considers that such an idea should be **carefully approached**, warning that the **coincidence between the general and local elections period** (every four years) and the proposed five-year MFF period would **jeopardise the sustainability of the EU planning process** in the long run. Furthermore, the *Narodno sabranie* believes that a seven-year MFF rather than a five-year one can facilitate the accomplishment of the goals of the seven-year Europe 2020 Strategy, and ensures the **long-term consistency and predictability**. This view is also shared by the Polish *Sejm*.

The Estonian *Riigikogu* underscores that the seven-year period ensures the necessary **financial and political stability** for planning and investing the funds. The German *Bundesrat* finds that the seven-year timeframe has **proved effective** for the Structural Funds programmes and for other programmes funded from the EU budget. The Greek *Vouli ton Ellinon* believes that the seven year period **ensures flexibility** in the mobilisation of resources.

¹³ I.e. the Austrian *Nationalrat* and *Bundesrat*, the Bulgarian *Narodno sabranie*, the Czech *Poslanecká sněmovna*, the Estonian *Riigikogu*, the German *Bundesrat*, the Greek *Vouli ton Ellinon*, the Latvian *Saeima*, the Polish *Sejm* and *Senat*, the Romanian *Camera Deputaţilor* and *Senatul*, the Slovak *Národná rada*.

Furthermore, the German *Bundesrat* warns that introducing shorter periods for the MFF would unnecessarily increase the effort required to reach agreements and for administration, and would render planning more uncertain. These **disadvantages outweigh the possible benefits** of the synchronising of the MFF with the terms in office of the Commission and the European Parliament. The Polish *Senat* warns that shortening the duration of the MFF **could provoke serious problems with the implementation of key EU policies**, including the cohesion policy. The Romanian *Camera Deputaţilor* deems the seven year period as **appropriate** to the interests of Romania.

The Finnish *Eduskunta* has reservations about the proposal, noting that five years is too short for long-term policy cohesion, it would **prefer a ten-year framework with a mid-term review** (the "five + five model").

There are **two** Parliaments/Chambers **supporting** the proposal. The European Parliament, in the resolution¹⁴ of the Special Committee on policy challenges and budgetary resources for a sustainable European Union after 2013 (SURE)¹⁵ voted on 8 June 2011, is of the opinion that the **duration of the MFF should match the tenure of the European Parliament and the Commission** (i.e. five years) in order to ensure democratic accountability, legitimacy and responsibility. Also the UK *House of Lords* welcomes and supports the proposal because it would match the European Parliament and Commission terms in office, making the European elections more meaningful. The *House of Lords* also believes that the less the flexibility within the MFF, the shorter it should be "as it would be unwise to lock in austerity for seven or ten years, and would also be likely to prove unacceptable to the European Parliament".

There are Parliaments/Chambers that have not **taken a final position yet**¹⁶, although some of them have had intensive debates¹⁷ on the issue, sometimes in the presence of Members of the European Parliament, as it was the case of the Portuguese *Assembleia da República*. The Committee on European Affairs of the German *Bundestag* debated this issue at a hearing with legal experts in May 2011. The Czech *Senát* notices that there are strong arguments for both options, the seven-year period ensures medium-term security for all participants in terms of available resources and stable conditions for the drawing of finances, while on the other hand, there is an added value in aligning the length of the MFF with the tenure of the Commission and the European Parliament. The Hungarian *Országgyűlés* believes that this question should be discussed in a larger inter-institutional context and supports the European Parliament's idea of organizing an inter-parliamentary conference with the participation of national Parliaments. The Slovenian *Državni zbor* intends to debate the issue in September 2011.

As a general comment, the Italian *Senato della Repubblica* believes that the MFF should be more flexible and more swiftly adaptable to the changing economic circumstances in the EU.

1.3 Proposal to reduce the GNI-based contributions of Member States to the EU budget

¹⁴ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0266+0+DOC+XML+V0//EN>

¹⁵ <http://www.europarl.europa.eu/activities/committees/presCom.do?language=EN&body=SURE>

¹⁶ I.e. the Czech *Senát*, the French *Sénat*, the German *Bundestag*, the Hungarian *Országgyűlés*, the Italian *Senato della Repubblica*, the Irish *Houses of the Oireachtas*, the Lithuanian *Seimas*, the Maltese *Kamra tad-Deputati*, the Portuguese *Assembleia da República*, the Slovenian *Državni zbor* and *Državni svet*, the UK *House of Commons*.

¹⁷ The Spanish *Cortes Generales*

A significant number of 19 Parliaments/Chambers have not debated or reached the final position on the issue yet¹⁸.

Five Parliaments/Chambers that have replied to the question on the proposal to reduce the GNI-based contributions of the Member States to the EU budget are **against** the proposal. Thus, the Bulgarian *Narodno sabranie* warns that any reduction of the GNI-based contribution to the EU budget would **lead to a higher risk of a "two-speed Europe"**, and keeping GNI as one of the main sources of the own resources system would serve as a guarantee that the actual economic development of each Member State is being taken into account. The *Narodno sabranie* believes that "in order to guarantee that the European Union achieves a high level of convergence between the new and old Member States, the long-term trend should be aimed at the reduction of the Disposable Personal Income (DPI) gap between them".

The Czech *Poslanecká sněmovna* **prefers the GNI-based contributions** of Member States rather than adding other types of sources. It is also in favour of maintaining the actual extent of the budget. The Danish *Folketing* supports the position of its Government which is against reducing GNI-based contributions, but is willing to look at specific proposals from the Commission on own resources. The Polish *Senat* notices that the new MFF is to be the first one under the Treaty of Lisbon, offering the EU new opportunities while also imposing new obligations on it. The *Senat* underlines that the EU budget should be **preserved at least at the present level of 1.13% of the GNI-based contributions** of the Members States, to make a real impact on the Member States' national policies and their economic situation.

The Irish *Houses of the Oireachtas* believe that the 1.05% GNI proposal made by the Commission is **broadly acceptable**.

The Italian *Senato della Repubblica* informs that **no opinion** has been developed on this proposal, but stresses that **the Italian Government has welcomed a gradual and carefully considered reduction of the contribution based on the GNP**. It underlines that Italy has been a net contributor to the EU budget for several years, without ever receiving any of the compensation measures envisaged by the MFF for certain States.

In the Greek *Vouli ton Ellinon* there is a broad agreement that that the old system which is primarily based on state contributions should be **modernised and enriched with additional tools and resources**.

Although the Lithuanian *Seimas* has not expressed its opinion yet, the **preliminary position** of the *Seimas* would be to **support the increase** of Member States contributions to the EU budget. The additional funds should be allocated for the implementation of the strategic European goals. Also the Latvian *Saeima* is in **favour of increasing** the proportion of the GNI-based contributions.

The Czech *Senát* believes that the GNI-based component of the EU's own resources should play a major role in the future financing of the EU, and **replace the current resource based on**

¹⁸ I.e. the Belgian *Chambre des représentants* and *Sénat*, the Cypriot *Vouli ton Antiprosopon*, the Estonian *Riigikogu*, the French *Assemblée nationale* and the *Sénat*, the German *Bundestag* and *Bundesrat*, the Hungarian *Országgyűlés*, the Italian *Camera dei Deputati* and the *Senato della Repubblica*, the Lithuanian *Seimas*, the Luxembourg *Chambre des Députés*, the Maltese *Kamra tad-Deputati*, the Portuguese *Assembleia da República*, the Slovenian *Državni zbor* and *Državni svet*, the Swedish *Riksdag* and the UK *House of Commons*

VAT, which were overly complicated. Also the Latvian *Saeima* supports the Commission's proposal to revoke the value-added-tax-based contributions.

The Dutch *Tweede Kamer* supports its Government and believes that the contributions from the Member States to the European Union need to be made more fair and transparent. Preference is given to using a **fixed percentage of the GNI** as resource to finance the EU budget. Using the GNI as the basis for contributions is simple and transparent and also ensures a fair distribution of contributions across the Member States, namely based on the size of the Member States' economies¹⁹.

As a general remark, the Spanish *Cortes Generales* believe that the structure of the contribution to the EU Budget should be established on the principles of equity in revenues and transparency. It favours a system of resources based both on GNI, as well as on the EU traditional resources. According to the Polish *Sejm*, it is necessary to provide for financial support to the new policies introduced by the Treaty of Lisbon. The *Sejm* takes the position that the effective achievement of the Europe 2020 goals will be impossible without proper funding guaranteed in the EU budget. The Romanian *Senatul* would like the EU Budget to contribute to the reduction of expenses at the national level.

In its resolution on "Investing in the future: a new Multiannual Financial Framework (MFF) for a competitive, sustainable and inclusive Europe"²⁰ the European Parliament is convinced that the introduction of **one or several genuine own resources replacing the GNI-based system** is indispensable "if the Union is ever to get the budget it needs to significantly contribute to financial stability and economic recovery".

1.4 New system of EU own resources

1.4.1 EU own resources

As for the proposal to introduce a new system of EU own resources i.e. a modernised VAT system and taxes on, for example, carbon dioxide emissions, air transport, corporate profits, financial transactions or sale of energy carriers, 14 Parliaments/Chambers have not considered or reached a final stance on the issue²¹ or do not have an opinion²².

12²³ Parliaments/Chambers are **against** the measure. The Bulgarian *Narodno sabranie* believes that new EU taxes would additionally burden the economies and citizens of the Member States. The Czech *Senát* believes that the tax policy is an area of sovereign competence of Member States, in which the EU should not interfere, while the Czech *Poslanecká sněmovna* does not support setting up new EU own resources and is in favour of traditional EU own resources and GNI-based contributions.

¹⁹ <https://zoek.officielebekendmakingen.nl/behandelddossier/32500-XIII/kst-32502-7.html> (in Dutch)

²⁰ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0266+0+DOC+XML+V0//EN>

²¹ I.e. the Belgian *Chambre des représentants* and *Sénat*, the Cypriot *Vouli ton Antiprosopon*, the French *Assemblée nationale* and the *Sénat*, the Hungarian *Országgyűlés*, the Italian *Camera dei Deputati* and the *Senato della Repubblica*, the Luxembourg *Chambre des Députés*, the Maltese *Kamra tad-Deputati*, the Slovenian *Državni zbor* and *Državni svet*, the Swedish *Riksdag* and the UK *House of Commons*

²² I.e. the Danish *Folketing*

²³ E.g. the Bulgarian *Narodno Sabranie*, the Czech *Poslanecká sněmovna* and the *Senát*, the Latvian *Saeima*

The Finnish *Eduskunta* has **reservations**, as the various proposals for new own resources do not appear to be very realistic and that own resources imply a lesser degree of political insight by the Member States' political bodies, thereby reducing the democratic legitimacy of the EU budget.

The German *Bundestag* is unlikely to support a European tax, as the governing coalition parties have stipulated so in their coalition agreement. The German *Bundesrat* takes the stance that the traditional own resources (in particular customs duties) should continue to accrue to the EU, and rejects the alternative of a tax-based revenue source for own resources. The Dutch *Tweede Kamer* is not convinced that the introduction of a European tax is desirable. This applies to the proposal to introduce a financial transaction tax (hereinafter referred to as "the FTT"), as well as to the proposed transfer of a part of the nationally collected VAT to the EU budget.

The Polish *Sejm*, too, is **against** introducing any new taxes, which may cause excessive financial burden to the economies of the poorer EU Members. The Polish *Senat* believes that some of the proposed options are unacceptable and underlines that a possible "eurotax" should respect the principle of equitable burden-sharing proportional to Member States' levels of wealth. In particular it **should not be based on CO₂ emissions** since such a solution would hit most severely the citizens of the "new" Member States where "power sectors are often coal-reliant". Finally, the UK *House of Lords* in its report "EU Financial Framework from 2014"²⁴ agreed with the UK Government that the new own resources are an "unfortunate distraction".

The Lithuanian *Seimas* gives a detailed account of its position underlining that EU Member States themselves should be free to choose the most appropriate measures to reduce greenhouse gas emissions. It also stresses that excise tariff review is not necessary for pursuing environmental targets, as the introduction of the environmental element would result in the loss of simplicity of the excise system and encumber the administration of the excise duties. It also warns that the review would result in the increase of minimum excise tariffs on all energy products, with the exception of petrol and energy; thus having a negative impact on the competitiveness of many sectors of economy, especially transport and agriculture.

There are **four** Parliaments/Chambers **favouring** a new system of EU own resources, or some of its elements. The Austrian Parliament strongly supports the introduction of the FTT. Although a final position has not yet been adopted in the Romanian *Senatul*, favourable opinions concerning the introduction of new taxes were expressed. Similarly, the European Parliament has been advocating a reform of the current system of the EU own resources in recent years²⁵. In the resolution on "Investing in the future: a new Multiannual Financial Framework (MFF) for a competitive, sustainable and inclusive Europe", the European Parliament²⁶ takes note of the potential new own resources proposed by the Commission in its Communication on the Budget Review²⁷ (e.g. taxation of the financial sector, auctioning under the greenhouse gas Emissions Trading System, EU charge related to air transport, VAT, energy tax, corporate income tax) and awaits the conclusions of the impact analysis of these options.

²⁴ <http://www.publications.parliament.uk/pa/ld201011/ldselect/ldcom/125/125.pdf>

²⁵ [http://www.europarl.europa.eu/meetdocs/2004_2009/documents/ta/p6_ta-prov\(2007\)0098_/p6_ta-prov\(2007\)0098_en.pdf](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/ta/p6_ta-prov(2007)0098_/p6_ta-prov(2007)0098_en.pdf)

²⁶ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0266+0+DOC+XML+V0//EN>

²⁷ http://ec.europa.eu/commission_2010-2014/president/pdf/eu_budget_review_en.pdf

The Slovak *Národná rada* agrees on the necessity for a new system of EU own resources and believes that the efforts should concentrate on the abolition of the own resource based on the VAT. The *Národná rada* opposes, however, the introduction of a new EU VAT own resource as it infringes the national sovereignty in the area of tax policy.

The Greek *Vouli ton Ellinon* views positively the elimination of the traditional own resources system.

There is a number of Parliaments/Chambers that are **open** to discussing new forms of EU own resources. The Estonian *Riigikogu* holds the opinion that the new own resources must fulfil the criteria of stability and sufficiency. The Slovenian *Državni zbor* remains open for discussion on new own resources underlining, however, that neither the proposed FTT nor the VAT have been clarified. Also the Romanian *Camera Deputaţilor* remains open to consider the introduction of new own resources (FTT, European VAT).

Although the Hungarian *Országgyűlés* has not taken a position yet, it believes that division of competences between the EU institutions and the Member States and the present legal base provided by the Treaties should be respected when introducing a new system of own resources. Similarly, the Committee on EU Affairs of the French *Assemblée nationale* has not taken a position yet. It is of note, though, that the Committee held several meetings with Mr Alain LAMASSOURE, the Chairman of the Budget Committee of the European Parliament (BUDG)²⁸.

Four Parliaments/Chambers underline the need to **simplify** the current system of own resources and make it **more transparent**. The Bulgarian *Narodno sabranie* considers it too complex at present, while the Estonian *Riigikogu* wants it to be more transparent, a view which is shared by the European Parliament²⁹. The Slovak *Národná rada* believes that the current system of own resources is **excessively complex, opaque, lacks fairness** and is finally **incomprehensible to the European citizens**. The *Národná rada* believes that the process of simplification could start from 2014 in the form of the abolition of the own resource based on the VAT.

Concerning the modernisation of the VAT system the Estonian *Riigikogu* is **in favour of the elimination of the current VAT-based own funds** and correction mechanisms; this view is shared by the Slovak *Národná rada*, while the UK *House of Lords* is concerned that losing the VAT-based resource should not compromise the UK abatement. The Greek *Vouli ton Ellinon* is in favour of reformed VAT.

1.4.2 Financial Transaction Tax

There are **six** Parliaments/Chambers **supporting the introduction of the FTT**. The Austrian Parliament strongly supports the introduction of the FTT and believes that, if implemented at the EU level or within the Euro area, the FTT would **generate significant fiscal revenues** without negative side effects on the real economy and would complement the necessary re-regulation of financial markets. Moreover, it would put an end to unjust privileges of financial actors with regard to taxation and also strengthen citizens' trust into EU institutions.

²⁸ <http://www.europarl.europa.eu/activities/committees/homeCom.do?body=BUDG>

²⁹ The report on "Investing in the future: a new Multiannual Financial Framework (MFF) for a competitive, sustainable and inclusive Europe" point 167
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0266+0+DOC+XML+V0//EN>

On 14 June 2011, the French *Assemblée nationale* adopted a resolution on introducing the FTT in Europe³⁰ **favouring the introduction of the FTT** in the European Union, or failing that, in the Euro zone or by a group of Member States. Nevertheless, this resolution does not tackle the question of using the FTT as an own resource of the EU.

The Romanian *Camera Deputaţilor* warns that the issues related to the FTT will have to be **carefully assessed** "in order to avoid excessive burdens on the financial sector liable to generate distortion or delocalisation effects that might postpone a sustainable economic recovery". The *Camera Deputaţilor* thinks the FTT "should be enforced homogeneously" in the EU or even more broadly at G-20 level. The Romanian *Senatul*, for its part, thinks that the FTT should be introduced throughout the EU. The European Parliament takes the view that the FTT "could constitute a substantial contribution, by the financial sector, to the economic and social cost of the crisis, and could also contribute partially to the financing of the EU budget, as well as to lowering Member States' GNI contributions". It adds that "the Union should also act as an example in relation to the movement of funds towards fiscal havens". The Greek *Vouli ton Ellinon*, in turn, believes that the introduction of the FTT may ensure the autonomy of the EU budget.

There are **four** Parliaments/Chambers **opposing** the idea of introducing the FTT. Thus, the Bulgarian *Narodno sabranie* warns that introducing a new FTT in the EU without an agreement on introducing such a tax on the global level would endanger the competitiveness of the financial institutions within the EU. Also, the majority of the Members of the Dutch *Tweede Kamer* is opposed to a FTT as EU own resource³¹ feeling that any tax on transactions can best be implemented worldwide, because, otherwise, this tax would be too easy to evade. Also the Italian *Senato della Repubblica* doubts whether an own resource based on the taxation of financial transactions will be effective or will merely drive investors towards countries with a more liberal tax regime. The Slovak *Národná rada* points out the scepticism expressed in connection with the proposed FTT.

1.5 Support for the Europe 2020 Project Bond initiative

Parliaments/Chambers have been asked whether they support the Commission's proposal on the Europe 2020 Project Bond initiative, the aim of which is to promote individual infrastructure projects by attracting additional private sector financing.

11 of the Parliaments/Chambers report that their respective Committees on EU Affairs have **not yet discussed** the Project Bond initiative of the Europe 2020 Strategy (e.g. the French *Sénat*, the Slovenian *Državni zbor* and the Lithuanian *Seimas*).

Out of the **16** Parliaments/Chambers which have **examined the Europe 2020 Project Bond initiative**, **12**³² **generally support** the idea. As expressed by the Bulgarian *Narodno sabranie*, "the project bonds might prove to be **a useful tool** of realization of multi-regional EU projects within strategies, such as the Danube Strategy, the Black Sea Strategy etc." The Czech *Senát* has

³⁰ <http://www.assemblee-nationale.fr/13/ta/ta0680.asp>

³¹ <https://zoek.officielebekendmakingen.nl/dossier/21501-20/kst-21501-20-546.html>

³² I.e. the Bulgarian *Narodno sabranie*, the Czech *Senát*, the Finnish *Eduskunta*, the German *Bundesrat*, the Greek *Vouli ton Ellinon*, the Hungarian *Országgyűlés*, the Italian *Camera dei Deputati*, the Polish *Senat*, the Romanian *Camera Deputaţilor* and *Senatul*, the UK *House of Lords* and the European Parliament

requested the Commission to further elaborate the concept of project bonds and the Finnish *Eduskunta* calls for "the proposals to be coordinated with the various financing instruments resulting from the economic crisis". The European Parliament also **welcomes** the Europe 2020 Project Bond Initiative, "as a risk-sharing mechanism with the European Investment Bank (EIB), providing capped support from the EU budget that should leverage the EU funds and attract additional interest of private investors for participating in priority EU projects in line with Europe 2020 objectives". Furthermore, the European Parliament calls on the Commission "to **present a fully fledged proposal** on EU project bonds, building on the existing experience with joint EU-EIB instruments, and to include clear and transparent criteria for project eligibility and selection" and reminds "that projects of EU interest which generate little revenue will continue to require financing through grants"³³.

The **main concern** for a number of Parliaments/Chambers is, however, that the **private sector must bear a fair share of the risk** regarding the Project Bond initiative (e.g. the Polish *Senat* and the Greek *Vouli ton Ellinon*). As underlined by the UK *House of Lords* "it should not be allowed to lead to the EU having to provide additional funds beyond its intended contribution". The European Parliament, on its part, is concerned that "the limited size of the EU budget might eventually impose limitations to providing additional leverage for new initiatives"³⁴.

Out of the Parliaments/Chambers which have replied to this question **four are not convinced** that private financing instruments should be applied to finance EU projects (i.e. the Austrian *Nationalrat* and *Bundesrat*, the Dutch *Tweede Kamer* and the Slovak *Národná rada*).

1.6 Implementation of the goals of the Europe 2020 Strategy through the MFF 2014-2020

All of the Parliaments/Chambers which have discussed the question generally **support** the notion that the MFF should provide for the implementation of the goals of the Europe 2020 Strategy³⁵.

However, the German *Bundesrat* explains that "a policy of EU expenditure cannot and **should not constitute the main instrument** for macro-economic management and for implementation of the Europe 2020 strategy" and that the coordination of the Member States' economic policies and the completion of the legal framework at EU level is of **greater importance** than the implementation of the Europe 2020 Strategy. This point is made even more explicit in the reply of the Greek *Vouli ton Ellinon* which writes that because of the reduction in public expenditures, as a result of the financial crisis, it has become almost impossible for "countries like Greece" to sufficiently finance growth and to enhance its participation in the single market.

Six Parliaments/Chambers explicitly support the inclusion of financing initiatives aimed at **strengthening the Single Market**³⁶. The European Parliament, for instance, is convinced that

³³ See paragraph 27 of the European Parliament resolution on Investing in the future: a new Multiannual Financial Framework (MFF) for a competitive, sustainable and inclusive Europe, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0266+0+DOC+XML+V0//EN>

³⁴ Ibid.

³⁵ I.e. the Austrian *Nationalrat* and *Bundesrat*, the Bulgarian *Narodno sabranie*, the Czech *Senát*, the Danish *Folketing*, the Estonian *Riigikogu*, the Finnish *Eduskunta*, the German *Bundesrat*, the Hungarian *Országgyűlés*, the Italian *Camera dei Deputati*, the Latvian *Saeima*, the Lithuanian *Seimas*, the Polish *Sejm* and *Senat*, the Portuguese *Assembleia da República*, the Romanian *Camera Deputaților* and *Senatul*, the Slovak *Národná rada*, the Slovenian *Državni zbor*, the Spanish *Cortes Generales*, the UK *House of Lords* and the European Parliament

"the re-launch of the single market is an essential element of the Europe 2020 Strategy which increases the synergy between its various flagship initiatives"³⁷.

Furthermore a **majority** of the Parliaments/Chambers argue that even though the Europe 2020 Strategy should be one of the main objectives of the MFF it should be balanced with the need to fund **other priorities** of the EU. For example, several Parliaments/Chambers mention the need to allocate financial resources to projects focusing on the development of infrastructure within the sectors of transport, energy and information and communication technologies (e.g. the Bulgarian *Narodno sabranie*, the Hungarian *Országgyűlés* and the Czech *Senát*) but also on development aid, environmental protection, biodiversity and the area of freedom, security and justice. The latter areas are highlighted as EU priorities by the UK *House of Lords* so as to respond clearly to the principal challenges facing the EU today. Finally, more traditional policies such as the cohesion policy and the common agricultural policy are also mentioned as areas which should be sufficiently funded (e.g. the Romanian *Camera Deputaţilor* and the Spanish *Cortes Generales*). As the Polish *Sejm* argues, the way to implement the Europe 2020 Strategy is "to use verified and solid mechanisms of the cohesion policy, the common agricultural policy and other EU budget instruments". Furthermore the European Parliament specifies that "the Europe 2020 Strategy should be **the main policy reference** for the next MFF", maintaining, at the same time, that "Europe 2020 is **not an all-inclusive strategy** covering all Union policy fields" and stressing that "other Treaty-based policies pursuing different objectives need to be duly reflected in the next MFF"³⁸.

About half of the Parliaments/Chambers having replied to this question, report that their respective Committees on EU Affairs have **not yet discussed** the MFF (e.g. the Cypriot *Vouli ton Antiprosopon* and the Czech *Poslanecká sněmovna*). Some indicate that the proposal is expected to be discussed during the autumn of 2011 (e.g. the Slovenian *Državni svet* and the French *Sénat*). The Irish *Houses of the Oireachtas* suggest that the questions considering the MFF "might be **more suited to the COSAC in the first half of 2012**" as it would allow the Committees on EU Affairs of national Parliaments "to consult as appropriate and to produce a considered view" on the matter.

1.7 Structure of EU budgetary expenditure in the MFF 2014-2020

More than a half of the Parliaments/Chambers which have replied to this question report that their respective Committees on EU Affairs **have not yet discussed** the structure of the EU budgetary expenditure in the context of the MFF 2014-2020.

Out of those Parliaments/Chambers which have examined the structure of EU budgetary expenditure in the MFF **only** the Bulgarian *Narodno sabranie* considers that the structure proposed by the Commission is **suitable** as "it gives more visibility to the Europe 2020 and at the same time is easy to be understood by the stakeholders".

³⁶ I.e. the Danish *Folketing*, the Estonian *Riigikogu*, the Hungarian *Országgyűlés*, the Lithuanian *Seimas*, the Polish *Senat* and the European Parliament

³⁷ Ibid, paragraph 41

³⁸ See paragraph 38 of the European Parliament resolution on Investing in the future: a new Multiannual Financial Framework (MFF) for a competitive, sustainable and inclusive Europe, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0266+0+DOC+XML+V0//EN>

12 Parliaments/Chambers **do not believe** that the proposed structure is **sufficiently specific**. As explained by the Czech *Senát* "the change in the structure of the EU expenditure headings as outlined in the EU Budget Review is **not appropriate** as it means further aggregation of various expenditures under a single general and often unrelated heading". This view is supported by the Estonian *Riigikogu* which states that "it is very important how and under what conditions the funds are distributed within the headings and under what conditions they can be used". Furthermore, the **lack of a heading dedicated solely to the cohesion policy** is a recurrent concern for a number of Parliaments/Chambers (e.g. the Finnish *Eduskunta*, the Romanian *Camera Deputaţilor*, the Romanian *Senatul* and the Slovak *Národná rada*).

The European Parliament, for its part, reiterates its position that **more flexibility within and across headings** is an absolute necessity for the functioning capacities of the Union not only to face the new challenges but also to facilitate the decision-making process within the institutions. It also presents a **specific table** in which it proposes a new MFF structure³⁹ that groups under one single heading all internal policies under the title "Europe 2020".

1.7.1 Transfer of funds from Sub-heading 1b to Sub-heading 1a

A **majority** of the Parliaments/Chambers that have replied to this question **do not support** the suggestion of transferring funds from the Sub-heading 1b (Cohesion for growth and employment) to the Sub-heading 1a (Competitiveness)⁴⁰. However, it is a question of achieving the right balance between efficiency and solidarity when considering the transfer of funds from cohesion to competitiveness, as the Romanian *Camera Deputaţilor* emphasises. The Finnish *Eduskunta* notes that "a more coherent approach to cohesion policies should make additional funds available for competitiveness projects".

A **few** Parliaments/Chambers find that the transferring of funds from the Sub-heading 1b to the Sub-heading 1a **would benefit** the economic, social and territorial cohesion of all Member States (e.g. the Danish *Folketing* and the Swedish *Riksdag*). In the present situation where the economy could use an "additional boost", the Slovenian *Državni zbor* is of the opinion that an increase of resources in the area of competitiveness is "more than welcome".

Of those Parliaments/Chambers that have answered the question, **11 have yet to discuss** the issue in their respective Committees on EU Affairs (e.g. the Hungarian *Országgyűlés*, the UK *House of Commons* and the Cypriot *Vouli ton Antiprosopon*). A number of these intend to discuss the question during the autumn of 2011 (e.g. the French *Sénat*, the Irish *Houses of the Oireachtas* and the Polish *Sejm*).

1.8 Unspent EU funds

³⁹ See paragraphs 128-142 of the European Parliament resolution on Investing in the future: a new Multiannual Financial Framework (MFF) for a competitive, sustainable and inclusive Europe", <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0266+0+DOC+XML+V0//EN>

⁴⁰ I.e. the Bulgarian *Narodno sabranie*, the Czech *Poslanecká sněmovna*, the Finnish *Eduskunta*, the German *Bundesrat*, the Italian *Camera dei Deputati*, the Italian *Senato della Repubblica*, the Latvian *Saeima*, the Lithuanian *Seimas*, the Polish *Senat*, the Portuguese *Assembleia da República*, the Romanian *Camera Deputaţilor* and *Senatul* and the Slovak *Národná rada*

Taking into account the scarcity of EU budgetary funds and the need for their efficient use, the Parliaments/Chambers were asked whether they would be in favour of adopting a principle that unspent EU funds should not be returned to the Member States, as is the case now, but instead used in future accounting periods as EU own resources.

The **majority** of the Parliaments/Chambers having answered the question **have not yet discussed** the issue in their respective Committees on EU Affairs. However, several of them expect the issue to be debated during the autumn of 2011 (e.g. the Slovenian *Državni zbor* and the Polish *Sejm*).

Among those Parliaments/Chambers that have discussed this issue, **six do not support** the suggestion (e.g. the Danish *Folketing* and the Italian *Senato della Repubblica*). Three main **explanations** for the lack of support are found in the following replies:

- Instead of carrying unspent funds over to the next fiscal period as EU own resources the **effective use** of EU budgetary resources should be improved (i.e. the Czech *Senát* and the Bulgarian *Narodno sabranie*).
- The **limited budgetary funds** in the Member States should take precedence (i.e. the Austrian *Nationalrat* and *Bundesrat*).
- **Democratic legitimacy** - "both the Union's outlays and its fundraising need to be subject to advance political approval by the Member States" (i.e. the Finnish *Eduskunta*).

Of the Parliaments/Chambers which have discussed the question of unspent EU funds, **three are in favour** of transferring the funds to future accounting periods (the Czech *Poslanecká sněmovna*, the Lithuanian *Seimas* and the European Parliament). The Polish *Senat*, in turn, believes that the suggestion is **worth considering** and the Portuguese *Assembleia da República* thinks the proposal should be subject of a thorough discussion.

CHAPTER 2: TWO YEARS AFTER THE ENTRY INTO FORCE OF THE TREATY OF LISBON - PARLIAMENTARY EXPERIENCE

In December 2011 it will be two years since the entry into force of the Treaty of Lisbon. The aim of the chapter 2 of this report is to evaluate best parliamentary practices and experience of the implementation of the Treaty of Lisbon (including Protocol 2 on the application of the principles of subsidiarity and proportionality).

Since the entry into force of the Treaty of Lisbon national Parliaments have been involved in ensuring the compliance with the principle of subsidiarity according to Protocol 2 and have adopted their internal subsidiarity check mechanisms.

National Parliaments send the Commission reasoned opinions on EU draft legislative acts stating why they consider that the draft in question does not comply with the principle of subsidiarity. Reasoned opinions are also notified to the European Parliament and the Council. National Parliaments receive responses from the Commission to their reasoned opinions. This chapter evaluates the national Parliaments' opinions on the replies sent to them by the Commission and describes how reasoned opinions are dealt with in the European Parliament.

According to Article 5 of Protocol 2 draft legislative acts shall contain the justification that the Union objective can be better achieved at the EU level. This chapter assesses to what extent non-fulfilment of this formal criterion hinders national Parliaments' examination of the EU draft legislative act's compliance with the principle of subsidiarity.

Cooperation between national Parliaments and the EU institutions also takes other forms including informal political dialogue between the Commission and national Parliaments. The experience of national Parliaments in this field is also evaluated in this chapter of the report.

Article 290 of the TFEU states that legislative acts may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. According to the Treaty of Lisbon the essential elements of an area shall be reserved for the EU draft legislative acts and accordingly shall not be the subject of a delegation of power. However, in the opinion of many national Parliaments essential elements are introduced to the delegated acts of the Commission which are outside the scope of control of national Parliaments. The chapter evaluates Parliaments' current practices and views in that respect.

2.1 Reasoned opinions

2.1.1 Reasoned opinions adopted since the entry into force of the Treaty of Lisbon

Since the entry into force of the Treaty of Lisbon a **majority** of national Parliaments/Chambers, i.e. **29**, have **adopted at least one reasoned opinion**. Out of **40** national Parliaments/Chambers, **11** have **not adopted** a reasoned opinion yet⁴¹.

⁴¹ I.e. the Belgian *Chambre des Représentants* and *Sénat*, the Cypriot *Vouli ton Antiprosopon*, the Estonian *Riigikogu*, the Finnish *Eduskunta*, the Greek *Vouli ton Ellinon*, the Hungarian *Országgyűlés*, the Latvian *Saeima*, the Portuguese *Assembleia da República*, the Slovenian *Državni zbor* and *Državni svet*

The **largest number** of reasoned opinions, i.e. **eight**, has been adopted by the Polish *Senat*. The Polish *Sejm* has adopted **seven** reasoned opinions, the Swedish *Riksdag* and the Luxembourg *Chambre des Députés* - five, the Italian *Senato della Repubblica* - four, the Danish *Folketing*, the French *Sénat*, the Lithuanian *Seimas*, the Dutch *Tweede Kamer*, the Dutch *Eerste Kamer* and the Romanian *Senatul* - three each. The remaining **18** national Parliaments/Chambers have adopted one or two reasoned opinions. For more information, please see Table 1 below.

Table 1: Reasoned opinions (by Parliament/Chamber)

Parliament/Chamber	Number of reasoned opinions (in replies)	Draft legislative acts (in replies)	Number of reasoned opinions (on IPEX) ⁴²
Austrian <i>Nationalrat</i>	1	COM (2010) 379	1
Austrian <i>Bundesrat</i>	2	COM (2010) 82 * COM (2010) 379	2
Belgian <i>Chambre des représentants</i>	0	-	0
Belgian <i>Sénat</i>	0	-	0
Bulgarian <i>Narodno sabranie</i>	2	COM(2011) 121 COM(2011) 169	2
Cypriot <i>Vouli ton Antiprosopon</i>	0	-	0
Czech <i>Poslanecká sněmovna</i>	1	COM(2010) 379	1
Czech <i>Senát</i>	1	COM(2010) 379	1
Danish <i>Folketing</i>	3	COM(2010) 368 COM(2010) 486 * COM(2010) 799	3
Estonian <i>Riigikogu</i>	0	-	0
Finnish <i>Eduskunta</i>	0	-	0
French <i>Assemblée nationale</i>	1	COM(2011) 169 °	0
French <i>Sénat</i>	3	COM(2010) 76 ◀ COM(2010) 486 COM(2010) 471 ◀	3
German <i>Bundestag</i>	1	COM(2010) 368 •	1
German <i>Bundesrat</i>	2	COM(2010) 368 • PE-CONS 2/10 ▼	1
Greek <i>Vouli ton Ellinon</i>	0	-	0
Hungarian <i>Országgyűlés</i>	0	-	0
Irish <i>Houses of the Oireachtas</i>	1	COM(2011)121	1
Italian <i>Camera dei Deputati</i>	1 ⁴³	COM(2011) 215 COM(2011) 216	1
Italian <i>Senato della Repubblica</i>	4	COM(2010) 176 COM(2011) 126 °	3 ⁴⁴

⁴² The data as of 8-9 September 2011

⁴³ The Italian *Camera dei Deputati* adopted one reasoned opinion on COM(2011) 215 and COM (2011) 216

		COM(2011) 127 COM(2011) 353 °	
Latvian <i>Saeima</i>	0	-	0
Lithuanian <i>Seimas</i>	3	COM(2010) 379 ♦ COM(2010) 537 ♦ COM(2010) 539 ♦	0
Luxembourg <i>Chambre des Députés</i>	5	COM(2010) 475 ◀ COM(2010) 537 □ COM(2010) 539 □ COM(2010) 738 ◀ COM(2010) 799 *	3
Maltese <i>Kamra tad-Deputati</i>	1	COM(2011) 121	1
Dutch <i>Tweede Kamer</i>	3	COM(2010) 748 COM(2010) 379 ♦ COM(2011) 121	2
Dutch <i>Eerste Kamer</i>	3	COM(2010)748 COM(2010)486 COM(2010)379	3
Polish <i>Sejm</i>	7	COM(2010) 537 COM(2010) 539 ◀ COM(2010) 728 COM(2010) 738 ◀ COM(2010) 799 COM(2011) 121 COM(2011) 127	7
Polish <i>Senat</i>	8	COM(2010) 61 ◀ COM(2010) 379 COM(2010) 537 ◀ COM(2010) 539 ◀ COM(2010) 738 ◀ COM(2010) 745 COM(2010) 799 COM(2011) 127	8
Portuguese <i>Assembleia da República</i>	0	-	0
Romanian <i>Camera Deputaților</i>	1	COM(2011) 121	1
Romanian <i>Senatul</i>	3	COM(2010) 733 * COM(2011) 32 * COM(2011) 127 ♦	2
Slovak <i>Národná rada</i>	1	COM(2011) 121	1
Slovenian <i>Državni zbor</i>	0	-	0
Slovenian <i>Državni svet</i>	0	-	0
Spanish <i>Cortes Generales</i>	2 ⁴⁵	COM(2011) 169 ♦ COM(2011) 215 ♦ COM(2011) 216	0
Swedish <i>Riksdag</i>	5	COM(2010) 368 COM(2010) 371 COM(2010) 486 ◀ COM(2010) 799 COM(2011) 121	5

⁴⁴ On IPEX there is an information on reasoned opinion issued by the Italian *Senato della Repubblica*, concerning COM(2010) 119

⁴⁵ The Spanish *Cortes Generales* adopted one reasoned opinion for both COM(2011) 215 and COM (2011) 216

UK House of Commons	2	COM(2010) 371 COM(2010) 121	2
UK House of Lords	2	COM(2010) 379 COM(2010) 486	2

Symbols used in Table 1:

- * This reasoned opinion cannot be found on IPEX by ticking the field "reasoned opinion", but can be found under the COM number;
- ° No information on scrutiny of this proposal by this Parliament/Chamber;
- ◄ This reasoned opinion cannot be found on IPEX by ticking the field "reasoned opinion", but can be found under the COM number. In addition, the Commission's reply is under the heading "informal political dialogue";
- The Commission's reply is under the heading "informal political dialogue";
- ▼ The dossier of this draft legislative act does not exist on IPEX;
- ◆ No information on the reasoned opinion in the dossier;
- No information on the reasoned opinion is in the dossier. In addition, the Commission's reply is under the heading "informal political dialogue".

The most frequently questioned draft legislative acts with regard to their compliance with the principle of subsidiarity were the proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) (**COM(2011) 121**) and the proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment (**COM(2010) 379**). **Both of them were contested by nine Parliaments/Chambers.**

It is worth noting that in case of the proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) COM(2011) 121, **nine reasoned opinions** amounted to **13 votes** in accordance with Article 7 of Protocol 2. As yet, **none** of the EU draft legislative acts have been contested by the sufficient number of national Parliaments/Chambers to trigger the "yellow card" or the "orange card" mechanisms of Protocol 2.

Table 2: Reasoned opinions (by draft legislative act)

Draft legislative act	Number of reasoned opinions in replies	Parliaments/Chambers that adopted reasoned opinion	Number of reasoned opinions on IPEX
COM(2011) 121 proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)	9	<ul style="list-style-type: none"> ○ Bulgarian <i>Narodno sabranie</i> ○ Dutch <i>Tweede Kamer</i> ○ Irish <i>Houses of the Oireachtas</i> ○ Maltese <i>Kamra tad-Deputati</i> ○ Polish <i>Sejm</i> ○ Romanian <i>Camera Deputaților</i> ○ Slovak <i>Národná rada</i> ○ Swedish <i>Riksdag</i> ○ UK <i>House of Commons</i> 	9
COM(2010) 379 Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment	9	<ul style="list-style-type: none"> ○ Austrian <i>Nationalrat</i> ○ Austrian <i>Bundesrat</i> ○ Czech <i>Poslanecká sněmovna</i> ○ Czech <i>Senát</i> ○ Lithuanian <i>Seimas</i> * ○ Dutch <i>Tweede Kamer</i> * ○ Dutch <i>Eerste Kamer</i> ○ Polish <i>Senat</i> ○ UK <i>House of Lords</i> 	6

COM(2010) 799 Proposal for a Regulation of the European Parliament and of the Council establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)	5	<ul style="list-style-type: none"> ○ Danish <i>Folketing</i> ○ Luxembourg <i>Chambre des Députés</i> ○ Polish <i>Sejm</i> ○ Polish <i>Senat</i> ○ Swedish <i>Riksdag</i> 	5
COM(2010) 486 Amended proposal for a Regulation of the European Parliament and of the Council amending Council Regulations (EC) No 1290/2005 and (EC) No 1234/2007, as regards distribution of food products to the most deprived persons in the Union	5	<ul style="list-style-type: none"> ○ Danish <i>Folketing</i> ○ Dutch <i>Eerste Kamer</i> ○ French <i>Sénat</i> ○ Swedish <i>Riksdag</i> ○ UK <i>House of Lords</i> 	5
COM(2010) 368 Proposal for a Directive of the European Parliament and of the Council on Deposit Guarantee Schemes [recast]	4	<ul style="list-style-type: none"> ○ Danish <i>Folketing</i> ○ German <i>Bundestag</i> ○ German <i>Bundesrat</i> ○ Swedish <i>Riksdag</i> 	4
COM(2011) 127 Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships	4	<ul style="list-style-type: none"> ○ Italian <i>Senato della Repubblica</i> * ○ Polish <i>Sejm</i> ○ Polish <i>Senat</i> ○ Romanian <i>Senatul</i> 	3
COM(2010) 537 Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)	4	<ul style="list-style-type: none"> ○ Lithuanian <i>Seimas</i> * ○ Luxembourg <i>Chambre des Députés</i> * ○ Polish <i>Sejm</i> ○ Polish <i>Senat</i> 	2
COM(2010) 539 Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers	4	<ul style="list-style-type: none"> ○ Lithuanian <i>Seimas</i> * ○ Luxembourg <i>Chambre des Députés</i> * ○ Polish <i>Sejm</i> ○ Polish <i>Senat</i> 	2
COM(2010) 738 Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 as regards marketing standards	3	<ul style="list-style-type: none"> ○ Luxembourg <i>Chambre des Députés</i> ○ Polish <i>Sejm</i> ○ Polish <i>Senat</i> 	3

COM(2011) 169 Proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity	3	<ul style="list-style-type: none"> ○ Bulgarian <i>Narodno sabranie</i> ○ French <i>Assemblée nationale</i> * ○ Spanish <i>Cortes Generales</i> * 	1
COM(2010) 371 Proposal for a Directive of the European Parliament and of the Council amending Directive 97/9/EC of the European Parliament and of the Council on investor-compensation schemes	2	<ul style="list-style-type: none"> ○ Swedish <i>Riksdag</i> ○ UK <i>House of Commons</i> 	2
COM(2010) 748 Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters	2	<ul style="list-style-type: none"> ○ Dutch <i>Tweede Kamer</i> ○ Dutch <i>Eerste Kamer</i> 	2
COM(2011) 215 Proposal for a Regulation of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection	2	<ul style="list-style-type: none"> ○ Italian <i>Camera dei Deputati</i> ○ Spanish <i>Cortes Generales</i> * 	1
COM(2011) 216 Proposal for a Council Regulation implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements	2	<ul style="list-style-type: none"> ○ Italian <i>Camera dei Deputati</i> ○ Spanish <i>Cortes Generales</i> * 	1
COM(2010) 61	1	Polish <i>Senat</i>	1
COM(2010) 76	1	French <i>Sénat</i>	1
COM(2010) 82	1	Austrian <i>Bundesrat</i>	1
COM(2010) 176	1	Italian <i>Senato della Repubblica</i>	1
COM(2010) 471	1	French <i>Sénat</i>	1
COM(2010) 475	1	Luxembourg <i>Chambre des Députés</i>	1
COM(2010) 728	1	Polish <i>Sejm</i>	1
COM(2010) 733	1	Romanian <i>Senatul</i>	1
COM(2010) 745	1	Polish <i>Senat</i>	1
COM(2011) 32	1	Romanian <i>Senatul</i>	1
COM(2011) 126	1	Italian <i>Senato della Repubblica</i> *	0
COM(2011) 353	1	Italian <i>Senato della Repubblica</i> *	0
PE-CONS 2/10	1	German <i>Bundesrat</i> *	0

* The reasoned opinion adopted by this Parliament/Chamber is not published on IPEX

2.1.2 Publication of reasoned opinions on IPEX

On 10 July 2011, the Presidential Troika of COSAC asked the COSAC Secretariat to include in the 16th Bi-annual Report a comparative analysis **on whether reasoned opinions** of national

Parliaments are **routinely and promptly published on IPEX**, a tool for exchanging information on EU parliamentary activities⁴⁶.

Based on the replies of national Parliaments/Chambers to the questionnaire for this report and the data published on IPEX, the COSAC Secretariat has performed the aforementioned analysis and has the following **general observations**:

- Although the vast majority of **reasoned opinions** is published on IPEX, **some are missing**;
- Some reasoned opinions are called by Parliaments/Chambers Opinions, Statements, Conclusions, and thus are **not identified as reasoned opinions** on IPEX and, as a result, **can not be found**;
- On a number of occasions, reasoned opinions **cannot be found** on IPEX by choosing **the heading "reasoned opinions"** and the name of the Parliament/Chamber in question, but can be found under the COM number of the particular draft legislative act; and
- Some reasoned opinions cannot be found on IPEX, while the Commission's replies to them are **published on IPEX under the heading of "informal political dialogue"**.

Bearing in mind the fact that the IPEX website has undergone major developments recently (new platform since June 2011), the practices concerning the scrutiny of EU draft legislative acts are still *in statu nascendi* and having regard to the above findings, it may be advisable for COSAC to encourage national Parliaments/Chambers to **publish** promptly and **regularly update** the information posted on the IPEX website.

2.1.3 Replies from the European Commission on reasoned opinions

Parliaments/Chambers have been asked to express their views on the Commission's replies to their reasoned opinions on EU draft legislative acts. Most national Parliaments/Chambers indicate that the Commission **replies to all reasoned opinions**.

The Commission has decided to reply to national Parliaments when they issue a reasoned opinion within three months of the receipt of the opinion. National Parliaments have been asked to indicate whether this self-imposed three month time-limit is met by the Commission.

From among the **19** Parliaments/Chambers which had adopted reasoned opinions at least three months before the deadline for the replies to the questionnaire for this report, a large majority (i.e. **13**) indicate that the three-month deadline was not met in at least one case. In some cases, the self-imposed deadline had not yet expired at the time when Parliaments/Chambers drafted their replies to the questionnaire (e.g. in the case of COM(2011) 121).

In some cases, national Parliaments/Chambers indicate that they had to wait for **four to six months** for the Commission's reply (e.g. the Austrian *Bundesrat* and the Czech *Senát* - four months, the German *Bundestag* - almost six months, the Polish *Senat* received the replies after four-six months).

⁴⁶ See minutes of the meeting of the Presidential Troika of COSAC on 9 July 2011 in Warsaw: <http://www.cosac.eu/en/meetings/poland2011/chairs/>

2.1.4 Quality of the Commission's replies to reasoned opinions

Four Parliaments/Chambers express **satisfaction** with the Commission's replies, without any reservations (i.e. the French *Sénat*, the German *Bundestag*, the Italian *Senato della Repubblica*, the Romanian *Senatul*).

Some Parliaments/Chambers inform that the quality of replies has **not (yet) been debated** as such (e.g. the Czech *Poslanecká sněmovna* and the UK *House of Commons*).

Specific reservations on the quality of Commission's replies expressed by **four** national Parliaments/Chambers concern both their form and content as they were deemed to be **too general, too short** or **generic**, apparently addressed to all national Parliaments.

According to the Polish *Sejm*, the replies were **not satisfactory**. "The main argument of the Presidium of the EU Affairs Committee, as well as of the Chancellery services, is that the **explanations are limited to one short paragraph**, in which Commission maintains its position and in general way takes an attitude towards the *Sejm's* doubts included in the reasoned opinion". The Polish *Senat*, for its part, notes that the Commission's replies to the reasoned opinions regarding COM(2010) 61, COM(2010) 379 and COM(2010) 537 "did include the Commission's position on the objections raised by the EU Affairs Committee". However, other replies, i.e. those to the reasoned opinions which claimed that the Commission had been granted too much power to regulate by means of delegated acts, were deemed **unsatisfactory** since the Commission offered **only a brief formal and legal explanation, without dealing with the objections raised in those opinions**".

The Lithuanian *Seimas* indicated that even though the recent report on the relations between the Commission and national Parliaments reiterates that all replies are individual, sometimes the Commission uses the practice **to generalise the answers** to the questions raised by national Parliaments **and send the same answers to all submitted reasoned opinions**. Thus the reply to a specific question raised by the particular national Parliament "looks watered down".

The UK *House of Lords* was also "**disappointed at the quality** of the reply to our reasoned opinion on the Seasonal Workers proposal". The *House of Lords* received "a **generic reply**, apparently addressed to all national Parliaments, **rather than a reply specifically addressing the concerns expressed**" in its opinion.

In this context, the Austrian *Nationalrat* and *Bundesrat* pointed out that while at the administrative level the replies were sometimes perceived as being **too general**, it was apparent from regular contacts with the Commission that "there is an **awareness** of this problem and that quite some effort is invested constantly improving them".

2.1.5 Dealing with the Commission's replies in national Parliaments

Practices for dealing with the Commission's replies in national Parliaments/Chambers vary. Out of **40** national Parliaments/Chambers which sent their replies, **17** share their experiences and practices and two describe planned procedure for dealing with the replies when they come in the future.

In **four** Parliaments/Chambers (i.e. the Czech *Poslanecká sněmovna*, the Danish *Folketing*, the Lithuanian *Seimas* and the French *Sénat*) the replies are sent only to the **Committees on EU Affairs** and/or other relevant **specialised committees**.

Furthermore, in the Polish *Sejm*, the Commission's replies are discussed in the meeting of the **Presidium of EU Affairs Committee** and then passed on to the **Members** of the committee. In the Dutch *Tweede Kamer* and the *Eerste Kamer*, the replies are put on the agenda of a meeting of the relevant committee and subsequently the committee decides on an adequate **follow-up**. On the other hand, in the Swedish *Riksdag*, there is no formal procedure for how to deal with the replies. They are forwarded to the relevant committee and it is up to the committee to decide how to proceed with them.

The group of recipients of the Commission's replies is sometimes wider. For instance, in the Austrian *Nationalrat* and *Bundesrat* the replies are distributed also to the **staff of the political groups** dealing with EU matters and to the administrative staff in the **EU department** and in the Luxembourg *Chambre des Députés* among recipients of the replies are Members of the European Parliament from Luxembourg and members of professional chambers⁴⁷.

Four Parliaments/Chambers (i.e. the Czech *Senát*, the Polish *Senat*, the UK *House of Commons* and *House of Lords*) indicate that they **publish** such replies on their **websites**. The German *Bundesrat* **reprints** the replies as *Bundesrat's official documents*. Similarly, the Irish *Houses of the Oireachtas* intend to forward the reply to its reasoned opinion on the CCCTB proposal to the joint Committee on European Union Affairs and the Joint Committee on Finance, Public Expenditure and Reform for consideration. The reply will also be included in a **weekly report** of documents received by the Commission and laid in the **Library** of both Houses.

Finally, the Finnish *Eduskunta*, which has not yet adopted a reasoned opinion, states that in future such replies "would be equivalent to any other additions to an existing dossier, i.e. would be discussed by the Grand Committee, which might express an opinion or order the Government to take action".

2.1.6 Reflection of reasoned opinions in EU draft legislative acts

The issue of the reflection of reasoned opinions in EU draft legislative acts has proved to be rather difficult to examine at this stage because of the scarce material available. The Treaty of Lisbon came into force on 1 December 2009 and, therefore, the practice of issuing reasoned opinions is very recent. Moreover, that the contested draft legislative acts originate from 2010 or 2011.

Nevertheless, two national Parliaments/Chambers (i.e. the Danish *Folketing* and the German *Bundesrat*) indicate **potential reflection** of their reasoned opinions on one draft legislative act, i.e. on the proposal for a Directive of the European Parliament and of the Council on Deposit Guarantee Schemes (COM(2010) 368). The Danish *Folketing* points out that regarding COM(2010) 368, the **part of the proposal, which was criticised** by the *Folketing*, was later **removed**. The German *Bundesrat*, in turn, indicates that "during deliberations on the draft

⁴⁷ Professional chambers include among others the Chamber of Commerce, the Chamber of Agriculture, the Chamber of Civil Servants and the Chamber of Employees (i.e. unions), whose opinion is required by law concerning certain (national) legislative proposals. Therefore, the Luxembourg *Chambre des Députés* has decided to closely cooperate on EU matters with, *inter alia*, with these professional chambers

directive in the Committee of Permanent Representatives, Part 2, on 17 June 2011, the Commission ultimately agreed to a compromise proposal from the (German) Federal Government; this envisaged, *inter alia*, that voluntary deposit guarantee schemes providing protection extending above the 100,000 Euro cut-off point should to a large extent not fall within the scope of the directive. This in essence corresponded to a key demand formulated in the *Bundesrat's* reasoned opinion on the draft directive".

The Swedish *Riksdag* notes that since the Treaty of Lisbon came into force "none of the (contested) draft legislative acts have been adopted and it is therefore **not clear** whether and how the reasoned opinions have been taken into consideration in the final legislative act". The *Riksdag* further notes that "the Commission did not meet the fundamental objections in the answer regarding COM(2010) 486⁴⁸, but instead included this proposal as part of the next proposal COM(2010) 799⁴⁹". Therefore, the *Riksdag's* objections remain valid. Moreover, that the COM(2010) 799 dossier contains "many ambiguities". Therefore, it is not clear which amendments have been made in relation to the current regulation.

2.1.7 Continued dialogue with the Commission after receiving its replies

All 40 national Parliaments/Chambers state that so far they **have not continued** the informal dialogue with the Commission on draft legislative acts after they received the Commission's reply to their reasoned opinion. However, the French *Assemblée nationale* points out that its Committee on European Affairs intends to continue the political dialogue with the Commission, which enables it to extend its scrutiny to the principle of proportionality and to initiate discussions on the substance of the proposals.

2.1.8 Sufficiency of the eight-week period for the evaluation of EU draft legislative acts

Article 6 of Protocol 2 stipulates that "any national Parliament or any chamber of a national Parliament may, **within eight weeks** from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that a draft in question does not comply with the principle of subsidiarity".

39 national Parliaments/Chambers have provided replies to the question on whether this eight-week period is sufficient to examine a draft legislative act both on the basis of its compliance with the principle of subsidiarity and on other aspects. It seems that **Parliaments/Chambers are divided** on the issue: **ten are satisfied** with the time-frame of Protocol 2, **14**, although generally satisfied, have various **reservations**, **ten find it insufficient or problematic** and the remaining **five** provide **general comments** without taking a formal position.

⁴⁸ Proposal for a Regulation as regards distribution of food products to the most deprived persons in the Union (COM(2010) 486)

⁴⁹ Proposal for a Regulation establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO) (COM(2010) 799)

Ten Parliaments/Chambers⁵⁰ consider the eight-week period **sufficient** for verifying the compliance of draft legislative acts with the principle of subsidiarity. For instance, the experience of the Portuguese *Assembleia da República* of the implementation of the Treaty of Lisbon has shown that the eight-week period is **sufficient** to check compliance with the principle of subsidiarity and to scrutinise draft legislative acts on other grounds. It is worth noting that while the *Assembleia da República* has not yet issued a reasoned opinion under Article 6 of Protocol 2, it has expressed its opinion on all draft legislative acts within the eight-week period within the framework of informal political dialogue. Also, the Lithuanian *Seimas* considers the eight-week period **sufficient** for subsidiarity checks. Usually, the Committee on European Affairs of the *Seimas* sets the time limit of up to four weeks for the specialised committees for deliberation of other aspects of the proposal. The Italian *Camera dei Deputati*, too, believes that the eight-week period is **sufficient, but only for subsidiarity checks**. An in-depth analysis of the substantive aspects of draft legislative acts and other EU documents in the *Camera dei Deputati* is usually finalised after the eight-week period.

A group of 14 Parliaments/Chambers, although generally satisfied with the eight-week period, seem to **have various reservations** about it. For instance, the Austrian *Nationalrat* and *Bundesrat* are of the opinion that "the period is short, but it can be done". In the view of the Irish *Houses of the Oireachtas* the eight week period **could, potentially, be insufficient** to consider a proposal's compliance with the principle of subsidiarity, in particular if other aspects of the proposal are at issue. The *Houses of the Oireachtas* note that this is obviously **compounded if** the proposal is **very complex** or it is published during the period following general elections. This opinion is shared by the Slovak *Národná rada* which believes that in the majority of cases the eight-week period is "long enough", but when it comes to more complicated cases, **"additional time would be helpful"**.

The Dutch *Tweede Kamer* annually selects proposals from the Working Programme of the Commission to be "tested against the principles of subsidiarity and proportionality". For this exercise, the *Tweede Kamer* generally considers the eight-week period to be sufficient. However, in order to guarantee the smooth functioning of the "yellow card" and the "orange card" mechanisms, the *Tweede Kamer* regards the eight weeks as **rather tight**, especially in cases when it starts examining a specific proposal only after a notification from another Parliament. The *Tweede Kamer* is concerned that the "yellow card" and the "orange card" coalition building will already absorb a substantial part of the eight-week period, potentially resulting in missed deadlines.

Similarly, the Polish *Sejm* so far has not had any problems with adoption of reasoned opinions during the eight-week period. However, the procedures of adopting reasoned opinions are **long and time-consuming**. Therefore, sometimes the EU Affairs Committee of the *Sejm*, being the initiator, sometimes needs to work under the pressure of time.

In the opinion of the Swedish *Riksdag*, the eight weeks would normally be a sufficient period of time for examination. However, clearer **and more certain indications** as to when a draft legislative act should be expected would facilitate the *Riksdag*'s planning of subsidiarity checks.

⁵⁰ I.e. the Cypriot *Vouli ton Antiprosopon*, the Italian *Camera dei Deputati*, the Finnish *Eduskunta*, the French *Sénat*, the German *Bundesrat*, The Greek *Vouli ton Ellinon*, the Lithuanian *Seimas*, the Polish *Senat*, the Portuguese *Assembleia da República*, and the Romanian *Senatul*

Finally, the UK *House of Lords* also indicates that the eight week period is **tight**, but does usually allow sufficient time for the relevant aspects of a draft legislative act to be examined. The need to secure time in plenary in order for the *House of Lords* to take a view on a draft reasoned opinion **could prove problematic**. For that purpose, the EU Committee "has an undertaking from the business managers to make time available within the eight week deadline wherever possible".

On the other hand, **ten** Parliaments/Chambers consider **the eight-week deadline to be too short**. For instance, since in the Czech *Senát* a proposal has to be deliberated both at the committee (approximately two meetings a month) and at the plenary level (approximately one meeting a month), the *Senát* considers the eight-week period as **generally insufficient**. On one occasion, in order to adopt a reasoned opinion on time, the EU Affairs Committee of the *Senát* had to convene an **extraordinary meeting**.

Similarly, in the view of the German *Bundestag*, "the eight-week period is **not a sufficient period** to examine all aspects of a Commission legislative proposal". For the Bulgarian *Narodno sabranie*, too, "the period is achievable, but **not sufficient as a whole**". For the French *Assemblée nationale* "the eight-week period **poses real organisational challenges**, while for the UK *House of Commons*, it **causes difficulty** in two respects: the time required to receive an Explanatory Memorandum from the UK Government and the time needed to ensure that debate on a Motion can be scheduled in order to secure the endorsement of the European Scrutiny Committee's recommendation by the *House of Commons*.

Among the ten Parliaments/Chambers, **five** Parliaments/Chambers **would definitely welcome a longer period** (the Czech *Poslanecká sněmovna*) as the eight weeks is **very little time** to substantially check Commission proposals (the Danish *Folketing*), is **a rather narrow timeline** for an effective examination a legislative proposal (the Hungarian *Országgyűlés*), is **rather short and particularly problematic** when this period falls over parliamentary recesses (the Maltese *Kamra tad-Deputati*) and **at times is barely sufficient** (the Italian *Senato della Repubblica*). As a result, the Danish *Folketing*, for instance, resorts to the **informal political dialogue**, when more than eight weeks are needed for the scrutiny of the content of a draft legislative act.

Finally, **five** Parliaments/Chambers give **general comments** or indicate that **no official position** on the issue has been taken yet. Thus the Estonian *Riigikogu* is of the opinion that the sufficiency of the eight-week period should be measured against each individual proposal. The Slovenian *Državni zbor*, for its part, considers that, based on earlier experiences, the eight-week period could be sufficient, even if since the entry into force of the Treaty of Lisbon it has not adopted any reasoned opinions. The issue has not yet been raised by the Committee on EU Affairs of the Spanish *Cortes Generales*. The Romanian *Camera Deputaţilor* has only recently (i.e. on 19 April 2011) adopted a new legal framework on its participation in the European affairs⁵¹. This new framework will be assessed in the future, although so far the *Camera Deputaţilor* has managed to comply with the eight-week deadline.

2.1.9 Lack of a legal basis and lack of (or insufficient) subsidiarity justification

National Parliaments/Chambers have been asked whether they have ever considered the lack of a legal basis or lack of (or insufficient) subsidiarity justification in the explanatory memorandum

⁵¹ Decision of the Romanian *Camera Deputaţilor* No 11/2011

of a draft legislative act as grounds for finding a breach of the principle of subsidiarity, and as a consequence have adopted a reasoned opinion. Out of the **33** Parliaments/Chambers which have replied to the question, **16** indicate that they have indeed found the lack of a legal basis and/or lack of (or insufficient) subsidiarity justification to be an **infringement of the principle of subsidiarity** and have as a consequence adopted **reasoned opinions**. On the other hand, **nine** Parliaments/Chambers have given a **negative answer** (e.g. the Cypriot *Vouli ton Antiprosopon*, the Estonian *Riigikogu*, the Portuguese *Assembleia da República*).

2.1.9.1 Lack of a legal basis

Eight Parliaments/Chambers give specific examples of **reasoned opinions** issued on the grounds of the absence of a legal basis for a draft legislative act.

Thus, the Danish *Folketing* in its **reasoned opinion**⁵² of 7 March 2011 on the proposal for a Regulation establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO) (COM(2010) 799) found that the intended measures had "shifted from having been agricultural policy measures to social measures" and consequently failed to fulfil the objectives of the common agricultural policy. As a consequence, the *Folketing* found that "**the legal basis** cited by the Commission in the proposal **is incorrect** (Article 43(2) of the TFEU)".

Similarly, the Italian *Senato della Repubblica* draws attention to the fact that the Commission has indicated Article 81(3) of the TFEU as the legal basis for the proposal for a Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships (COM(2011) 127) and for the proposal for a Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (COM(2011) 126). The *Senato della Repubblica* points out that Article 81(3) of the TFEU provides that "measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure". In its **reasoned opinions** of 31 May 2011, the *Senato della Repubblica* highlighted problematic aspects relating to the extension of family law provisions to same-sex marriage and expressly objected to the extension of family law to registered partnerships (COM(2011) 127). In both cases, it concluded that "**problems relating to the legal basis** require further consideration of the proposal's compliance with the subsidiarity principle".

The Austrian *Nationalrat* and *Bundesrat* have criticised the lack of legal basis in their **reasoned opinions**⁵³ on the Proposal for a Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment (COM(2010) 379). Both Chambers found that the chosen legal basis for the proposal, i.e. Article 79(2a) and (2b) of the TFEU was "**inadequate**, because these provisions do not provide a basis for decreeing European rules that have impact on the national labour markets, an intention explicitly stated in the proposal".

The Spanish *Cortes Generales* and the Italian *Camera dei Deputati* in their reasoned opinions on the proposal for a Regulation implementing enhanced cooperation in the area of the creation of

⁵²http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npdocs/denmark/2010/com20100799/com20100799_folketinget_opinion_en.pdf

⁵³<http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20100210/atnat.do>

unitary patent protection (COM(2011) 215) and on the proposal for a Regulation implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements (COM(2011) 216) found that the breach of the principle of subsidiarity was due to **an erroneous legal basis**. In the **reasoned opinion**⁵⁴, the Italian *Camera dei Deputati* stressed explicitly that "the subsidiarity check implies also the assessment of the correctness of the legal basis" and that "the proposals are **devoid of a sound legal basis**". It further states that "Article 118 of the TFEU confers on the Union exclusive competence in the area of the creation of unitary patent protection. Therefore the decision 2011/167/UE of the Council authorising enhanced cooperation and its implementation does not comply with article 20(1) TEU which provides that Member States may establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences".

Also, the German *Bundesrat* identified violations of the subsidiarity principle in respect of the Member State initiative on the European Protection Order (PE-CONS 2/10) and, as a result, adopted a **reasoned opinion** stating that there were **considerable doubts** as to whether the draft directive could be based on the envisaged legal basis.

In addition, the Swedish *Riksdag* indicates that although the lack of a legal basis or subsidiarity justification has not been "a stand-alone objection in a reasoned opinion", a **breach of the legality principle** has been the main objection in a **reasoned opinion**⁵⁵ on a proposal for a Regulation as regards distribution of food products to the most deprived persons in the Union (COM(2010) 486). The *Riksdag* had serious objections to the proposal, the main one being that the **legal basis** on which the proposal rests was **inaccurate**.

On the other hand, **a few** Parliaments/Chambers indicated that the absence of a legal basis has **not** been considered **a ground of an infringement** of the principle of subsidiarity. For instance, the European Scrutiny Committee of the UK *House of Commons* considers the lack of a legal basis to be **a question of competence** rather than subsidiarity. In the view of the *House of Commons*, "if there is no competence for the EU to act, subsidiarity cannot arise. Competence to act is, a necessary prerequisite to consideration of subsidiarity". By the same token, the Portuguese *Assembleia da República* does not consider the lack of a legal basis as a cause for a breach of the subsidiarity principle. Whenever questions of the adequacy of a legal basis have been raised in the *Assembleia da República*, they have always been dealt with in the framework of the **informal political dialogue**.

2.1.9.2 Lack of or insufficient justification with regard to the principle of subsidiarity

Article 5 of Protocol 2 provides:

"Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative

⁵⁴ <http://www.ipex.eu/IPEXL-WEB/scrutiny/COM20110216/itcam.do>

⁵⁵ <http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20080183/serik.do>

and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved".

The total of 17 Parliaments/Chambers **comment on the consequences** of the lack of or insufficient justification of draft legislative acts with regard to the principle of subsidiarity. For instance, the Danish *Folketing* in its **reasoned opinion** on the proposal for a Regulation establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO) (COM(2010) 799) found that "**the Commission has not - as it is obliged – properly justified the proposal** with regard to its compliance with the subsidiarity principle. The proposal neither contains a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality, nor has it been substantiated by qualitative or quantitative indicators making it possible to conclude whether the objectives of the proposal can be better achieved at EU level than at national level."

The French *Sénat* refers to two of its **reasoned opinions**⁵⁶, one on the proposal for a Regulation as regards distribution of food products to the most deprived persons in the Union (COM(2010) 486) and the other on the proposal for a Decision establishing the first radio spectrum policy programme (COM(2010) 471). The reasoned opinions were intended **to remind the Commission** that the lack of the justification of the proposals with regard to the principle of subsidiarity constitutes a violation of Article 5 of Protocol 2.

The Polish *Sejm*, too, has invoked a violation of Article 5 of Protocol 2 in its **reasoned opinion**⁵⁷ on the proposal for a Regulation on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (COM(2010) 537) and on the proposal for a Regulation establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers (COM(2010) 539). The *Sejm* drew attention to the fact in line with the jurisprudence of the Court of Justice, the justification of an EU legal act should make it possible to understand those reasons for its adoption and, subsequently, to examine its legality. It was the Commission's responsibility to provide the reasons. Consequently, the *Sejm* found that in the **absence of an explanation** justifying the compliance of the proposal with the principle of subsidiarity, it could not evaluate the Commission's arguments on the proposal's compliance with this principle. **The lack of justification** with regard to the principle of subsidiarity of the same proposal for a Regulation establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers (COM(2010) 539) has been the basis for issuing a **reasoned opinion** by the Luxembourg *Chambre des Députés*.

Similarly, the European Scrutiny Committee of the UK *House of Commons* is of the opinion that "the **sufficiency of the subsidiarity justification** should be a **critical part** of national Parliaments' consideration of whether to issue a reasoned opinion", noting that it is on procedural grounds that the Court of Justice is likely to find a breach of the principle of subsidiarity. The European Scrutiny Committee raised the issue of the **absence of a "detailed statement"** containing the necessary quantitative and qualitative indicators **as a ground of the breach of subsidiarity** in its **reasoned opinion** on the proposal for a Directive on a Common Consolidated Corporate Tax Base (CCCTB) (COM(2011) 121/4):

⁵⁶ <http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20080183/frsen.do>

⁵⁷ <http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20100266/plsej.do>

"18. Section 2.4 of the impact assessment (on subsidiarity and proportionality) **does not contain a "detailed statement"** to make it possible to appraise compliance with the principle of subsidiarity (and proportionality), as required by Article 5 of Protocol 2. The summary of the impact assessment states that the impact assessment followed the Guidelines of Secretariat General for Impact Assessments, which do not appear to include a provision for a detailed statement in accordance with Article 5 of Protocol 2 (see paragraph 11 above). Section 2.4 **falls a long way short of the level of detail required** to substantiate action at EU level [...]"

Furthermore, the Joint Committee on European Union Affairs of the Spanish *Cortes Generales* in its **reasoned opinion**⁵⁸ on the proposal for a Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity (COM(2011) 169) also found a breach of the principle of subsidiarity due to a **lack of justification**.

The Austrian *Nationalrat* and *Bundesrat*, too, have criticised the lack of subsidiarity justification in their **reasoned opinions**⁵⁹ on the Proposal for a Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment (COM(2010) 379). With regard to the requirements for the detailed statement under Article 5 of Protocol 2, both the *Nationalrat* and *Bundesrat* found that "all these **aspects are absent** from the proposed Directive (and in the working document) or **are difficult to identify and without substance**".

In this context, a number of Parliaments/Chambers highlight the **importance of adhering to the requirements of Article 5** of Protocol 2. Thus, the Bulgarian *Narodno sabranie* calls for a "more substantive subsidiarity justification" which **could lead to a better evaluation** of draft legislative acts. Similarly, the German *Bundestag* indicates that many Members of Parliament **criticise** the subsidiarity justification in most legislative proposals. Sufficient justification under Article 5 of Protocol 2 is also underscored by the Dutch *Tweede Kamer*.

The Lithuanian *Seimas*, for its part, details a **test** it applies when evaluating the compliance of draft legislative acts with the principle of subsidiarity **based on** the information contained in the **explanatory memorandum** of the proposal. Thus, it takes into account the following:

- Sufficiency of the consultations with Member States in the drafting process of the act;
- Explanations allowing to assess the compliance with the principle of subsidiarity;
- Presence of qualitative and quantitative criteria on which the proposal is based;
- Assessment of the financial and administrative burden;
- Potential regulatory impact of the draft legislative act.

2.1.10 Impact assessments of EU draft legislative acts

As a rule, all major policy initiatives and legislative proposals on the Commission's Work Programme (hereinafter referred to as "the CWP") are required to undergo an **impact assessment of the potential economic, social and environmental consequences** that they may

⁵⁸ <http://www.ipex.eu/IPEXL-WEB/scrutiny/CNS20110092/escor.do>
⁵⁹ <http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20100210/atnat.do>

have. According to the Commission, "impact assessment is an aid to political decision-making, not a substitute for it"⁶⁰. The annual roadmaps⁶¹, which are also published at the time the CWP is adopted, give an indication of the main areas to be assessed and the planning of impact assessments. The roadmaps and impact assessments (since 2003) are published on the Commission Impact Assessment website⁶².

In November 2005, the European Parliament, the Commission, and the Council have agreed on an **inter-institutional Common Approach to Impact Assessment**⁶³, setting out basic rules for impact assessments throughout the legislative process. The European Parliament and the Council have agreed to assess the impact of their own 'substantive' amendments.

In 2006, the **Impact Assessment Board**⁶⁴ was created as a **central quality control** and support function working under the authority of the President of the Commission. It is chaired by the Deputy Secretary General responsible for Better Regulation. The Impact Assessment Board examines and issues opinions on all the Commission's impact assessments.

2.1.10.2 Quality of impact assessments

Out of **36** Parliaments/Chambers which have answered the question on impact assessments, **19** comment on their quality.

A number of Parliaments/ Chambers **provide general comments** on the **usefulness** of impact assessments for the scrutiny process in national Parliaments. Thus, in the opinion of the Cypriot *Vouli ton Antiprosopon* impact assessments are **necessary** during the examination of a draft legislative act. The French *Sénat* finds the information contained in impact assessments "**helpful**". In the Polish *Senat* impact assessments "serve as a **useful tool**" for the analysts who prepare preliminary opinions for its EU Affairs Committee. The Portuguese *Assembleia da República* finds them "**very relevant** to an understanding of the draft legislative act" and of its scope. The European Parliament believes them to be "**a suitable instrument** for verifying the relevance of Commission proposals, and **in particular compliance with the principles of subsidiarity** and proportionality, and for explaining more clearly to the co-legislators and the public at large the reasons behind opting for a given measure".

Five Parliaments/Chambers are **satisfied** with the quality of impact assessments. Thus, the Bulgarian *Narodno sabranie* considers the quality of impact assessments to be **good**. The Czech *Poslanecká sněmovna* thinks "it is **all right**". The Czech *Senát*, too, mostly finds the data provided in the impact assessments **sufficient**, but draws attention to the need to have a discussion on "the **methodology of the studies and interpretation of the data collected**". The French *Assemblée nationale* shares the opinion that the quality of impact assessments is "**satisfactory**", while in the Belgian *Chambre des représentants* their quality is "**greatly appreciated**".

On the other hand, a **substantially higher number** of Parliaments/Chambers, i.e. **12**, voice **criticism** with regard to the quality of impact assessments. For instance, the Finnish *Eduskunta* is of the opinion that the quality of impact assessments, like the quality of actual legislative

⁶⁰ European Commission Impact Assessment page: http://ec.europa.eu/governance/impact/index_en.htm

⁶¹ http://ec.europa.eu/governance/impact/planned_ia/roadmaps_2011_en.htm

⁶² Ibid.

⁶³ http://ec.europa.eu/governance/impact/ia_in_other/docs/ii_common_approach_to_ia_en.pdf

⁶⁴ http://ec.europa.eu/governance/impact/iab/iab_en.htm

proposals, seems to be **variable**. "At best, well-drafted proposals come with informative impact assessments. **At worst**, impact assessments are **schematic, only offering lip service to the Treaty's requirements**." Similarly, the Hungarian *Országgyűlés* warns against generalisation as to the quality of impact assessments of EU draft legislative acts, but underlines that in proposals falling under the scope of Protocol 2, detailed and conceptual explanations should be provided instead of **occasionally formal or general remarks**. The Polish *Sejm* shares this opinion as the quality of impact assessments differs. Portuguese *Assembleia da República*, **in general**, considers impact assessments to be **well drafted**. However, there have been situations, such as the proposal for a Directive on a Common Consolidated Corporate Tax Base (CCCTB) (COM(2011) 121/4), where the impact assessments have not made possible a full understanding of the implications of the proposed measures.

The Spanish *Cortes Generales* also draws attention to the fact that impact assessments are **not always up to the required standards** and have in a number of cases been considered as **insufficient**. On two occasions the Swedish *Riksdag* has voiced criticism on impact assessments. In the case of the amended proposal for a Regulation as regards distribution of food products to the most deprived persons in the Union (COM(2010) 486), the impact assessment was "**not satisfactory in substance**" and in the case of the proposal for a Regulation establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (COM(2010) 799), "there were **hardly any assessments** made at all".

As a rule, the European Scrutiny Committee of the UK *House of Commons* finds Commission impact assessments **not to contain the information required** by the "detailed Statement" under Article 5 of Protocol 2. In addition, the **Commission's Guidelines** on impact assessment "**do not appear to have been changed to reflect the new emphasis on subsidiarity** after the entry into force of the Treaty of Lisbon". For example, the European Scrutiny Committee has shared the UK Government's criticisms of the Commission's impact assessment on the draft Directive on minimum health and safety requirements regarding the exposure of workers to risks arising from electromagnetic fields. It was seen to be "**based on too limited a set of data** to reflect the full scale and scope of the impact of the draft Directive and, as a result, it underestimated the probable costs for industry".

In March 2010, the EU Select Committee of the UK *House of Lords* produced a **report** "Impact Assessments in the EU: Room for Improvement?"⁶⁵. The report highlights some **areas where the situation is unclear** and further investigation might be warranted, including "the conformity of impact assessments to the Guidelines, the production and use of impact assessments on comitology proposals, the adequacy of consultation exercises in the preparation of assessments, the evaluation of whether the SME test is working and the use of ex-post evaluation". The report also notes that the Council and the European Parliament could make more use of the Commission's impact assessments.

Four Parliaments/Chambers⁶⁶ voice **concerns** with regard to the **independent nature** of the Commission's impact assessments. Thus, the Swedish *Riksdag* underlines that "it is important that **independent impact assessments** are made as they play an important part in taking a position on a draft legislative act". The Greek *Vouli ton Ellinon* emphasises that "the impact assessments always **advocate the Commission's standpoint** and therefore they are not considered as crucial during our examination process, compared to other documents such as consultation results or opinions of other institutions". The German *Bundesrat*, for its part, has

⁶⁵ <http://www.publications.parliament.uk/pa/ld200910/ldselect/ldcom/61/61.pdf>

⁶⁶ I.e. the Swedish *Riksdag*, the Greek *Vouli ton Ellinon*, the German *Bundesrat*, the European Parliament

repeatedly expressed concerns that "the Commission continues to resist the idea of arranging for an **external quality appraisal of impact assessments** by an objective body outside the Commission". Furthermore, the *Bundesrat* has criticised the fact that the Commission continues to insist on conducting **impact assessments only on draft legislation with a "significant" impact**, stressing that **each new legislative proposal should comprise a clear indication of its impact**, particularly in respect of administrative burdens at various levels.

In view of the fact that Commission's impact assessments are only translated into English or, occasionally, French, it comes as no surprise that the **most thorough analysis and strongest criticism** of the Commission's impact assessments comes from the European Parliament. In its resolution on guaranteeing independent impact assessments⁶⁷ adopted on 8 June 2011 (rapporteur Ms Angelika NIEBLER), the European Parliament lays down a series of recommendations on the requirements for impact assessments at the European level with a view to enhancing their efficiency and independence.

As to the **quality** of the impact assessments, the European Parliament stresses that "the impact assessments carried out by the Commission are **inconsistent in their quality level and frequently serve rather to justify a legislative proposal** than to permit an objective consideration of the facts." The European Parliament also calls "for impact assessments to not focus exclusively on cost/benefit-analysis but to take a large number of criteria into account, in accordance with the principle of an integrated approach, in order to provide the legislator with as comprehensive a picture as possible".

With regard to the **independent nature** of the impact assessments, in the aforementioned resolution the European Parliament emphasises that it "has on a number of occasions expressed support for the use of **independent impact assessments** in the European Union", that "it is necessary to **involve external experts** from all policy areas as well as all stakeholder groups affected in the impact assessment process in order **to guarantee independence and objectivity**". In addition, the resolution draws attention to the fact that "the Impact Assessment Board is considered by the Commission to be independent although it is under the authority of the President of the Commission and is composed of high-level officials from several Directorates-General and chaired by the Deputy Secretary-General" which "**leads to an information bias and thus to a violation of necessary neutrality**". The resolution calls for the members of the Impact Assessment Board "to be **scrutinized by the European Parliament and the Council** prior to appointment and no longer be subject to the instructions of the Commission President" as well as for the work of the Impact Assessment Board and experts "to take place **in the public remit** with the highest **transparency** so that their independence can be verified in practice".

2.1.10.3 Translation of impact assessments into the official languages of the EU

As a rule, full impact assessments of major draft legislative acts are published in English or French. Since 2006, the Commission publishes (Executive) Summaries of impact assessments in all official languages of the EU, except Gaelic.

When asked about the need to have the full text of impact assessments translated into all official EU languages, **24 Parliaments/Chambers expressed their views** on the issue. Among those, **15**

⁶⁷<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0259+0+DOC+XML+V0//EN&language=EN>

are of the opinion that full impact assessments **should be translated into all official languages of the EU**.

The Bulgarian *Narodno sabranie* **welcomes the idea** arguing that having the translation into all official EU languages of the full impact assessment may lead to a **better understanding** of the essence of the proposal. Furthermore, assuming that the eight-week period would not run before translations of a full impact assessment into all official languages are published, it would additionally **contribute to proper subsidiarity check procedures** in national Parliaments. Similarly, the Lithuanian *Seimas* on several occasions underlined that the full version of the impact assessment should be translated into all official languages of the EU **before** the eight-week period starts.

The Cypriot *Vouli ton Antiprosopon* is of the opinion that impact assessments **should be translated into all official languages of the EU**, the French *Sénat* believes that it would be "**a good thing**", while the Belgian *Chambre des représentants* and *Sénat* think it would be "**an important advantage**". The Swedish *Riksdag*, for its part, considers that it would be **very valuable**, while the Portuguese *Assembleia da República* is convinced that it would be **very important for transparency and a better understanding** of EU draft legislative acts in Member States. Also, the Italian *Camera dei Deputati* in its opinion on the Annual Report 2010 on relations between the European Commission and national Parliaments (COM(2011) 345)⁶⁸ has **urged the Commission** to make impact assessments available in all official languages of the EU as far as possible. The Slovak *Národná rada*, too, is of the opinion that "**it would be helpful**" to have the impact assessments translated in all official languages of the EU, as this is the obligation with regard to all legislative proposals.

The Latvian *Saeima* finds the lack of the translation into the Latvian language as an **obstacle for conducting subsidiarity checks**. According to the *Saeima*, the lack of translation "is the reason why the *Saeima* conducts subsidiarity checks only on rare occasions". It underscores that it is **impossible** to conduct a comprehensive subsidiarity check without a relevant impact assessment.

The Polish *Sejm* reminds that although an impact assessment is a different document than a draft legislative act, in its substance it is an integral part of the latter. That is why impact assessments should be **subject to the same translation requirements as draft legislative acts**. Similarly, the Hungarian *Országgyűlés* recalls the EU's **linguistic diversity** and equal treatment of all national Parliaments as guiding principles that should be respected by all EU institutions and actors concerned. Also, the Italian *Senato della Repubblica* considers that the action of EU institutions should be consistent with the language regime envisaged by the Treaties and that therefore as many documents as possible should be made available in all official languages of the EU. In this context, the *Senato della Repubblica* brings up the question of the **quality of the translation**, which "should be carefully ensured, especially for those texts that are bound to become legally binding".

Five Parliaments/Chambers, however, consider that there is **no need** to translate full impact assessments into all official languages of the EU. Thus in the opinion of the Czech *Poslanecká sněmovna*, "there is no desperate need" to translate really everything into all official languages of the EU. The same opinion is shared by the Luxembourg *Chambre des Députés*. The Czech *Senát* does not deem translations of full impact assessments necessary either and underlines that the **associated costs would not be proportionate to the added value**. The Finnish *Eduskunta* "is

⁶⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0345:FIN:EN:PDF>

prepared to **be pragmatic**", holding the view that while the substantive proposals must be available in all official languages, not all background documents need to be translated into all languages. The *Eduskunta* notes, however, that the decision would ultimately depend on the importance of the underlying proposal. The Danish *Folketing*, for its part, is satisfied with the impact assessments **in English**.

An additional **four** Parliaments/Chambers see **limited added value** in the exercise, as summaries of impact assessments are already translated in the official languages of the EU (the Austrian *Nationalrat* and *Bundesrat*, the Greek *Vouli ton Ellinon*) or, because of their importance for parliamentary and legislative deliberation, suggest translating impact assessments into **all working languages** (the German *Bundestag*).

Finally, **seven** Parliaments/Chambers indicate that they **have not (yet) formulated a position** on the matter. Thus, the Joint Committee of the Irish *Houses of the Oireachtas* does not have a view regarding the translation of impact assessments into the official languages of the EU, stressing that this would depend on the requirements of colleagues in other national Parliaments. The Maltese *Kamra tad-Deputati* does not have an opinion on this issue either. However, since English is also an official language in Malta, the English version will usually do. The issue has **not been discussed** in the Polish *Senat*, the Slovenian *Državni zbor*, the *Državni svet* and the UK *House of Lords* either. The latter, however, draws attention to the **associated costs**.

2.1.11 Internal subsidiarity control mechanisms of national Parliaments

Out of **39** Parliaments/Chambers which have replied to the question on their internal subsidiarity control mechanisms, **20** consider them **satisfactory** so far (e.g. the Danish *Folketing*, the Dutch *Eerste Kamer*, the Irish *Houses of the Oireachtas*, the Finnish *Eduskunta*, the German *Bundestag*, the Latvian *Saeima*, the French *Sénat*).

In **five** Parliaments/Chambers **no modifications** to the current subsidiarity control procedures have been introduced at any stage, i.e. the Czech *Poslanecká sněmovna*, the Hungarian *Országgyűlés*, the Greek *Vouli ton Ellinon*, the Slovenian *Državni svet* and the Swedish *Riksdag*.

Another **five** Parliaments/Chambers **plan to modify** their internal subsidiarity control mechanisms, i.e. the Austrian *Bundesrat*, the Italian *Senato della Repubblica*, the Lithuanian *Seimas*, the Romanian *Senatul* and the UK *House of Commons*.

20 national Parliaments/Chambers report **amendments in their internal subsidiarity control mechanisms** introduced due to the changes in the role of national Parliaments in the EU provided for in the Treaty of Lisbon. Several **examples** of such amendments are described below⁶⁹.

In **Austria**, besides some minor modifications at the administrative level, changes were made to the Constitutional Law and to the *Bundesrat* Rules of Procedure. Changes to the Rules of Procedure of the *Nationalrat* are also foreseen. One important change regarding the eight-week deadline was that the EU-Subcommittee of the *Nationalrat* now meets more regularly, i.e. once a month.

⁶⁹ For additional information on the subsidiarity control mechanisms in national Parliaments please check the COSAC website at: <http://www.cosac.eu/en/info/earlywarning/>

The Rules of Organization and Procedure of the **Bulgarian *Narodno sabranie*** were also amended after the entry into force of the Treaty of Lisbon in order to reflect the new subsidiarity control mechanism. According to the current procedure, the subsidiarity check is conducted on EU draft legislative acts which are included in the Annual Work Programme on European Union Issues of the *Narodno sabranie*. A new approach has been introduced while preparing its Annual Work Programme for 2011, i.e. cooperation and broad discussion with all stakeholders – the Commission, the European Parliament, the Trio Presidency of the Council of the EU, the Parliament and the Council of Ministers. As a result the Programme has been transformed into a strategic document, elaborated in accordance with the Commission Work Programme for 2011. This approach ensures the focus of the *Narodno sabranie* on key issues of the EU agenda.

The **Czech *Senát's*** Rules of Procedure have been amended to implement Article 8 of Protocol 2 on actions before the Court of Justice on grounds of infringement of the principle of subsidiarity by a legislative act of the European Union. The **Estonian *Riigikogu*** introduced its internal subsidiarity control mechanism in 2010. The same year the subsidiarity mechanism of the **German *Bundestag*** was modified to allow its EU Affairs Committee to issue opinions on every subsidiarity check.

In the **Irish *Houses of the Oireachtas***, too, the Standing Orders of both Houses have been amended to provide for a mechanism for subsidiarity checks. Following the recent general elections, specialised committees were specifically delegated the power to consider compliance of draft legislative acts with the principle of subsidiarity. The *Houses of the Oireachtas* have also put in place a procedure whereby, following general elections and prior to the establishment of the committee system, a transitional committee is established within three days of its first sitting, specifically to consider the subsidiarity aspect of EU proposals. This mechanism has been used for the first time after the recent general elections and has provided the basis for the *Dáil* to consider a draft of a reasoned opinion.

In **Poland**, since entry into force of the Act on the cooperation of the Council of Ministers with the *Sejm* and the *Senat* in matters relating to the Republic of Poland's membership of the European Union came into force on 13 February 2011, the Standing Orders of the *Sejm* have also been amended to accommodate a new mechanism for adopting reasoned opinions. Under the current procedure, a draft resolution on the breach of the principle of subsidiarity may be tabled by either the EU Affairs Committee or by at least 15 Members of Parliament. A debate and the first reading of the draft resolution take place in the EU Affairs Committee, while the second reading and a vote take place in the plenary. The adopted reasoned opinion and a cover letter signed by the Marshal of the *Sejm* are subsequently sent via e-mail to the Commission, the European Parliament and the Council.

The **Portuguese *Assembleia da República*** adopted its scrutiny procedure for EU draft legislative acts on 20 January 2010, following the entry into force of the Treaty of Lisbon. Under this procedure, the European Affairs Committee receives EU draft legislative acts and sends them to competent specialised committees for information or for opinion. Whenever it is decided to draw up a report and an opinion on a draft legislative act, the relevant specialised committee has to do so within six weeks. The report and the opinion are then forwarded to the European Affairs Committee, which has to complete the consideration of the draft legislative act in two weeks, paying particular attention to the legal basis and the act's compliance with the principle of subsidiarity. If it is found to comply with the principle of subsidiarity, the European Affairs Committee sends its written opinion, with the report and the opinion of the specialised

committee to the Speaker of the *Assembleia da República*, who sends it to the EU institutions. On the other hand, if a breach is found, the European Affairs Committee presents a draft resolution to the plenary, which if approved, is sent to the Presidents of the three EU institutions in the form of a reasoned opinion.

In the **Italian *Senato della Repubblica***, the current subsidiarity and proportionality control mechanism is defined not in the Rules of Procedure, but in a letter of the Speaker signed on the day the Treaty of Lisbon came into force. The letter established that the subsidiarity control mechanism should follow the procedure used for developing guidelines for the Government⁷⁰. However, recently, a sub-committee of the Committee on Rules was established to revise the Rules of Procedure of the *Senato della Repubblica* in order to accommodate the subsidiarity control mechanism. Recommendations of the sub-committees have been sent to the Speaker and are presently being considered by the Committee on Rules.

In the **Lithuanian *Seimas***, an inter-institutional working group has proposed amendments to the Statute (i.e. Rules of Procedure) of the *Seimas* aimed at:

- Clarifying the subsidiarity control procedure in the *Seimas*;
- Establishing the legal basis for examination of the compliance of proposals with the principle of proportionality;
- Defining the competence of the *Seimas* to bring actions before the Court of Justice on grounds of infringement of the principle of subsidiarity by a legislative act;
- Establishing the procedure for the approval of the EU legal acts (adopted according to Art. 223, 262, 311 of the TFEU and Art. 42 of the TEU).

Proposed amendments have been submitted to the plenary of the *Seimas*.

In the **Romanian *Senatul***, the internal subsidiarity control mechanism is currently being upgraded. It is now more focused on the horizontal cooperation between the Committee on European Affairs and specialised committees. In future, it should provide for a timely scrutiny of priority proposals and improved information exchange between the *Senatul* and the Government.

In the **UK *House of Commons***, the parliamentary procedure for dealing with the subsidiarity control mechanism has yet to be finalised. At present it is the Government that tables and moves the Motion to agree a reasoned opinion recommended by the European Scrutiny Committee. The committee regards that as unsatisfactory and is in discussion with the Government on changing the procedure to one in which the Motion is tabled and moved by the Chairman of the European Scrutiny Committee. The Committee's view is supported by a recent report of the Procedure Committee of the UK *House of Commons*.

In addition, the **Bulgarian *Narodno sabranie*** informs that if any future amendments to its current scrutiny control mechanism are to be adopted, they would be focused on the improvement of cooperation and exchange of information between the Government and the *Narodno sabranie*, including timeframes for observing the eight-week deadline.

Finally, in **three Parliaments/Chambers** there is **no special internal subsidiarity control mechanism**. In the Cypriot *Vouli ton Antiprosopon*, the Parliamentary Committee on Foreign and European Affairs is the primary Committee involved in the scrutiny process of EU documents. There is no separate procedure with regard to subsidiarity checks. The issue of

⁷⁰ For more information on the current subsidiarity check procedure in the Italian *Senato della Repubblica*, please consult the Annex to this Report

involving specialised committees in future proceedings is still under consideration. In the Czech *Sénat*, the subsidiarity control mechanism is an integral part of the ex-ante scrutiny of EU legislation. Therefore, there was no need to define a special procedure in this regard. In the Maltese *Kamra tad-Deputati*, for its part, the internal procedure still needs to be approved.

2.1.12 Treatment of reasoned opinions and contributions⁷¹ by the European Parliament

Following the entry into force of the Treaty of Lisbon, the European Parliament **amended its Rules of Procedure**⁷² in order to implement the new mechanism under Protocol 2 and set up an internal procedure for dealing with both reasoned opinions and contributions from national Parliaments. Pursuant to Rule 38a(4) of the Rules of Procedure, committees must refrain from adopting reports before the lapse of the period of eight weeks which is provided under Protocol 2.⁷³

Furthermore the European Parliament notes that **definitions of the terms "reasoned opinion" and "contribution"** have been established by its Committee on Legal Affairs (JURI), which is responsible for overseeing respect of the principles of subsidiarity and proportionality. "Reasoned opinions" are submissions of national Parliaments on the non-compliance of a draft legislative act with the principle of subsidiarity that are communicated to the European Parliament within the eight week deadline referred to in Article 6 of Protocol 2. "Contributions" are any other submissions of national Parliaments which do not fulfil the criteria for a reasoned opinion.

2.1.12.1 Treatment of reasoned opinions

The European Parliament explains that reasoned opinions from national Parliaments should be addressed to the President of the European Parliament and be sent to the following e-mail address: documentsreception@europarl.europa.eu. Alternatively, they may be sent to the President of the European Parliament⁷⁴ by ordinary mail.

Upon reception, and pursuant to Rule 38a(3) of the Rules of Procedure, all reasoned opinions are **referred to the committee(s) responsible** for the draft legislative act and forwarded for information to the **Committee on Legal Affairs (JURI)**, which examines them and forwards them for **translation** into all official EU languages - except Maltese and Gaelic - in line with the decision of the Conference of Committee Chairs in December 2010.

Reasoned opinions are **distributed to all Members** of the competent committees, are **included in the file** for the committee meeting and **published on the** "meeting documents" section of the committee **website** page. Furthermore, the text of draft legislative resolutions must make **reference** to any reasoned opinions received in relation to their subject matter.

⁷¹ The generic term "contribution" means an opinion, a conclusion, a resolution or any other document issued by a national Parliament/Chamber in the framework of the informal political dialogue with the European Commission

⁷² <http://www.europarl.europa.eu/sides/getLastRules.do?language=EN&reference=TOC>

⁷³ Except in the cases of urgency referred to in Article 4 of the Protocol on the role of national Parliaments in the European Union

⁷⁴ The correspondence address is 'Unit for the Reception and Referral of Official Documents, DG Presidency, European Parliament, B-1047 Brussels, Belgium'

The European Parliament also provides details on the **procedure** that is followed in case the requisite **"yellow card" and "orange card" thresholds** (i.e. numbers of votes allocated to national Parliaments) are reached. Where reasoned opinions represent at least one third of all the votes allocated to the national Parliaments or a quarter in the case of a proposal for a legislative act submitted on the basis of Article 76 of the TFEU, Rule 38a(5) of the Rules of Procedure states that the European Parliament shall not take a decision until the author (e.g. the Commission) of the proposal has stated how it intends to proceed. In accordance with Rule 38a(6), where, under the ordinary legislative procedure, reasoned opinions represent at least a simple majority of the votes allocated to the national Parliaments, the committee responsible for the subject-matter, having considered the reasoned opinions submitted by the national Parliaments and the Commission, and having heard the views of the Committee responsible for respect of the principle of subsidiarity, may recommend to the European Parliament (plenary) that it reject the proposal on the grounds of infringement of the principle of subsidiarity or submit to the European Parliament any other recommendation, which may include suggestions for amendments related to respect of the principle of subsidiarity. The opinion given by the committee responsible for respect of the principle of subsidiarity must be annexed to any such recommendation. The recommendation must then be submitted to the plenary for a debate and vote. If a recommendation to reject the proposal is adopted by a majority of the votes cast, the President must declare the procedure closed. Where the European Parliament does not reject the proposal, the procedure must continue, taking into account any recommendations approved by the European Parliament.

2.1.12.2 Treatment of contributions

According to the European Parliament's definition, contributions are any submissions of national Parliaments which do not fulfil the criteria for a reasoned opinion. They may thus refer to the views of national Parliaments on substantive provisions, the legal basis or policy choices of a draft legislative act, but also to the views of a national Parliament on an EU document which does not necessarily come under the scope of Protocol 2. A submission which positively assesses a given legislative proposal's compliance with the principle of subsidiarity is also treated as a contribution. Contributions should be sent to the dedicated e-mail address national.parliaments@europarl.europa.eu

Following Rule 130(4) of the Rules of Procedure, upon reception contributions are **referred to the European Parliament's committee(s) responsible** for the file. The transmission of contributions (as well as Commission replies) to the relevant committees of the European Parliament is done by the **Directorate for Relations with National Parliaments** (Legislative Dialogue Unit). Subsequently, **committee secretariats** are responsible for the **transmission** of contributions **to** the respective committee **Chairs and/or rapporteurs** who may request translation of contributions respecting the principle of equal treatment (i.e. all contributions relating to the particular file must be translated).

2.1.12.3 Further actions

The European Parliament's Directorate for Relations with National Parliaments circulates to all committee secretariats, political groups and any other interested European Parliament services a **monthly summary table** and an explanatory note outlining the reasoned opinions and

contributions of national Parliaments pertaining to draft legislative acts coming under the scope of Protocol 2 received during the preceding month. The Conference of Committee Chairs receives these documents for information.

The summary table, which includes links to the full text of all reasoned opinions and contributions received since the entry into force of the Treaty of Lisbon, to the Legislative Observatory of the European Parliament (OEIL)⁷⁵ and to the IPEX website⁷⁶, is also **accessible via the European Parliament Intranet** (and therefore directly available to the COSAC Secretariat and all representatives of national Parliaments accredited to the European Parliament).

2.1.13 Reasoned opinions and contributions in documents of the European Parliament

The European Parliament states that it is particularly keen on ensuring respect of draft legislative acts with the principle of subsidiarity. To this end, it has adapted its Rules of Procedure⁷⁷ and established a procedure for reception and treatment of reasoned opinions and contributions in order to facilitate the proper implementation of Protocol 2 (see Part 2.1.12). Interestingly, it is the **only EU institution to translate** all reasoned opinions (and potentially contributions) **in all EU official languages**, thus allowing its Members to fully take into account the views expressed by national Parliaments.

The European Parliament goes on to say that its legislative reports "systematically make express reference to reasoned opinions received in the context of Protocol 2". It illustrates this by giving the following recent examples of reports and resolutions in different legislative areas:

- COM (2010) 368: Proposal for a Directive of the European Parliament and of the Council on Deposit Guarantee Schemes [recast]. The draft legislative resolution adopted by the Committee on Economic and Monetary Affairs (ECON) and submitted on 14 June 2011 to the European Parliament for adoption makes specific reference in the **fifth recital** to its Preamble to the **reasoned opinions of four Parliaments/Chambers**, i.e. the Danish *Folketing*, the German *Bundestag* and *Bundesrat* and the Swedish *Riksdag*;
- COM(2010) 379: Proposal for a Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment. The European Parliament's legislative report was adopted on 8 June 2011 by the Committee on Civil Liberties, Justice and Home Affairs (LIBE). The **fourth recital** to the Preamble of the draft legislative resolution makes explicit reference to the **reasoned opinions of six Parliaments/Chambers**, i.e. the Austrian *Nationalrat* and *Bundesrat*, the Czech *Poslanecká sněmovn*, and *Senát*, and the Dutch *Eerste Kamer* and *Tweede Kamer*.
- COM(2010) 537: Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development. The draft legislative resolution adopted by the Committee on Agriculture and Rural Development (AGRI) and submitted on 20 April 2011 to Parliament for adoption makes specific reference in its **fourth recital**

⁷⁵ <http://www.europarl.europa.eu/oeil/index.jsp>

⁷⁶ <http://www.ipex.eu/IPEXL-WEB/home/home.do>

⁷⁷ <http://www.europarl.europa.eu/sides/getLastRules.do?language=EN&reference=TOC>

to its Preamble to the **reasoned opinions of four Parliaments/Chambers**, i.e. the Lithuanian *Seimas*, the Luxembourg *Chambre des Députés* and the Polish *Sejm* and *Senat*.

- **COM(2010) 176**: Proposal for a Council Decision laying down rules for imports into the European Union from Greenland of fishery products, live bivalve molluscs, echinoderms, tunicates, marine gastropods and by-products thereof. The European Parliament adopted its legislative resolution on 6 April 2011, following the report of its Committee on Fisheries (PECH). The legislative resolution makes reference to the **reasoned opinion of one Parliament**, i.e. the Portuguese *Assembleia da República*, without however naming it explicitly.

In its reply to the questionnaire the European Parliament concludes that the impact of Protocol 2 on the legislative process is increasing as the procedure matures. It underlines that it is confident that the internal procedures that are in place operate efficiently and contribute to achieving the objectives set by the Treaty of Lisbon and its Protocols and reiterates its commitment to and active support for further advancing its cooperation with national Parliaments.

2.2 Informal political dialogue

The **Informal Political Dialogue** initiative of the Commission (also referred to as "the Barroso initiative") was **launched in 2006** with the aim of encouraging national Parliaments to express their opinions on the Commission's initiatives (e.g. white papers, green papers, communications, draft legislative acts, etc.) not only related to their compliance with the principle of subsidiarity but also to any other aspect of the initiative. In addition to the official dialogue based on Protocol 2, national Parliaments have the possibility to engage in a political dialogue with the Commission throughout the legislative process, too.

This tool has been in use for five years and **its use is on the increase** since the entry into force of the Treaty of Lisbon. As the **Annual Report 2010** from the Commission on relations between the European Commission and national Parliaments⁷⁸ shows the **clear trend** for 2010 and the first months of 2011 is that national Parliaments are more and more engaging in the informal political dialogue.

However, not all Parliaments/Chambers use this tool in the same way. Out of the Parliaments/Chambers that have replied to the questionnaire, **nine** Parliaments/Chambers⁷⁹ have **not yet used** the opportunity to convey their opinions to the Commission in the framework of the informal political dialogue.

2.2.1 Number of contributions sent to the Commission

The **number of contributions** sent by individual Parliaments/Chambers to the Commission differs. The largest number of contributions since the entry into force of the Treaty of Lisbon on 1 December 2009, i.e. **220**, has been sent by the **Portuguese Assembleia da República**, followed

⁷⁸ http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/docs/ar_2010_en.pdf

⁷⁹ I.e. the Estonian *Riigikogu*, the Finnish *Eduskunta*, French *Assemblée nationale*, the Hungarian *Országgyűlés*, the Maltese *Kamra tad-Deputati*, the Dutch Tweede Kamer, the Slovak *Národná rada*, the Slovenian *Državni zbor* and *Državni svet*

by the Czech *Senát* (52), the German *Bundesrat* (44), the Swedish *Rigsdag* (38), the Austrian *Nationalrat* and *Bundesrat* (31) and the Italian *Camera dei Deputati* (31).

It is important to note that the contributions sent to the Commission may refer to one or several Commission documents. For that reason, the **number of documents** that Parliaments/Chambers refer to in their replies may **exceed the number of contributions** sent to the Commission.

Parliaments/Chambers follow **different practices** in sending their contributions. Some send them not only to the **Commission** but also to the **European Parliament** and to the **Council** (e.g. the Portuguese *Assembleia da República*).

Table 3 below refers to the most frequently commented documents of the Commission in 2010 and in 2011 (situation as on). Please note that many of these documents have also raised subsidiarity concerns of national Parliaments/Chambers.

Table 3: Most frequently commented documents⁸⁰

COM(2009)622 COM(2010)119	Citizens' Initiative (Green Paper and Proposal for a Regulation)	8
COM(2011)0121	Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)	7
COM(2011)0015	Green paper on the modernisation of EU public procurement policy Towards a more efficient European Procurement Market	7
COM(2010)250, COM(2010)367 and COM(2010)522-527	Economic governance	6
COM(2010)379	Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment	6
COM(2010)368	Proposal for a Directive on deposit guarantee schemes	6
COM(2009)647 COM(2010)2020	Europe 2020 (Consultation document and Communication)	5

2.2.2 The Commission's replies to contributions

The number of Commission replies to the contributions of national Parliaments/Chambers often does not match the number of contributions. Indeed the **Commission has not yet replied to many contributions**. In some cases this can be explained by the fact that the deadline (i.e. three months) has not yet expired. It is worth mentioning that in some cases national Parliaments/Chambers have sent their contributions to inform the Commission on their views without necessarily expecting an official reply (e.g. two cases provided by the UK *House of Lords*).

⁸⁰ The data in this table is based solely on the information provided by Parliaments/Chambers in their replies to the questionnaire

2.2.3 Quality of the Commission's replies to the contributions

Out of those Parliaments/Chambers that have replied to this question, **the majority** consider that the replies given by the Commission were **satisfactory** (e.g. Cypriot *Vouli ton Antiprosopon*, Czech *Poslanecká sněmovna*, the Danish *Folketing*, the Irish *Houses of the Oireachtas*, the Lithuanian *Seimas*). However, **a group** of Parliaments/Chambers indicate that the Commission's replies are sometimes **too vague** or **too general** (e.g., the German *Bundestag*, the Polish *Senat*, the Portuguese *Assembleia da República*). Some examples of **critical remarks** by Parliaments/Chambers are quoted below.

The Dutch *Eerste Kamer* points out that in one case the reply came **too late, i.e. after the requested date. Consequently**, it could not be used during the plenary debate on the amendment of "the bill on illegal aliens".

The Portuguese *Assembleia da República* considers that all the Commission's replies follow **the same predefined structure** and often do not refer to the specific issues raised or relevant comments made in the submitted opinion. This is especially true in the field of the area of freedom, security and justice, in which the political dialogue is clearly very limited. On the other hand, the *Assembleia da República* emphasizes that in some cases the Commission has made reference to the complete calendar/roadmap of the European decision-making process, including the stages at the Council and the European Parliament, which has proved **particularly useful**. The *Assembleia da República* also points out that the (formal) way in which the European Commission has generally replied to national Parliaments **does not appear to uphold the desired "political dialogue"** in a wholly satisfactory way (in terms of content). According to the Portuguese *Assembleia da República*, the replies often predominantly stress the virtues of the Commission's draft acts and do not seek to answer the critical observations made by the Parliament, thus failing to encourage discussion on the ideas, content and substance of the draft acts and opinions in question and fall short of leading to the intended "dialogue".

However, there is still **room for improvement** in many aspects. Thus, the Austrian *Nationalrat* and *Bundesrat* and the Italian *Camera dei Deputati* emphasize that on the basis of the regular communication between national Parliaments and the Commission they know that the Commission **is aware of this problem and makes "quite some effort" to improve the quality** of its replies and that it has improved over the last year.

The Czech *Senát* considers that the **quality of replies differs** (depending on the Directorate-General of the Commission responsible and the type of document). On the other hand, it acknowledges that the replies to resolutions on draft legislative acts are generally more elaborated. The *Senát* emphasizes that it would **in particular welcome information on the results of public consultations** launched on green papers, even if this would mean that the self-imposed time-limit of three months to reply would be exceeded.

2.2.4 Dealing with the Commission's replies in national Parliaments

In most cases the Commission's replies to the contributions in the framework of the informal political dialogue are **dealt with in the same manner as the replies to reasoned opinions under Protocol 2**.

In the majority of cases the replies are distributed in the Committee on EU Affairs, but also in other relevant specialised committees⁸¹.

Exceptionally, for instance in the Luxembourg *Chambre des Députés*, replies are also sent to the Luxembourg Members of the European Parliament, while the Greek *Vouli ton Ellinon* and the Lithuanian *Seimas* also occasionally send the replies to their Governments.

Many Parliaments/Chambers publish the replies on their websites, thus increasing transparency and enabling all interested parties to follow the political dialogue.

2.2.5 Further informal political dialogue after receiving Commission's replies

In the vast **majority** of cases there has been **no continuation** of the informal political dialogue after receiving a Commission's reply to the contribution.

In some cases, though, for instance in case of the debate on the EU-China report in the UK *House of Lords*, further written dialogue has continued. In other reported cases, there were no written answers or comments to the replies, but a discussion on the Commission's replies in the relevant committees (mostly Committees on EU Affairs).

In the Lithuanian *Seimas*, there has been a more concrete follow-up of the replies, in that the informal dialogue has continued in meetings between Lithuanian Members of Parliament and Commission officials responsible for the Internal Market issues. The Czech *Senát*, for its part, indicates that it often invites a Member of the European Commission, usually Mr Maroš ŠEFČOVIČ, Vice-President of the Commission responsible for inter-institutional relations, to discuss in person with the relevant bodies of the *Senát* any pending issues that might not have been dealt with in the replies in a satisfactory manner.

2.3 Parliamentary scrutiny and delegated acts under Article 290 of the TFEU

2.3.1 Opinions on proposals that provide for delegated acts

Out of the 36 Parliaments/Chambers that have replied to the question of whether they have had any concerns regarding proposals which provide for delegated acts, some indicate that they have **not discussed** the issue (i.e. the Estonian *Riigikogu*, the Belgian *Chambre des Représentants* and *Sénat* and the Spanish *Cortes Generales*) or have **not yet** done so (i.e. the Maltese *Kamra tad-Deputati*, the Romanian *Camera Deputaţilor* and the Slovak *Národná rada*). The Cypriot *Vouli ton Antiprosopon* informs that the issue is **under consideration**. The French *Sénat*, the Slovenian *Državni zbor* and the Swedish *Riksdag* mention that they have **not adopted an official position**. The latter refers to a statement of the Swedish Government when ratifying the Treaty of Lisbon indicating, *inter alia*, that delegated acts may make the legislative process more efficient and adds that the *Riksdag* has not voiced a different opinion. The Slovenian *Državni svet* states that it has **not yet raised concerns** on delegated acts. The Italian *Camera dei Deputati*, for its part, informs that up to now "no general position or concern has been expressed"

⁸¹ E.g. the Italian *Camera dei Deputati*, the Lithuanian *Seimas*, the Dutch *Eerste Kamer*, the Portuguese *Assembleia da República*, the Swedish *Riksdag*

by its EU Affairs Committee and specialised committees. The Danish *Folketing* explains its (written) **procedure** on delegated acts whereby the Government has to present its position on delegated acts of considerable importance to the European Affairs Committee, after which the *Folketing* has at least eight days to adjust the Government's position, and if it does so the Government must inform the other members of the Council of the change. The European Affairs Committee of the Latvian *Saeima* takes the view that **national Parliaments can have an indirect influence** on the application of a "non-legislative act of general application" by giving their Governments the mandate to object in the Council to the application of Article 290 of the TFEU and goes on to explain that in order for non-legislative acts to be applicable an important condition must be met, i.e. a delegated act can come into force only if the European Parliament or Council has not objected. Hence the European Affairs Committee of the *Saeima* considers non-legislative acts of the EU on an individual basis.

The remaining Parliaments/Chambers take a more or less articulated **critical stance**. The Austrian *Nationalrat* and *Bundesrat* are of the opinion that delegated acts **should be used carefully** as they might endanger the institutional balance struck by the Treaties and undermine democratic legitimacy of decisions taken at the European level. In the same vein the Portuguese *Assembleia da República* **expresses reservations about the excessive use** of this "legislative technique". The EU Select Committee of the UK *House of Lords* warns that practical **scrutiny problems** arise when proposals involve many provisions for delegated legislation in highly technical contexts. The Joint Committee on European Union Affairs of the *Irish Houses of the Oireachtas*, for its part, holds the view that more focus should be put on consideration of the delegation of powers as part of the usual scrutiny process and informs that it will liaise with the specialised committees to that effect. The EU Affairs Committee of the Polish *Sejm* underlines that it tries to monitor and control the Commission's power to adopt delegated acts through the consideration of its proposals, while its counterpart of the Polish *Senat* highlights that **defining and assessing non-essential elements** to be regulated by delegated acts has proven a **difficult and controversial exercise**, as many national Parliaments consider these elements essential, for which reason they should be regulated by a legislative act.

For the Dutch *Tweede Kamer* the democratic control of practices in the so-called **comitology committees** remains an issue. It says it is open to suggestions to increase transparency in this field. In the Greek *Vouli ton Ellinon* a majority of the Members of the EU Affairs Committee believe that delegated acts **enhance the powers of democratically elected bodies**, such as the European Parliament and the Council, **against comitology**. The German *Bundestag* is concerned that the delegation of power **may weaken national Parliaments** and indicates that it should be involved through national law. The Finnish *Eduskunta*, in turn, signals that it is regularly confronted with the **improper application of Article 290** and links this to "the old question of the technical quality of European legislation". Similarly, the Hungarian *Országgyűlés* pleads for transparent and explicit references in legislative acts authorising the Commission to adopt delegated acts. The European Scrutiny Committee of the UK *House of Commons*, too, refers to Article 290 and calls for **close monitoring of delegated acts by the EU legislator**, welcoming in this context the **Common Understanding** between the Commission, the European Parliament and the Council⁸². The Italian *Senato della Repubblica*, too, mentions the Common Understanding and in particular its paragraph 8 on the duration of delegated acts.

⁸² <http://register.consilium.europa.eu/pdf/en/11/st08/st08753.en11.pdf>

The French *Assemblée nationale* states that the general issue of delegated (and implementing) acts was **addressed on two occasions** by the Chairman of its Committee on EU Affairs, Mr Pierre LEQUILLER, i.e. on 22 September 2009 and on 6 July 2010. It goes on to say that the Committee chose (a) to extend the mandate of the rapporteurs on major legislative texts to the scrutiny of the most important delegated acts and implementing acts that emanate from them, (b) to **organise hearings** - on the most important texts - **with the leading French experts** who would sit on the various committees that work on delegated acts and implementing acts and (c) to identify the sectors that could be monitored more closely.

Finally, four Parliaments/Chambers refer to **resolutions** in which they have voiced their **concerns**. The Committee for European Affairs of the Czech *Poslanecká sněmovna* has stated in some of its resolutions that too much competence is being passed to the Commission. Likewise, the Czech *Senát* expressed its opinion in its resolution of 20 May 2010 on the Communication from the Commission on the implementation of Article 290 of the TFEU. The German *Bundesrat*, quoting three examples, highlights that it has repeatedly criticised the fact that the Commission's proposals envisaged powers to enact delegated acts even in cases where the *Bundesrat* believes that harmonised provisions for the implementation of EU legislation are required or in cases addressing certain provisions of essential importance for Member States. The *Bundesrat* goes on to say that for that reason on 18 March 2011 it resumed deliberations on the aforementioned Communication on the implementation of Article 290 of the TFEU and adopted an additional resolution which was also sent directly to the Commission⁸³. The Italian *Senato della Repubblica*, referring *inter alia* to resolution 875/09 of the German *Bundesrat*, insists that the Treaty on the functioning of the European Union should be strictly complied with when it comes to defining the various aspects of the delegation of power. The Italian *Senato della Repubblica* lists 27 resolutions in which it raises objections related to the delegation of power and quotes from the Commission's Annual Report 2010 on relations between the European Commission and national Parliaments, in which the Commission acknowledges that "one chamber systematically questions the fact that the delegated powers are conferred on the Commission for an undetermined period".

2.3.1.1 Concerns related to the subject of delegated acts

31 Parliaments/Chambers have replied to this question. Some do not go into further details for various reasons: the Slovak *Národná rada* has not discussed the issue in any extensive way yet, the Romanian *Camera Deputaţilor* will explore the issue later, the Slovenian *Državni zbor* has not adopted an opinion and the UK *House of Commons* has not formed a view yet. In the Cypriot *Vouli ton Antiprosopon* the issue is still under consideration.

Four Parliaments/Chambers (the Danish *Folketing*, the Irish *Houses of the Oireachtas*, the Slovenian *Državni svet* and the Swedish *Riksdag*) inform that **no concerns** have been raised on this issue **so far**. The European Affairs Committee of the Latvian *Saeima* clarifies that it has **no concerns since its opinion is binding on the Government** and its views are therefore represented in the Council. The Bulgarian *Narodno sabranie* states that **concerns** have arisen on several occasions, but that the issue has subsequently been **solved**. The Estonian *Riigikogu* clarifies that its EU Affairs Committee has discussed this issue under the existing scrutiny framework and that "comitology" questions have been raised and dealt with in cooperation with the Government.

⁸³ See the Annex to the 16th Bi-annual Report

Numerous Parliaments/Chambers voice **specific concerns**, often referring to documents. The German *Bundesrat* refers to the aforementioned additional **resolution** on the implementation of Article 290 of the TFEU of 18 March 2011, in which it notes *inter alia* that the provisions of the Treaty of Lisbon were not sufficiently taken into account and that there was a lack of consistency in the decisions to opt for a delegated act or an implementing act. The Lithuanian *Seimas* has expressed its concern in two **reasoned opinions**. So has the Polish *Senat*, which has adopted five reasoned opinions stating that the Commission had been granted excessive delegated powers on issues of vital importance to the agricultural market. The Luxembourg *Chambre des Députés*, too, mentions five reasoned opinions that are critical of certain aspects of legislative proposals which deal with essential elements and are not compatible with Article 290 of the TFEU. The Polish *Sejm* refers to **opinions** of its European Union Affairs Committee in which it expresses its doubts in relation to delegated acts, giving the example of the directive on the interconnection of central, commercial and companies registers. The UK *House of Lords* provides three **examples** of cases (*inter alia*, in respect of agricultural funding) that have caused concern about the power to adopt delegated legislation possibly affecting essential elements of the legislative act. In addition, it highlights "a significant element of political judgment" in determining what are essential or non-essential elements of legislative acts. The Polish *Senat* makes a similar comment (see 2.3.1) The Italian *Senato della Repubblica*, too, gives six specific examples of scrutinized documents that include delegated powers concerning essential elements of the act. One such example is the delegated act in the framework of the **Citizens' Initiative** regulation empowering the Commission to amend Annex I establishing the minimum number of signatories per Member State. The same example is given by the Czech *Senát*. It draws attention to the "unfortunate trend of basic legislative acts containing only a framework regulation" which leads to more delegated acts and less transparency.

According to the Finnish *Eduskunta*, the general problem seems to be that delegated acts **exceed the powers granted** in the underlying legislation or are even **in contradiction** with it. The Italian *Camera dei Deputati* refers to one case in which a specialised committee considered that a draft legislative act conferred a **too broad delegation of power** to the Commission. The Austrian *Nationalrat* and *Bundesrat* hold the view that delegated acts should be limited to technical aspects and/or emergency situations and that the transfer of law-making power **should not exceed the absolute minimum**. This view is echoed by the Portuguese *Assembleia da República*, which considers that the delegation of power to the Commission to adopt non-legislative acts should be "**kept to a strict minimum**". The Hungarian *Országgyűlés* insists that all relevant EU institutions should **respect the limitations** of Article 290 of the TFEU and the Dutch *Eerste Kamer* considers that the incorrect application of Article 290 of the TFEU "would indeed be a matter of concern" insofar as it "would impede effective parliamentary scrutiny".

2.3.1.2 Adequate description of essential features of delegated acts in proposals

28 Parliaments/Chambers have replied to the question on the adequacy of the description of essential features of delegated acts in proposals. The Romanian *Camera Deputaţilor* indicates that the issue will be dealt with later. The Slovenian *Državni zbor* has not adopted an opinion on this and the UK *House of Commons* has not formed a view yet. In the Cypriot *Vouli ton Antiprosopon* the issue is still under consideration. The Joint Committee of the Irish *Houses of the Oireachtas* is considering whether the Commission should be required to address the issue in the **explanatory memorandum** of relevant proposals. The Italian *Senato della Repubblica*, too, is of the opinion that the Commission should include in the explanatory memorandum of every

act the elements necessary **to assess compliance with Article 290**. The Dutch *Tweede Kamer* states that no information is available and the Czech *Poslanecká sněmovna* admits that it cannot really assess this issue.

The Danish *Folketing* informs that only the general use of delegated acts has been debated. The Bulgarian *Narodno sabranie*, for its part, clearly states that so far essential features of delegated acts have been **properly described**. The Slovenian *Državni svet*, the Swedish *Riksdag*, the Italian *Camera dei Deputati* and the European Affairs Committee of the Latvian *Saeima* have **not identified any concerns yet**.

According to the Finnish *Eduskunta* the real problem with delegated acts - apart from their varying drafting quality - is the **tendency not to respect the inherent limits**. The Lithuanian *Seimas* refers to its criticism of the Commission in a reasoned opinion on the grounds that it did not provide sufficient evidence to **prove the need** for delegated acts. The Greek *Vouli ton Ellinon*, for its part, explains that in the light of the vast number of recent proposals based on Article 290 of the TFEU only a few have been selected for scrutiny and goes on to say that the scrutiny process has revealed **many differences in the justification** of delegated acts, ranging from very detailed to inexistent.

On the description of the **objective** of delegated acts, the Polish *Sejm* has come to the conclusion that it is **often vague** (as is the description of the scope). The UK *House of Lords*, too, states that there have been instances where the legislative act **does not clearly and specifically define** the objectives of the delegated power, for instance in the context of agricultural funding.

Regarding the **content** of delegated acts, the Polish *Sejm* highlights that delegated acts do contain essential elements which should be dealt within the legislative act itself. According to the Portuguese *Assembleia da República* the lack of an explicit description of the content (and scope) of delegated acts raises justifiable doubts. The Luxembourg *Chambre des Députés* notes that the wording frequently **lacks precision**, allows for the **arbitrary interpretation** of delegated powers and **alters essential elements** of the legislative act.

In its additional resolution of 18 March 2011 on the implementation of Article 290 of the TFEU the German *Bundesrat* notes *inter alia* that the requirement to limit the **scope** and/or duration of delegated acts has often not been complied with. The Austrian *Nationalrat* and *Bundesrat* hold the view that there is a **need for an ex-ante clear definition** of the scope of future delegated acts and that the scope should be **restricted to technical aspects and/or emergency situations**. The Italian *Senato della Repubblica* urges that the scope be defined in compliance with the limits explicitly set by **Article 290 of the TFEU**. Both the Polish *Sejm* and the Portuguese *Assembleia da República* criticise the **insufficiently explicit definition** of the scope of many delegated acts. The Greek *Vouli ton Ellinon* informs that Members of its EU Affairs Committee take the view that in some cases the scope of competence conferred on the Commission is **"of significant nature"**, which may lead to breaches of the proportionality principle. The Czech *Senát* signals that it supported the efforts of the Czech Government to better define the scope of the Commission's powers in the context of the recast of the railway package.

The **duration** of delegated acts is another point of concern to the Czech *Senát*, which is in disagreement with, for instance; the **indefinite nature** of the delegation of power to the Commission to amend Annex I of the regulation on the **Citizens' Initiative**. In its aforementioned resolution of 18 March 2011 the German *Bundesrat* notes *inter alia* that the requirement to limit the scope and/or duration of delegated acts has **often not been complied**

with. The Hungarian *Országgyűlés* fears that the indeterminate period of delegation of power to the Commission and the narrow time frame for EU legislators to react **may reduce transparency**, especially *vis-à-vis* national Parliaments. This view is shared by the Italian *Senato della Repubblica*, which argues that "the practice of indefinite delegation is held to adversely **affect the authority of national Parliaments**" and advocates clear start and end dates for the delegation of power, "which should leave no space for the increasing practice of indefinite delegation". It goes on to describe delegated powers for an indefinite period of time as an "**anomaly**" made possible by the aforementioned **Common Understanding** between the Commission, the European Parliament and the Council. The European Scrutiny Committee of the UK *House of Commons*, too, thinks that delegated acts "should be granted for a fixed, rather than indefinite, period of time, which should not be automatically renewed."

2.3.2 Possible cooperation with the EU institutions for monitoring delegated acts

33 Parliaments/Chambers have replied to the question on possible cooperation with the EU institutions in the process of the **monitoring of delegated acts**. The Maltese *Kamra tad-Deputati* informs that the issue has not yet been discussed. In the Luxembourg *Chambre des Députés* the issue is not under discussion. Similarly, the Romanian *Camera Deputaţilor* indicates that the issue will be dealt with later, while the Cypriot *Vouli ton Antiprosopon* reiterates that the issue is still under consideration. The Slovenian *Državni zbor* states that no opinion has been adopted and the Swedish *Riksdag* is not in a position to answer the question.

According to the Czech *Poslanecká sněmovna* there is "**hardly**" any room for cooperation with the EU institutions on monitoring delegated acts, while the Lithuanian Seimas does "**not yet**" see such a possibility. The Slovak *Národná rada* **does not primarily focus on this issue**, but does not exclude its future participation in such an exercise either. The Finnish *Eduskunta*, for its part, prefers to rely on its existing constitutional powers, considering dialogue with the EU institutions **not a first option** and legal action the ultimate remedy if delegated powers are exceeded. Similarly, the Austrian *Nationalrat* and *Bundesrat* take the view that an increased control of delegated acts by national Parliaments will not remedy shortcomings and that it is **up to the EU legislators and finally the Court of Justice** to secure uniform application of criteria. The Hungarian *Országgyűlés* favours primarily **closer cooperation between governments and national Parliaments**. The Danish *Folketing*, for its part, has been focusing on the scrutiny of delegated acts via its Government in the Council. The German *Bundestag* mentions that for now cooperation takes place "in the given framework". For the Polish *Senat* **reasoned opinions** and the **political dialogue** are useful tools to address the concerns, while the Latvian *Saeima* takes the view that "dedicating a section on the European Commission's website to delegated acts would be a sufficient measure to ensure additional clarity".

The Joint Committee on European Union Affairs of the Irish *Houses of the Oireachtas* states that it "would be happy to consider an **appropriate mechanism**". The Dutch *Tweede Kamer* conveys the message that it is "open to suggestions that could improve the transparency and democratic control of the practices of the comitology committees". The Dutch *Eerste Kamer*, for its part, is "open to work with other EU Parliaments to exchange information and best practices". The Slovenian *Državni svet* declares itself always **open to cooperation**, without formulating specific suggestions. According to the Bulgarian *Narodno sabranie* cooperation with the EU institutions on this issue is "a **good idea**". The Committee on EU Policies of the Italian *Camera dei Deputati* finds such a cooperation "**very useful** in order to support the general scrutiny of national Parliaments on draft legislative acts", indicating that the latter are "currently not transmitted by

the Government to the Italian Parliament". The German *Bundesrat* informs that so far it has not commented on this issue, but also draws attention to its first opinion of 12 February 2010 on the Communication of the Commission on the implementation of Article 290 of the TFEU, in which it welcomed the intention of the Commission to continue the systematic **consultation of experts from national authorities of all Member States** and the practice of working with expert groups. In the same opinion, the *Bundesrat* emphasised that "the **EU legislator** must continue to assume **responsibility for democratic oversight** of delegated acts", and called on the Federal Government to ensure in the Council that this scope for oversight is used to the full. The Greek *Vouli ton Ellinon* insists that any involvement in the process "requires specialised knowledge and expertise" and is convinced that "there will be a **constant need for support** by experts and governmental units in undertaking such an initiative".

Cooperation with the European Parliament in particular is a possibility foreseen by the Polish *Sejm*, which announces that the issue will be discussed when the Presidium of its EU Affairs Committee meets in September 2011. The French *Assemblée nationale*, for its part, is quite explicit in stating that close cooperation, in particular with the European Parliament, is "one of the most promising ways to guarantee efficient parliamentary control". The UK *House of Lords*, too, **favours increased cooperation** with the European Parliament by identifying in good time delegated acts to which the European Parliament or the Council may object as well as instances where either of them contemplates revoking the delegation in the legislative act. Pointing to capacity problems in most national Parliaments to monitor "the plethora of delegated acts adopted" the Czech *Senát* **welcomes** the idea of the UK *House of Lords* regarding cooperation with the European Parliament on this issue.

The European Parliament refers to the aforementioned **Common Understanding** with the Commission and the Council and goes on to say that it will carry out an **assessment** of the way the Common Understanding functions one year after it became operational and decide whether or not to initiate a revision of it with the Commission and the Council.

The Italian *Senato della Repubblica* draws attention to the **letter on** (the duration of) **delegated acts** that the Chairwoman of its Committee on EU Policies, Ms Rossana BOLDI, sent on the occasion of the **XLV COSAC**, inviting all national Parliaments to have an in-depth look into the matter⁸⁴. Whilst criticising the Commission for constantly reiterating its position in its numerous replies to its standing committees, the *Senato della Repubblica* states that it is willing to **cooperate with all EU institutions** on effective monitoring of delegated acts. The Portuguese *Assembleia da República* underscores the **need for a model** - even if only informal - of cooperation with the EU institutions on the scrutiny of delegated acts.

⁸⁴ <http://www.cosac.eu/en/meetings/Budapest/ordinary/>