
practices of interparliamentary
coordination in
international politics

the European Union and beyond

Edited by
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chapter one

practices of interparliamentary coordination in international politics: the European Union and beyond

Ben Crum and John Erik Fossum

Introduction

Parliaments risk becoming the main losers in internationalisation. Today, an ever-greater number of political decisions are being taken at the international level, many with profound national political implications. As part of this process of internationalisation we see a marked shift in executive-legislative relations as the main actors that occupy the international stage are executives and experts. In this picture, parliaments, in contrast, appear more as outsiders or even as passive bystanders. What is clear is that they have been slow to reassert control of decisions that are taken beyond the confines of the nation-state and whatever access they have to international politics is mostly filtered through their executives. The result of this is a growing gap between the actual decisions that affect a state, on the one hand, and those decisions that the state's parliament is able to shape, on the other.

The international financial crisis has exacerbated this problem, a mismatch that has become particularly visible in the European Union (EU). As the European Parliament (EP) (2011) recently noted: 'the democratic credibility of European integration has suffered enormously from the manner in which the euro crisis has been dealt with to date [...]'. Indeed, with the introduction of the so-called 'European semester', national budgets are now first scrutinised by the European Commission (EC) before they become the object of debate for national parliaments. Even more intrusive is the fact that, under European pressure, technocratic governments were temporarily installed in Greece and Italy. Added to that is how the populace, especially in crisis-struck countries, vent their anger at the political representatives for failing to come up with adequate crisis responses and for having become co-opted by foreign powers. These developments might end up placing representative institutions in a double squeeze: from executives and experts who seek to avoid parliamentary oversight and control, and from populists who mobilise and seek to capitalise on declining public confidence in parliaments as the central democratic institutions.

The financial crisis thus provides a particularly striking illustration of how parliamentary institutions' failure to become adequately involved in international decision-making has fundamental implications for the democratic legitimacy that these arrangements can enjoy. While this was recognised well before the crisis struck, the situation is becoming ever more urgent. It prompts a reconsideration of

the role and mode of parliaments' operations.

Taking a step back to consider possible rectificatory measures, we may discern two tracks for how parliamentary democracy may be (re-)aligned with international decision-making. The first track is the development of international parliamentary institutions that are not only directly attached to international organisations but are also directly elected by the citizens.¹ The EP is the most notable example of a directly elected supranational parliament that has a direct say in (most) decision making at EU level. But then, the EU is not an ordinary international organisation; it has prominent supranational features. Thus, the first track is really about the setting up of a supranational or a transnational parliament proper.

The more common alternative which gives rise to the second track is to reinforce the ability of national parliaments to address international politics through the development of closer relations across borders (cf. Slaughter 2004). Such relations may initially take the form of *ad hoc* contacts and exchanges of information and best practices but they may also become more institutionalised and eventually even lead to an integrated system of closely interacting parliaments. This track then includes efforts to attach a parliamentary assembly to an international organisation; such an assembly is typically composed of delegates from the national parliaments of the member states. This approach is adopted by many international organisations such as NATO, the OSCE and the African Union. In fact, by 2011 Kissling (2011) counts twenty-six 'parliamentary organs' that are actually structurally incorporated in an international organisation and another thirteen 'international parliamentary agencies' that are dedicated to a particular international organisation. Ultimately, one could envisage the proliferation of international parliamentary institutions to constitute a globe-spanning network with a United Nations Parliamentary Assembly at its pinnacle (cf. Falk and Strauss 2001). The development of international parliamentary institutions that are made up of delegates of national parliaments is therefore one aspect of the second track that parliaments can use to catch up with the internationalisation of politics. This track may involve the establishment of new representative bodies but, in contrast to the first track, they will not consist of parliamentarians who have been directly elected by citizens.

The relevance of this second track of interparliamentary coordination is rendered apparent by the fact that most international politics remain essentially intergovernmental in character; national governments remain the key actors and are essentially in control of whatever decisions are adopted. In such a context, interparliamentary coordination is a means for national parliaments to compensate for the information advantage that the executives enjoy because of their direct involvement in international politics. As Robert Putnam (1988) has famously pointed out, executives may well want to exploit this information advantage by misrepresenting the negotiation situation they face at the international level.

1. For overviews of different forms of parliamentary institutions, see Kraft Kasack (2008) and Kissling (2011).

Interparliamentary coordination provides national parliaments with a means to cross-check the information they get from their executives.²

Another merit of interparliamentary coordination is that it remains closely wedded to the distinctive sources of democratic legitimacy that national politics enjoys. National parliaments operate in well-established contexts of integrated national public spheres, familiar political cleavages, and sentiments of national allegiance and trust in the national constitutions. Thus, their public visibility is high and the same applies to the perceived legitimacy of the decision-making processes that they are engaged in. Even though we may see some traces of an emerging transnational society, such as public deliberation and identities across borders, the political advantages of the national context are impossible to replicate at the international level without very substantial additional efforts. Indeed, this is borne out by the limited public visibility and legitimacy enjoyed by international parliamentary institutions, a point that also applies to the supranational EP.

Interparliamentary coordination suffers from the major limitation that it remains inherently fragmented. However much parliaments coordinate, they are unlikely to add up to a single coherent voice that can control the actual decisions adopted by the collective of governments that they scrutinise. What is more, effective coordination requires the dedicated effort of the parliamentarians involved and such dedication cannot always be guaranteed, given the limited time and resources available. Indeed, parliamentarians' short-term interests in individual gains in national politics are likely to outweigh more long-term, collective interests in interparliamentary coordination.

Parliaments thus face a major challenge in keeping up with the internationalisation of political decision-making, and there is no reason to believe that they will easily find an effective way of doing so. Still, to the extent that parliaments are, and remain, central to our understanding of modern democracy, it is of great importance to track their responses to internationalisation, the various forms these take and the various effects they have. Such knowledge is vital to establishing whether and, if so, under what specific conditions, parliamentary democracy is in fact sustainable under conditions of internationalisation.

Interparliamentary coordination: what should we focus on?

This book focuses on what parliamentarians do to adjust their behaviour in response to the internationalisation of political decision-making. With this behavioural focus, the book is more concerned with interparliamentary coordination in the sense of the second track (outlined above) than with the explicit process of

2. One way of thinking about the ensuing system is as a form of 'audit democracy' – a notion initially developed to make sense of the democratic dimension in the intergovernmental conception of the EU (see Eriksen and Fossum 2002; 2012). In such a system, parliaments will not be directly elected by the citizens because there is no uniform body of rights-bearing citizens to elect them in the first place. Such a parliamentary assembly will mainly serve to: supervise and control the international organisation's actions through providing forums for bringing forth relevant information on its actions; launch commissions of inquiry and include other bodies to undertake critical scrutiny of aspects of the organisation's activities; and engage civil society actors.

institution building (establishing supranational parliamentary institutions) that is a key aspect of the first track. Most of the literature on interparliamentary relations looks comparatively at the institutional set-up of different parliaments and the means they have at their disposal to scrutinise international and European politics (e.g. Maurer and Wessels 2001; Raunio 2005; Auel and Benz 2006; Kiiver 2006a; O'Brennan and Raunio 2007). This book supplements that body of literature by placing the focus on how parliamentarians operate within the broader institutional set-up, including the choices they make in engaging themselves (or not) with actors outside of their own parliament and constituency.

More specifically, the purpose of the book is twofold. The first aim is to examine empirically how an internationalising context drives parliamentarians to coordinate their work with colleagues in other parliaments; what benefits they derive from such coordination; and how this coordination affects their power positions *vis-à-vis* executive actors, among themselves, and in society in general. Second, drawing on these empirical insights, the book aims to clarify the broader implications of these developments for the practice and theory of democracy. This implies establishing whether or the extent to which the largely informal means of interparliamentary interaction might make up for, or counterbalance, the oft-noted executive dominance of international politics. Further, it brings up the broader question of whether new forms of interparliamentary coordination allow for the sustainability of parliamentary democracy under conditions of internationalisation, the fragmentation of political sovereignty, and the proliferation of multilevel politics.

The empirical questions – about parliamentarians' engagement in interparliamentary coordination, what motivates this, and what benefits the engagement produces – are approached here from a range of complementary angles. One relatively straightforward way to look at them is to analyse the ways that different parliaments respond to a shared challenge, such as scrutinising their government's engagement in EU affairs, or institutional provisions such as the EU IPEX-database and the Early Warning Mechanism (EWM) established by the EU Treaty of Lisbon. A second way is to look for variations in parliamentary engagement across policy spheres, which may reflect differences in the nature of the issues involved or differences in the (international) policy instruments employed. Parliaments may adopt a different strategy when their government adopts an international regulation (on, for instance, a standard for mobile telephony) than when it engages in a joint military mission. Yet again, a third perspective is to focus less on different parliaments and more on the networks that link parliaments together in terms of party groups or other ascriptive features by which parliamentarians may identify and organise themselves.

As to the wider theoretical question about the sustainability of parliamentary democracy under conditions of internationalisation, it is important to note beforehand that we are under no illusions as to the intrinsic merits of these new arrangements. Our point of departure is that parliaments are under pressure in an age of globalisation, and we are well aware of the fact that most of the evidence available so far – and much of what is included in this volume – indicates that

parliamentarians' efforts are likely not to make up for this. We do not expect interparliamentary coordination to be a holy grail, a panacea that can readily deliver viable democracy in the interstate context.

Instead, our theoretical ambition is far more modest and rather preliminary in character. We start from the empirical observation that there is a growing trend of interparliamentary coordination and that this is often referred to as a possible democratic remedy. Whereas there are obvious grounds for taking this trend seriously from a democratic perspective, this is only possible if we reconsider established orthodoxy. We need to look more closely at the kind of representative relationship that this structure of parliamentary coordination may spawn. The lack of real-life precedents makes this an important intellectual undertaking. It also triggers important questions: can parliaments exercise effective control in such a context? For whom and to whom do they speak? How can the actual decision makers be held accountable? Such questions cannot be properly addressed unless we consult the theoretical literature. To that effect, we will draw on recent advances in the thinking on representation and deliberation (Castiglione and Warren 2006; Eriksen and Fossum 2012; Mansbridge 2003, 2009; Rehfeld 2005, 2009; Saward 2006, 2010; Urbinati and Warren 2008). These examinations will shed light on the important question of whether interparliamentary coordination has democratic potential, or is largely a dead-end and mainly a symbolic gesture.

The European Union as a vanguard

In many respects, the EU constitutes a vanguard, a particular case for reviewing the ability of parliamentary democracy to keep up with the internationalisation of politics. Importantly, within the Union both tracks of realigning parliaments with international decision-making have been taken up in a far-ranging and quite distinctive manner. On the one hand, as noted, the EU has given rise to the world's most fully-fledged supranational parliament, the EP, which is directly elected by the citizens of the member states and holds full co-decision powers in basically all important spheres in which the Union legislates. Thus, the powers of national parliaments over EU affairs have been complemented by a supranational parliamentary body that operates at the level of the Union as a whole.

In connection with this, it should be noted that the EP also could be said to have emerged out of the second track that we identified above. Even though the initial Assembly was established as a supranational body, the EP was composed of national parliamentarians until the introduction of direct elections in 1979. This shows that it is possible for a parliamentary arrangement to move up the ladder, from the second to the first track.

But what is also important to note with regard to the EU is that, in parallel with the EP consolidating its parliamentary role under the first track, from the early 1990s onwards, the Union also established a range of measures to facilitate the coordination among national parliaments on EU decision-making. These included the establishment of the Conference of Parliamentary Committees for Union Affairs (of Parliaments in the European Union) (COSAC) and the introduction of

chapter two | learning from the best? interparliamentary networks and the parliamentary scrutiny of EU decision-making

Aron Buzogány

Introduction

European integration has led to constitutional and political developments which traded national sovereignty for attaining the potentially higher benefits of increased integration. As a result, a substantial part of domestic legislation goes back to community law. Rather than active co-legislation, national parliaments have a major task in the *ex ante* and *ex post* control of community policy-making. In carrying out the scrutiny of EU policies, national parliaments' European Affairs Committees (EACs) traditionally play the central role. Consequently, institutional choice and the design of such parliamentary scrutiny procedures have been among the main points of interest for scholars focusing on the adaptation of domestic legislatures to EU integration. Explanations for the differential 'oversight powers' of parliaments among EU member states put forward predominantly domestic explanatory variables. Thus, the development of such oversight procedures has been described as a variable of political-administrative relations, coalition types, political culture, party-based or popular euroscepticism or the strength of parliaments or parliamentary committees prior to establishing oversight in EU matters (Raunio 2005).

Incorporating this domestic-centred view, this chapter extends the perspective on processes of institutional choice in EU scrutiny design and argues that, in addition to domestic factors, interaction and learning processes triggered by interparliamentary networks have played an increasingly important role during the last decades. Explanations for institutional choice need therefore to take into account the complexities of the 'multilevel parliamentary field' that has emerged in the EU (Crum and Fossum 2009). This perspective helps us to explain the choice of scrutiny instruments in EU member states by showing that national parliaments can emulate existing examples from other national models, choosing from a 'menu' of possible solutions available in the 'parliamentary field' when designing their own scrutiny mechanisms. Institutional entrepreneurs, such as single parliaments, their bureaucracies and interparliamentary fora have played a substantial role in promoting the institutionalisation of specific models of scrutiny.

This chapter proceeds as follows. The next section sketches a theoretical framework informed by organisation theory. It adapts institutional learning to the concept of the 'multilevel parliamentary field'. The following section introduces

interparliamentary networks and institutional entrepreneurs. It describes how different, bilateral and multilateral, formal and informal interparliamentary networks that help to tie the field together have developed historically among parliamentary actors at multiple levels of the European multilevel system. The fourth section presents the two main models of parliamentary scrutiny established by national parliaments of the member states to control EU-related policy-making and shows that over time there has been a development towards choosing the mandating-based scrutiny model over the document based one. The fifth section complements this analysis by reviewing crucial moments of institutional choice when establishing EACs in different member states and illustrates that such choices also partially go back to the role played by interparliamentary networks. The chapter closes with an evaluation of the future potential of representative democracy in the EU and the role interparliamentary networks can play there.

Institutional learning in the multilevel parliamentary field

New institutions, such as new EACs, emerge more often through bricolage than exact planning on the drawing-board. Actors build upon and reinterpret models that are familiar and function elsewhere. Such adaptation processes take place in ‘organisational fields’ which are characterised by increased interaction, inter-organisational structures and the mutual awareness among participating organisations that they are involved in a common endeavor (DiMaggio and Powell 1983). In the case of the national parliaments of the EU member states, such learning processes can be located in the tightly networked space of a multilevel parliamentary field. Organisational analysis, and particularly the work of the Stanford School, offers a theoretical lens that helps us to understand these processes by focusing on the flow of practices within large social systems and by explaining why organisations dealing with similar questions become increasingly similar to one another (DiMaggio and Powell 1983). Solutions perceived as successful, legitimate and appropriate are adopted through organisational isomorphism. Institutional uncertainty and the lack of clear causal relations leading to organisational goals increase organisational isomorphism and the adaptation of potentially successful models (DiMaggio and Powell 1983). The institutionalisation of innovations in organisational fields is marked by ‘interpretative struggles’ over the meaning of institutional solutions (Zilber 2002). Institutional entrepreneurs with relevant resources play a central role here by ‘creat[ing] a whole new system of meaning that ties the functioning of disparate sets of institutions together’ (DiMaggio 1988). Their preferences and interactions are crucial for institutionalisation processes. At the same time, local actors are also able to contextualise, translate and theorise the available ‘master ideas’ which are taken for granted but remain rather vague in their details and are thus open for ‘editing’ (Sahlin-Andersson 1996) and adjustment for domestic use.

Drawing on DiMaggio and Powell’s conceptualisation of the organisational field, Crum and Fossum (2009) have introduced the idea of a ‘multilevel parliamentary field’, which is constituted by parliaments and shaped by the character

and density of interparliamentary interactions between them. Such interactions are both formal and informal; they comprise ‘divisions of labour and expertise across parliaments, partisan interactions, links to civil society, etc.’ (Crum and Fossum, this volume). The multilevel parliamentary field perspective lends itself as a helpful theoretical device for analysing national parliaments’ institutional choices of scrutiny mechanism. The organisational field perspective conveniently complements the rather positivistic bias in the literature on institutional transfer (Benson and Jordan 2011) by adding a constructivist twist. It reminds us of the importance of international socialisation and deliberation processes, which hitherto have been mostly analysed from a political theory (Eriksen and Fossum 2000; Joerges and Neyer 1997) or an international relations perspective (Checkel 2005; Flockhart 2004).

When focusing on the institutional choice of oversight mechanisms of national parliaments in European Affairs, such a constructivist perspective is particularly welcome. In contrast to domains of public policy, where the European Commission has developed directives (hard law) or at least recommendations (soft law), no such Commission-initiated template is available in the case of scrutiny. In responding to the treaty changes that consecutively provided more rights to national parliaments (Buzogány and Stuchlík 2012), the parliaments themselves have created a (multilevel) organisational field to assess and learn from one another’s practices.

At the same time, it is important to stress the socially constructed nature of the chosen institutional solutions. Little secure knowledge about the effectiveness of the different scrutiny models exists; their merits and pitfalls are contextually tied to the complexities of each political system and are practically impossible to fully incorporate into comparative benchmarks and rankings. We can consider the very process of deliberative pondering of different characteristics of institutional solutions as an ‘interpretative struggle’ carried out with the participation of politicians, parliamentary staff and independent experts that accompanies the institutionalisation of parliamentary control of EU affairs in the member states. Thus, while in parallel with the debate about the EU’s democratic deficit, the ‘master idea’ of the necessity of (some form of) domestic parliamentary control of European policy-making has led to the isomorphic creation of EACs in all member states, the conceptualisation of exactly what this should look like has remained rather vague and adjustable to each national parliament’s needs.

Choosing an institutional scrutiny model is a complex procedure in which actors in the ‘multilevel parliamentary field’ evaluate the solutions already available. Such institutional choices often rely on the ‘logic of appropriateness’ (March and Olsen 1989). This perspective underlines that actors are driven by their perceptions of what is appropriate or exemplary behaviour. At the same time, institutional choices are also determined by perceptions of the ‘adaptability’ of the scrutiny model to domestic circumstances. In most of the cases, scrutiny in European Affairs builds on previously existing instruments of parliamentary control. Therefore, institutional choice in EU matters starts with an internal evaluation of which parts of the model to be adopted would work and which would

overburden the existing system. This points to an issue that is central to the design of the scrutiny systems: the delicate balance between efficiency and accountability provisions. Simply put, an overly strong parliamentary scrutiny system would significantly constrain the governments' room for manoeuvre and would therefore obstruct the delegation of decision making at the EU level (Auel and Benz 2005). One obvious way to deal with this dilemma is to choose *à la carte* from existing scrutiny solutions and build institutional 'hybrids' which can balance efficiency and accountability demands.

Interparliamentary networks

The multilevel parliamentary field is populated by various formal and informal intraparliamentary networks. Interparliamentary cooperation has become more intensive during the past three decades. While the impact of such meetings has often remained beyond the networks' control and is often criticised as mere 'cheap talk' by both participants and academic observers (Bengtson 2007; Raunio 2011), the more important issue in this context is that these highly secluded and often symbolic fora have contributed to the establishment of a common discursive field of representative democracy in a multilevel setting. The discussions taking place in these networks can be seen as constituting the very nucleus of an 'intermediary public sphere' which promises to contribute to the institutionalisation of heterogeneous norms (Habermas 1998). Using the distinction between 'weak' and 'strong' publics introduced by Fraser, interparliamentary networks can be considered as 'weak' publics as their deliberations focus on opinion formation but not on outright decision making (Fraser 1992).

For analytical purposes, we can distinguish between bilateral and multilateral interparliamentary networks. Both can involve formal and informal avenues of communication (Table 2.1). While the emphasis in these networks is certainly on politically elected actors (MPs), networks forged among parliamentary and party staff working on EU-related issues in different domestic parliaments are at least as important on the informal level. Bilateral intraparliamentary networks have been established between various parliaments, often based on historical, regional or cultural proximity. Parallel to this development, political parties have strengthened their cooperation both within the party families of the EP and bilaterally (EPP 2009). According to data from the European Commission's General Secretariat, from the late 1980s to the early 2000s, the intensity of interparliamentary cooperation has grown steeply regarding formalised meetings, joint committee meetings, bilateral meetings and meetings of parliamentary staff (Maurer and Wessels 2001). Also, the number of contacts between the European and national parliaments has increased, including those at the level of Sectoral Committees (Neunreither 2005). Such fora include the EU Speaker's Conference, which brings together the Chairs of EACs of national parliaments and the President of the EP, and interparliamentary sittings of Sectoral Committees of the European parliaments with their peers from national parliaments. Added to this, the parliaments of the countries holding the rotating presidency of the

EU Council regularly organise sittings between the Sectoral Committees of the national parliaments.

However, probably the most important venue regarding European scrutiny has been the founding of COSAC, which became the strongest interparliamentary forum for coordinating national parliament activities following its creation in 1989. Its historical antecedents go back to the European assizes launched by French President, Mitterrand, in 1989 which resulted from a compromise about the establishment of a Second Chamber of the EU composed of representatives of national parliaments and complementing the EP. While the idea of the second parliamentary chamber could not capture the minds of the executives, they agreed instead on establishing COSAC, which remains a strictly consultative body and has no powers whatsoever to bind national parliaments or determine their position (Eriksen and Fossum 2002). At least theoretically, this is exactly what gives it the potential of becoming, in a Habermassian-sense, a truly open space for transnational deliberation (Blichner 2000). In the meantime, COSAC has become increasingly institutionalised; it commands bureaucratic structures (albeit rather weak ones) and organises biannual conferences together with the parliament of the country holding the rotating presidency. COSAC also produces biannual reports on different issues related to the scrutiny of EU policies which have contributed to the diffusion of best practices among parliaments.

The increasing density of interparliamentary networks dealing with the domestic dimension of EU policies has been paralleled by ongoing discussions on the democratic legitimacy of the Union. During the European Convention, the role of parliaments has been hotly debated in Working Group IV, which brought together practitioners and academics. While the immediate results were assessed rather sceptically (Fraga 2005), such venues provided a momentum for restructuring interparliamentary cooperation at the level of parliamentary committees and civil service. During the preparation of the Rules of Procedure for the newly established EACs in Eastern Europe (2003–2005), the frequency of such meetings was particularly high as the question of national parliaments

Table 2.1: A typology of interparliamentary networks

	Bilateral	Multilateral
Formal	Joint meetings between national parliaments Joint meetings between national parliaments and the EP	COSAC EU Speaker's Conference Regional parliamentary networks European Convention
Informal	Contacts between MPs and MPs/MPs and MEPs via their European party families Information exchange between parliamentary staff	Brussels offices of national parliaments (Monday Morning Meetings) Information exchange e.g. ECPRD

chapter three

cooperation among national parliaments: an effective contribution to EU legitimisation?

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Introduction

In recent years, various new tools of interparliamentary information exchange and cooperation have been developed. The aim of these tools is to improve the ability of national parliaments to scrutinise the European decision-making process, both at national and European levels, and for them to form and voice their opinions at both these levels. This chapter describes the development and use of these channels in the context of the democratic legitimacy of the EU and in the framework of the European multilevel parliamentary field.

The fact that national parliaments have a role in legitimising European integration has been gradually acknowledged since at least the early 1990s and the role of national parliaments has been both promoted and studied, as will be shown in the first section of this chapter. This acknowledgement has led to various developments, both formal and practical. Successive treaties have increasingly come to refer to national parliaments, and both European institutions and national parliaments themselves have reacted to this development by fostering mutual cooperation. The European Commission has opened a dialogue with national parliaments and encouraged them to use the Commission as a channel to voice their positions directly at the European level. National parliaments themselves have used the already existing fora, COSAC and the Conference of Speakers of EU Parliaments (the Conference of Speakers), to promote more interparliamentary cooperation and to create new tools of information exchange, such as IPEX.

The second section of this chapter is devoted to the potential role of national parliaments in ensuring European democratic legitimacy and concludes with a conceptualisation of the criteria to assess the extent to which they have emerged as a collective actor in EU affairs. The third section describes the incentives and mechanisms for interparliamentary cooperation. As national parliaments now have regular but not very frequent contacts in such fora as COSAC and the Conference of Speakers, they have been able to develop new instruments of cooperation and even test them in specific cases. The coordinated tests of subsidiarity checks organised by COSAC in anticipation of the introduction of the EWM are a good example of first attempts at acting collectively. The cooperation among national

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parliaments in these cases is analysed in the fourth section. Moreover, national parliaments now have at their disposal some newly developed tools, particularly IPEX, that offer them an opportunity to communicate and exchange information on a daily basis on everyday issues. The use of IPEX, its scope as well as its limits, and the challenges national parliaments face, are analysed in the fifth section. All these aspects of interparliamentary cooperation are bound together within the concept of the European multilevel parliamentary field. The sixth section then briefly analyses the achievements and prospects of national parliaments at the European level.

National parliaments and the EU's democratic legitimacy

For a long time it has been claimed that the European integration process has strengthened executives at the expense of legislatures (Moravcsik 1994) and that national parliaments have been the main losers in this process (Maurer and Wessels 2001). Although national parliaments have reacted to this process and learned 'to fight back' (Hix and Raunio 2000), most of their reactions have happened at the national level. National parliaments have developed systems of national scrutiny of European affairs primarily in order to scrutinise, influence and control their governments and their activities in the Council. Many of these systems have been extensively studied and are well described in the literature, either in separate studies (*see e.g.* Pahre 1997; Hegeland and Neuhold 2002; Pollak and Slominski 2003; Hansen and Scholl 2002; Slagter 2009; Sprungk 2010) or in edited volumes through comparative studies (Maurer and Wessels 2001; Cygan 2001; Auel and Benz 2006; O'Brennan and Raunio 2007; Tans *et al.* 2007; Barrett 2008). However, these developments have approached the deparliamentarisation problem almost exclusively from a national perspective. By attempting to have better oversight of their governments' activities in the EU, national parliaments only really influence the national legitimacy of European policies in their respective member states. Simply put, the strong position of, for example, the Danish Parliament in scrutinising the Danish Government's position on European policies may improve the legitimacy of the EU in Denmark but not in other member states, and not in the EU as a whole. The fact that national parliaments may emulate the best practices used by other national parliaments and learn from one another (*see* Buzogány in this volume) does not affect the limited impact of national routes to legitimising the EU.

This does not, however, mean that the European route to legitimisation is open only to the EP, although the EP is of course an important institution in legitimising the EU as a new type of political system (Wessels and Diedrichs 1997). What is notable is that national parliaments as a collective can also affect the legitimacy of the European level by entering directly into the European legislative process and interacting with other European institutions.

Of course, in practice, this distinction does not preclude individual national parliaments from combining both routes, or doing so in cooperation with, not in opposition to, their governments (Dimitrakopoulos 2001). It does, however, elicit new questions regarding the possibilities of national parliaments' cooperation or

even coordination at the European level.

This chapter uses the concept of the ‘multilevel parliamentary field’ in the European Union (Crum and Fossum 2009; *see also* the introductory chapter in this volume) to understand the nature, relevance and possible cooperation of national parliaments for the EU’s legitimacy. While the concept of a network could be sufficient for studying interparliamentary information exchange and cooperation as factors influencing the performance of individual national parliaments within their national political systems, the MLPF concept allows us to integrate into our analysis such factors as European-level incentives (treaties, the Commission’s activities, etc.) and perceive national parliaments as a collective.

For the national channel of democratic legitimisation of European integration to work at the European level, the activities of national parliaments at this level should meet some criteria of collective actorness. Unlike legitimisation at the national level, where each national parliament individually controls its respective governments, legitimisation at the European level requires that the activities of national parliaments are carried out collectively. While this does not necessarily mean that every single parliament or parliamentary chamber must actively participate every time any European-level tool of parliamentary involvement is used, isolated activities of individual national parliaments towards European institutions cannot contribute to European-level legitimisation on their own. (Although these could contribute to a national-level legitimisation of European issues in a given member state.)

These criteria of collective actorness can be derived from the notion of the MLPF that stresses the relevance of shared function, the structural character of the field and the fact that the field is more than the sum of its constitutive parts (Crum and Fossum 2009; *see also* Cooper in this volume).

I define these criteria of collective actorness as follows:

- (a) National parliaments perceive one another as sharing the same function within the integration process. The shared perception of their role as representing peoples’ interests in EU decision-making keeps the components of the parliamentary field together (Crum and Fossum 2009) and allows for the interpretation of the activities of national parliaments at the European level within the context of legitimisation (and is not just a simple attempt to acquire more power for the sake of power itself);
- (b) National parliaments are aware of the scrutiny processes and positions held by other members of the multilevel parliamentary collective, a precondition that makes it possible for national parliaments to act collectively by conscious effort (and not just act at the same time by simple coincidence). This leads directly to the third criterion;
- (c) National parliaments are able to execute coordinated efforts to influence the European decision-making process.

In the following I will consider to what extent these criteria are fulfilled in the present-day EU.

Incentives and mechanisms for interparliamentary cooperation

In the last twenty years, national parliaments' involvement in European affairs and interparliamentary cooperation has been encouraged by multiple formal and practical developments.

The idea that national parliaments should have some role in the EU has been recognised in treaties since the Maastricht Treaty which included a Declaration on the Role of National Parliaments in the EU. The Declaration was devoted especially to the encouragement of the exchange of information and contacts between national parliaments and the EP.¹ Five years later, in the Amsterdam Treaty, the Declaration was 'upgraded' to a Protocol, namely the Protocol on the Role of National Parliaments in the EU. The Protocol distinguished between an individual parliament's scrutiny of its own government and the involvement of national parliaments in the activities of the EU. It included the, historically speaking, first obligations for European institutions towards national parliaments; the Protocol requires that the Commission forwards its consultation documents to national parliaments. It also refers to COSAC and acknowledges its right to address the European institutions in relation to their legislative activities.²

The role of national parliaments has also been debated by the Convention on the Future of Europe and came to be reflected in the proposed texts of the Constitutional Treaty and the Treaty of Lisbon. Working group IV of the European Convention, discussing the role of national parliaments, has specifically distinguished between three different roles of national parliaments: scrutinising governments, monitoring the application of the principle of subsidiarity, and involving national parliaments at the European level through multilateral networks or mechanisms. It also called for a clarification and a strengthening of the role of COSAC (European Convention 2002). The Lisbon Treaty contains numerous references to national parliaments; it gives national parliaments the right to receive information and documents from the EU and charges them with ensuring the compliance of Union law with the principle of subsidiarity.³ Moreover, the Treaty on the EU now contains a specific article on the national parliaments' role in the EU (Article 12 of the Treaty on European Union) and two related protocols (the Protocol on the Role of National Parliaments in the EU and the Protocol on the Application of the Principles of Subsidiarity and Proportionality). The first protocol (Article 9) states that the 'European Parliament and national parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union'. The second protocol introduced

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1. Declaration on the role of national parliaments in the European Union, Treaty on European Union, Official Journal C 191, 29 July 1992.
 2. Protocol on the role of national parliaments in the European Union, Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and related Acts, Official Journal C 340, 10 November 1997.
 3. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, Official Journal C 306 of 17 December 2007.

the Early Warning Mechanism allowing national parliaments to interfere in the European legislative process directly (see Cooper in this volume).

The European institutions have also reacted to these developments, sometimes going further than the Treaties formally prescribed. The Commission, in anticipation of the ratification of the Constitutional Treaty, introduced the so-called Barroso Initiative in 2006, and, among other measures, started forwarding the legislative proposals and other documents to national parliaments before it was under any legal obligation to do so. The Commission has begun developing other channels of relations with national parliaments, such as visits to national parliaments, participation at the COSAC meetings, openness to communication with national parliaments, etc. (COSAC 2005). It also started monitoring its relations with national parliaments more closely and, since 2005, has published annual reports on its relations with them.⁴

The national parliaments have responded to these developments by creating various channels and instruments of interparliamentary cooperation that, in turn, were expected to boost this cooperation. The most relevant instruments are COSAC, permanent representatives of national parliaments in Brussels and the IPEX database.

COSAC was established in 1989 by a decision of the Conference of Speakers. It meets twice a year and serves as a venue for the exchange of information and teaching best practices. COSAC and the Conference of Speakers have since then launched various other initiatives to facilitate interparliamentary cooperation, such as the creation of IPEX and the organisation of the coordinated test of subsidiarity checks, in anticipation of the introduction of the Early Warning Mechanism. The role of these fora in organising these cooperation tools (see the specific sections below) indicates that national parliaments share some perception of their common function in the European integration process. This can be further illustrated by specific declarations of such a role that can be found in their documents, such as: ‘national parliaments contribute actively to the good functioning and to increase the democratic legitimacy of the European Union’ (Conference of Speakers of the European Union Parliaments 2008) or ‘the Conference of Speakers [...] aims at safeguarding and promoting the role of parliaments’ (Conference of Speakers of the European Union Parliaments 2010).

Another network facilitating the cooperation among national parliaments is formed by the permanent representatives of national parliaments in Brussels. At the moment, all national parliaments have created an office of a permanent representative in Brussels (sometimes there are two representatives for individual chambers in bicameral parliaments).⁵ The titles of these permanent representatives

4. Annual reports on relations between the Commission and national parliaments are online and available at: http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npoi/index_en.htm (accessed 3 July 2012).

5. A list of these representatives is online and available at <http://www.cosac.eu/permreps/> (accessed 3 July 2012).

vary – they may be either permanent representatives to the EP or to the European institutions. Some are affiliated to the respective Permanent Representations of their governments, others are more institutionally independent. However, all permanent representatives of national parliaments have offices at the EP's premises in Brussels which facilitates not only the cooperation between their parliaments and the EP/European institutions, but also the mutual cooperation among national parliaments.

The permanent representatives mostly facilitate informal, day-to-day cooperation. It is usually the Conference of Speakers and COSAC that launch new initiatives and prepare the framework for interparliamentary cooperation. For example, the Conference of Speakers has adopted the guidelines of interparliamentary cooperation. The first version, known as The Hague Guidelines (Conference of Speakers of the European Union Parliaments 2004), was adopted in 2004 in response to the draft Constitutional Treaty and the Protocols appended to it. The Guidelines determine the main objectives of interparliamentary cooperation in Europe, which are:

- (a) to provide information and strengthen parliamentary scrutiny in all areas of competence of the EU; and
- (b) to ensure the efficient exercise of parliamentary competencies in EU matters, in particular in the area of subsidiarity control by national parliaments.

The Guidelines list eight possible occasions or venues for interparliamentary cooperation: the Conference of EU Speakers; meetings of sectoral committees organised by national parliaments or by the EP; COSAC; simultaneous debates in interested parliaments; secretaries general; IPEX; representatives of national parliaments in Brussels; and the ECPRD. Moreover, they list four fields of cooperation. First, in the field of subsidiarity control, the parliaments are recommended to inform others of their activities concerning the subsidiarity checks. Second, parliaments are encouraged to exchange information and documents at all levels. The use of IPEX is promoted in both these fields. Third, the Guidelines support the organisation of conferences or other events, and fourth, they suggest that the Conference of EU Speakers could select priority policy areas. The Guidelines were slightly amended at the Conference of Speakers in Lisbon in June 2006 (Conference of Speakers of the European Union Parliaments 2008).

All these developments have created an environment that is conducive to interaction among national parliaments and within the European decision-making process, as well as between other institutions that are active within this process. National parliaments have been prompted to consider possibilities for collective activities through various incentives. These include, first, formal treaty changes, ranging from the mere mentioning of national parliaments in the Maastricht Treaty to the new rights and competences of national parliaments pertaining to the European level under the Lisbon Treaty. Second, they also include reactions of the European Commission, the institution that (under these new provisions) has the

greatest obligations towards national parliaments. Such reactions also represent an additional set of incentives for national parliaments to work out ways of ensuring mutual communication and cooperation.

National parliaments have also undertaken some practical steps to improve their cooperation, especially in response to the drafting of the Early Warning Mechanism in the Constitutional Treaty. These include especially the launch of the IPEX database and the organisation of the coordinated tests of subsidiarity checks.

Coordinated tests of subsidiarity checks

In preparation for the Early Warning Mechanism, COSAC, in 2004, decided to ‘carry out an experiment’ and test the subsidiarity checks on a legislative proposal from the European Commission (COSAC 2004). This first test concerned the Third Railway package in 2005 and was followed by seven others;⁶ the last one was concluded just after the Lisbon Treaty came into force. The idea behind the tests was to (a) try out the mechanisms of subsidiarity checks adopted in individual member states; (b) find out whether national parliaments can comply with the requirements of the Early Warning Mechanism (such as the time limits imposed); and (c) see if national parliaments can reasonably be expected to reach the required number of votes (one third or a simple majority) to raise the yellow or orange cards.

The tests revealed several problematic aspects of the subsidiarity checks and the potential cooperation of national parliaments.⁷ The main challenge for national parliaments pertained to the short time limits as many parliaments found it difficult to finish the check in time even without disseminating information on their opinion to other national parliaments or attempting further cooperation.

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6. Legislative proposals on which the coordinated test of subsidiarity checks were organised are: (1) Third Railway package - test running from 1 March 2005 until 12 April 2005; (2) Regulation on the applicable law and jurisdiction in divorce matters – test running from 17 July until 27 September 2006; (3) Proposal for the full accomplishment on the Internal Market for Postal Services – test running from 31 October until 11 December 2006; (4) Proposal for the Framework Decision on Combating Terrorism – test running from 26 November 2007 until 21 January 2008, (the first time it ran for eight weeks, according to the provisions of the Lisbon Treaty); (5) The Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Religion or Belief, Disability, Age or Sexual Orientation – from 9 July 2008 until 4 September 2008; (6) Proposal for the Directive on standards of quality and safety of human organs intended for transplantation – from 10 December 2008 until 6 February 2009; (7) Proposal for the Council Framework Decision on the right to interpretation and to translation in criminal proceedings – from 20 July 2009 until 14 September 2009; (8) Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession - from 21 October until 17 December 2009.
7. All data in this section are based on the COSAC reports. Online. Available at: <http://www.cosac.eu/subsidiarity-tests/> (accessed 3 July 2012). More detailed analysis of the tests can be found in Knutelská (2011a).

During the first three tests, national parliaments had major problems with completing the checks within the six-week deadline. This resulted in altering the Protocol in its Lisbon Treaty version that extended the time limit to eight weeks. Parliaments also repeatedly complained about the late availability of legislative proposals in all-language versions. However, as the Treaty specifically states that the eight-week period begins after the transmission of a draft legislative act in the official languages of the Union, this should not be a major problem, although national parliaments capable of processing legislative proposals in the working languages of the Commission sometimes have the advantage of more than just eight weeks to check the proposal. Moreover, the number of parliaments finishing the subsidiarity check in time has risen with the extension of the deadline between the third and the fourth test, as shown in Table 3.1.

The time concerns proved to be especially relevant in cases where the six/eight-week period overlapped with parliamentary recess, especially during summer, but also during Christmas holidays. The Commission took these tests, and the arrangements national parliaments had made, into account when preparing its practical arrangements for the operation of the Early Warning Mechanism after the Lisbon Treaty came into force. For example, it promised to use IPEX to post copies of legislative proposals as well as reasons for its decisions made in response to any alleged breaches of subsidiarity by national parliaments. Perhaps the most significant result was the Commission's promise that 'in order to take account of national [p]arliaments' summer recesses, the Commission considers that the month of August should not be taken into account when determining the deadline referred to in Protocol No. 2' (European Commission 2009b).

Moreover, despite the limitations of the Treaty, the Commission has invited national parliaments to comment not only on subsidiarity issues, but also on the substance of a proposal, although it asked them to distinguish between the two (European Commission 2009b).

The coordinated tests of subsidiarity checks were also the first opportunity for national parliaments to exchange information and to try to cooperate in a real case of scrutiny that was subject to the actual legislative process in the EU. It is thus the first example in which the second (mutual awareness of activity) and third (coordinated effort) criteria of collective actorness can be evaluated. Table 3.2 summarises the interparliamentary cooperation in tests four to eight (as the questionnaires and reports on the first three tests do not offer specific information in this regard). In this case, 'cooperation' is understood as any communication and/or information exchange (passive or active) on the subject of the coordinated

Table 3.1: Timely completion of the coordinated tests of subsidiarity checks

	ST1	ST2	ST3	ST4	ST5	ST6	ST7	ST8
No. of parl. chambers completing the check in time	NA	11	10	25	17	27	21	11
Collision with summer recess	N	Y	N	N	Y	N	Y	N

Source: COSAC reports on coordinated tests