



Strasbourg, 7 July 2021

**CDL-PI(2021)012**

**Study No. 994/2020**  
**Etude N. 994/2020**

Or. Engl./Fr.  
Or. angl./fr.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT**  
**(COMMISSION DE VENISE)**

**EUROPEAN DECISION-MAKING PROCESSES AND NATIONAL  
PARLIAMENTS**

**REPLIES TO THE QUESTIONNAIRE**

**LES PROCESSUS DECISIONNELS EUROPEENS  
ET LES PARLEMENTS NATIONAUX**

**REPONSES AU QUESTIONNAIRE**

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**QUESTIONNAIRE ON EUROPEAN DECISION-MAKING  
PROCESSES AND NATIONAL PARLIAMENTS**

- 1. Does national law provide for the involvement of the national parliament in the control of acts and positions taken by the representatives of the executive power within European Union bodies?**
- 2. In the affirmative, what is the legal basis of this involvement? What is its place in the hierarchy of norms (e.g. the Constitution, ordinary legislation, rules of procedures of Parliament?) Please quote the relevant provisions and provide a copy.**
- 3. In which acts are national parliaments involved in the preparation (e.g. legislative acts of the European Union, the budget)?**
- 4.a. What is the type of involvement/the power of the national parliament in the process? For example:**
  - **The right to be informed**
  - **The right to be consulted**
  - **Parliamentary reservation: the State cannot take a position at European level as long as there is a debate in Parliament**
  - **The right to ask for reasons: the country can take a position against the position of Parliament only after giving reasons**
  - **The agreement of Parliament is needed.**
- 4.b. Does this depend on the nature of the act under consideration?**
- 4.c. Does national legislation provide the national parliament with the power to initiate an action for violation of the principle of subsidiarity?**
- 4.d. How do these or other relevant national provisions relate to the provisions of Protocols 1 and 2 annexed to the founding Treaties of the European Union, which provide for the right of national parliaments to receive several types of documents (including legislative proposals) directly from the Commission and the Court of Auditors and to submit a reasoned opinion if they consider that a legislative proposal infringes the principle of subsidiarity?**
- 5. What is the procedure in bicameral parliaments, for example in the case of disagreement between both chambers?**
- 6. What is the effective implementation of the national and European provisions referred to above?**
- 7. In the absence of a specific legal provision, is the parliament nevertheless involved in the process? If so how?**
- 8. Do these provisions and practices apply in the area of the Economic and Monetary Union (in particular for the countries of the eurozone)? Do special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**
- 9. Do these provisions and practices apply in the field of the Area of Freedom, Security and Justice? Do any special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**
- 10. How is interparliamentary co-operation as provided for in Protocol No. 1 implemented?**

## QUESTIONNAIRE SUR LES PROCESSUS DECISIONNELS EUROPEENS ET LES PARLEMENTS NATIONAUX

11. *Le droit national prévoit-il l'implication du parlement national dans le contrôle des actes et des positions des représentants du pouvoir exécutif au sein des organes de l'Union européenne ?*
12. *Dans l'affirmative, quelle est la base juridique de cette participation ? Quelle est sa place dans la hiérarchie des normes (par exemple, la Constitution, la législation ordinaire, le règlement intérieur du Parlement) ? Veuillez citer les dispositions pertinentes et en fournir une copie.*
13. *Quels sont les actes dans la préparation desquels les parlements nationaux sont impliqués (par exemple les actes législatifs de l'UE, le budget) ?*
- 14.a. *Quel est le type d'implication/le pouvoir du parlement national dans le processus ? Par exemple :*
- *Le droit d'être informé*
  - *Le droit d'être consulté*
  - *La réserve parlementaire : le pays ne peut pas prendre position au niveau européen tant qu'il y a un débat au Parlement*
  - *Le droit à la motivation : l'Etat ne peut pas prendre position contre la position du Parlement sans motivation*
  - *L'accord du Parlement est nécessaire.*
- 4.b. *Cela dépend-il de la nature de l'acte en question ?*
- 4.c. *La législation nationale donne-t-elle au Parlement national le pouvoir d'engager une action pour violation du principe de subsidiarité ?*
- 4.d. *Comment ces dispositions nationales, ou d'autres dispositions nationales pertinentes, s'articulent-elles avec les dispositions des Protocoles n° 1 et 2 annexés aux Traités fondateurs de l'Union européenne, qui prévoient le droit des parlements nationaux de recevoir directement de la Commission et de la Cour des Comptes plusieurs types de documents (dont les propositions législatives) et de présenter un avis motivé s'ils estiment qu'une proposition législative viole le principe de subsidiarité ?*
15. *Quelle est la procédure dans les parlements bicaméraux, par exemple en cas de désaccord entre les deux chambres ?*
16. *Quelle est la mise en œuvre effective des dispositions nationales et européennes visées ci-dessus ?*
17. *En l'absence de disposition juridique spécifique, le parlement est-il néanmoins impliqué dans le processus ? Dans quelle manière ?*
18. *Est-ce que ces dispositions et pratiques s'appliquent aux domaines de l'Union économique et monétaire (notamment pour les pays de la zone euro) ? Est-ce que des dispositions et pratiques spéciales s'appliquent en complément ou en substitution des dispositions et pratiques générales ? Veuillez fournir une copie de ces dispositions.*
19. *Est-ce que ces dispositions et pratiques s'appliquent au domaine de L'Espace de liberté, de sécurité et de justice ? Est-ce que des dispositions et pratiques spéciales s'appliquent en complément ou en substitution des dispositions et pratiques générales ? Veuillez fournir une copie de ces dispositions.*
20. *Comment la coopération interparlementaire telle que prévue par le Protocole n° 1 est-elle mise en œuvre ?*

## 1. REPLY FROM AUSTRIA

### **1. Does national law provide for the involvement of the national parliament in the control of acts and positions taken by the representatives of the executive power within European Union bodies?**

Yes (see below)

### **2. In the affirmative, what is the legal basis of this involvement? What is its place in the hierarchy of norms (e.g. the Constitution, ordinary legislation, rules of procedures of Parliament?) Please quote the relevant provisions and provide a copy.**

- Article 23c to Article 23k of the Bundes-Verfassungsgesetz /Constitution (see Annex 1).
- Ordinary laws (EU-Informationsgesetz) (see Annex 2).
- Rules of procedure of the National Council and Rules of procedure of the Federal Council (see Annex 3 and 4).<sup>1</sup>

### **3. In which acts are national parliaments involved in the preparation (e.g. legislative acts of the European Union, the budget)?**

The National Council and the Federal Council have the right to be informed and to give their opinion with respect to “all projects within the framework of the EU” (see Article 23e para. 1 Bundes-Verfassungsgesetz). The term “all projects within the framework of the EU” is interpreted broadly. It includes legislative acts as well as any other forms of projects irrespective of their nature or their denomination and irrespective of the European body, which is competent or involved in the project. Accordingly, the budget is subject of the parliament’s right to be informed and to give an opinion as well. Furthermore, any procedures before the European Courts are subject of the right to information.

### **4.a. What is the type of involvement/the power of the national parliament in the process?**

- Article 23e para. 1 of the Constitution: the right to be informed and to give an opinion.

- Article 23e para. 3 of the Constitution relates to legal acts in a field, which would affect the passing of federal acts in the respective field. If the National Council has given an opinion on a project aimed at passing such a legal act, the competent Federal Minister may, in negotiations and voting in the European Union, depart from this opinion only for compelling integration and foreign policy reasons. If the competent Federal Minister intends to depart from the opinion of the National Council, he has to bring the matter before the National Council again. If the project is aimed at passing a binding legal act, which either requires the passing of federal constitutional regulations or contains rules which can only be passed by such regulations, such deviation is only admissible if the National Council does not object within adequate time. The competent Federal Minister shall without delay report to the National Council after the voting in the European Union and eventually name the reasons, for which he departed from the opinion. According to that provision the opinion given by the National Council with view to a legislative act with consequences for the Austrian legislature has a limited binding effect.

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<sup>1</sup> Annexes/appendixes to the replies can be sent on request by the Secretariat of the Venice Commission, please email [DGI-VeniceCommission@coe.int](mailto:DGI-VeniceCommission@coe.int)

- The same “limited binding effect” is established by Article 23e para. 4 of the Constitution with view to opinions by the Federal Council given to binding acts, which either require the passing of Federal Constitutional regulations limiting the competence of the provinces in legislation and executive powers, or contain regulations which can only be passed by such regulations.
- According to Article 23i of the Constitution, the Austrian member in the European Council may agree to an initiative pursuant to Art. 48 para 7 of the Treaty on European Union only having been authorized by the National Council, with the consent of the Federal Council, based on a proposal of the Federal Government. Such resolutions of the National Council and the Federal Council each require the presence of at least half the members and a majority of two thirds of the votes cast. Accordingly, the agreement of the National Council and of the Federal Council is needed in case of an initiative according to Article 48 para. 7 of the Treaty of the European Union.
- Article 23c para. 3 of the Constitution requires the agreement of the Main Committee of the National Council for the presentations for the nomination of members of the European Commission, the Court of Justice of the European Union, the Court of Auditors and the Board of Governors of the European Investment Bank.

**4.b. Does this depend on the nature of the act under consideration?**

See a)

**4.c. Does national legislation provide the national parliament with the power to initiate an action for violation of the principle of subsidiarity?**

According to Article 23h of the Constitution, the National Council and the Federal Council have the right to initiate an action for violation of the principle of subsidiarity.

**4.d. How do these or other relevant national provisions relate to the provisions of Protocols 1 and 2 annexed to the founding Treaties of the European Union, which provide for the right of national parliaments to receive several types of documents (including legislative proposals) directly from the Commission and the Court of Auditors and to submit a reasoned opinion if they consider that a legislative proposal infringes the principle of subsidiarity?**

The National Council and the Federal Council have the right to present their view in a founded comment to a drafted legal act in the framework of the European Union, for which reason the draft is incompatible with the subsidiarity principle (Article 23h para. 1 of the Constitution). Furthermore, the National Council and the Federal Council may demand the competent Federal Minister to make a statement on the compatibility of drafts with the subsidiarity principle, which, in general, has to be presented within two weeks after the demand has been made (Article 23h para. 2 of the Constitution).

**5. What is the procedure in bicameral parliaments, for example in the case of disagreement between both chambers?**

The right to be informed and to give a non-binding opinion is granted to the National Council and the Federal Council (see above). As the opinion is not binding, there is no specific procedure for the case of disagreement. With respect to binding legal acts the opinion of the National Council or – for specific legal acts – the opinion of the National Council have limited binding effects (see above). Also for this situation, a specific procedure for the case of disagreement is not provided.

**6. What is the effective implementation of the national and European provisions referred to above?**

In respect of the right to information of the National Council or the Federal Council, detailed procedures are provided for in the “EU-Informationsgesetz” (European Union – Law on Information), an ordinary law.

**7. In the absence of a specific legal provision, is the parliament nevertheless involved in the process? If so how?**

**8. Do these provisions and practices apply in the area of the Economic and Monetary Union (in particular for the countries of the eurozone)? Do special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

The provisions apply in the area of the Economic and Monetary Union.

**9. Do these provisions and practices apply in the field of the Area of Freedom, Security and Justice? Do any special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

The provisions apply in the field of the Area of Freedom, Security and Justice.

**10. How is interparliamentary co-operation as provided for in Protocol No. 1 implemented?**

According to information provided on the webpage of the Parliament (<https://www.parlament.gv.at/PERK/PE/INTZU/index.shtml>) the Austrian Members of Parliament take part in conferences of MPs on European Level on a regular basis upon invitation by the European Parliament or the Parliament of the Member State actually presiding the EU. Additionally, the webpages inform on the participation of the Austrian Parliament in IPEX – “Interparliamentary EU Information Exchange” and the cooperation with the “The European Centre for Parliamentary Research and Documentation (ECPRD)”.

## 2. RÉPONSE DE LA BELGIQUE

### 1. **Le droit national prévoit-il l'implication du parlement national dans le contrôle des actes et des positions des représentants du pouvoir exécutif au sein des organes de l'Union européenne ?**

a. Les règles relatives au contrôle parlementaire ordinaire sont applicables aux actes et aux positions des représentants du pouvoir exécutif au sein des organes de l'Union européenne. Ce contrôle est exercé en appliquant les techniques ordinaires: les questions écrites et orales, les interpellations et les enquêtes parlementaires. Il peut être exercé au sein de la Commission parlementaire, spécifiquement compétent pour les affaires européennes<sup>2</sup> et au sein de l'assemblée plénière. Il peut aboutir au vote d'une résolution et à l'adoption d'une motion de méfiance (constructive) (voir art. 96, al. 2 de la Constitution).

Les règles internes de la Chambre des représentants mentionnent en outre que « *chaque commission permanente inscrit à son ordre du jour une fois par mois un échange de vues consacré aux questions européennes qui la concernent et qui sont à l'ordre du jour du Conseil des ministres [...]* ».<sup>3</sup> Chaque Commission désigne aussi parmi ses membres un «europromoteur» dont la mission est de suivre les questions européennes pertinentes pour la Commission et de stimuler leur mise à l'agenda. Le Parlement flamand et le Parlement de la Communauté française ont adopté un concept similaire d'«europromoteur»<sup>4</sup>.

b. Afin de rendre le contrôle parlementaire plus efficace et de permettre qu'il puisse être exercé avant que les décisions au niveau européen ne soient prises, l'article 92 *quater* de la loi spéciale du 8 novembre 1980 sur la réforme de l'Etat, prévoit :

*« Dès leur transmission au Conseil des Communautés européennes, les propositions de règlement et de directive et, le cas échéant, des autres actes à caractère normatif de la Commission des Communautés européennes sont transmises aux Chambres et aux Parlements chacun pour ce qui le concerne.*

*Les Chambres peuvent donner leur avis sur ces propositions au Roi, conformément aux règles explicitées par la commission de concertation parlementaire visée à l'article 82, de la Constitution. Les Parlements peuvent donner un avis sur ces propositions à leur Gouvernement. »*

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<sup>2</sup> Voir p.e. l'art. 68, I du règlement de la Chambre des Représentants. « *Au début de chaque législature, la Chambre nomme en son sein un comité d'avis pour les Questions européennes, composé de dix députés, le président y compris, et de dix membres du Parlement européen élus en Belgique. Les membres de la Chambre sont nommés par leur assemblée. Les autres membres sont désignés par les membres du Parlement européen élus en Belgique à la représentation proportionnelle.*

*2. La présidence du comité est assurée par le président de la Chambre des représentants ou un vice-président de la Chambre qu'il désigne.*

*3. Le comité a pour mission d'examiner l'ensemble des aspects liés à la construction européenne.*

*4. Les travaux du comité peuvent se conclure par des avis<sup>35</sup>, propositions de résolution, recommandations ou d'autres textes finaux, qui sont soumis, selon le cas, directement à la séance plénière ou à la commission qui en a formulé la demande.*

*5. Le comité peut se réunir valablement, quel que soit le nombre de membres présents. Pour les votes, la majorité est calculée sur le total des membres. Dans les limites des attributions que lui reconnaît le présent article, le comité organise ses travaux et délibère conformément aux dispositions applicables aux commissions permanentes.*

*6. Le comité fixe ses modalités de fonctionnement dans un règlement d'ordre intérieur. »*

<sup>3</sup> Art.36 du règlement de la Chambre des représentants

<sup>4</sup> Art.37 du règlement de la Chambre des représentants. Voir aussi Art.31 du Règlement intérieur du Parlement de la Fédération Wallonie-Bruxelles. Pour le Parlement Flamand, voir à la page suivante : <http://www.vlaamsparlement.be/vp/informatie/diensteuropa/beleidsdomein/algemeen/europromotoren.html> (dernière consultation le 14/02/2014)

Dans cet article, le mot « Chambres » réfère aux Chambres fédérales (la Chambre des Représentants et le Sénat) et le mot « Parlements » aux Parlements des entités fédérées, les Communautés et les Régions.

c. Dans le but de renforcer la participation des deux Chambres fédérales aux activités de l'Union européenne, un "Comité d'avis fédéral chargé des questions européennes" a été créé. Ce Comité d'avis se compose de façon paritaire de 10 sénateurs, de 10 députés et de 10 membres belges du Parlement européen. La présence des parlementaires européens doit favoriser l'information réciproque et la collaboration entre le Parlement européen et le Parlement belge.

Les tâches du Comité d'avis sont notamment de :

- Coordonner et encourager le contrôle parlementaire du processus décisionnel européen;
- Rédiger des rapports et donner des avis sur les questions européennes;
- Entendre le Gouvernement, avant et après chaque Conseil européen, sur les points figurant à l'ordre du jour et sur les conclusions;
- Être informé et émettre des avis sur toute révision des traités instituant les Communautés européennes (conformément à l'article 168 de la Constitution);
- Consacrer annuellement une étude au rapport du Gouvernement concernant l'exécution des traités relatifs à l'Union européenne et qui rend également compte des progrès sur le plan de la transposition du droit européen en droit interne;
- Participer aux deux conférences annuelles des commissions spécialisées dans les affaires européennes des parlements de l'Union européenne (COSAC), et d'une manière générale, favoriser la coopération parlementaire en matière européenne (en particulier avec le Parlement européen).

Les auditions publiques du Premier Ministre avant et après les réunions du Conseil européen constituent l'activité la plus visible et la plus substantielle du Comité.

**2. Dans l'affirmative, quelle est la base juridique de cette participation ? Quelle est sa place dans la hiérarchie des normes (par exemple, la Constitution, la législation ordinaire, le règlement intérieur du Parlement) ? Veuillez citer les dispositions pertinentes et en fournir une copie.**

Le contrôle parlementaire ordinaire est basé sur les articles 100<sup>5</sup>, et 101, alinéa 2<sup>6</sup>, de la Constitution, sur les coutumes constitutionnelles qui se sont greffées sur ces articles et sur les dispositions spécifiques des différentes assemblées parlementaires concernées.

L'obligation d'information et le droit de donner un avis sur « les propositions de règlement et de directive et, le cas échéant, des autres actes à caractère normatif de la Commission des Communautés européennes » sont prévues dans l'article 92<sup>quater</sup> de la loi spéciale du 8 novembre 1980 sur la réforme de l'Etat, qui dans la hiérarchie des normes se trouve juste en dessous de la Constitution, mais au-dessus des lois fédérales et des décrets et ordonnances des entités fédérées.

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<sup>5</sup> Art. 100. Les ministres ont leur entrée dans chacune des Chambres et doivent être entendus quand ils le demandent. La Chambre des représentants peut requérir la présence des ministres. Le Sénat peut requérir leur présence dans le cadre des matières visées aux articles 77 ou 78. Pour les autres matières, il peut demander leur présence.

<sup>6</sup> Art. 101, alinéa 2 C: "Les ministres sont responsables devant la Chambre des représentants. »

Ce sont les articles 68. I du Règlement de la Chambre des représentants<sup>7</sup> et 78 du Règlement du Sénat<sup>8</sup> qui créent le "Comité d'avis fédéral chargé des questions européennes" .

**3. Quels sont les actes dans la préparation desquels les parlements nationaux sont impliqués (par exemple les actes législatifs de l'UE, le budget) ?**

Les différentes assemblées parlementaires exercent le contrôle parlementaire ordinaire sur toutes les actions et positions que les gouvernements respectifs prennent au sein des organes de l'Union européenne.

L'obligation accrue d'information et le droit de donner un avis ne concerne que « les propositions de règlement et de directive et, le cas échéant, des autres actes à caractère normatif de la Commission des Communautés européennes ».

**4.a. Quel est le type d'implication/le pouvoir du parlement national dans le processus ? Par exemple :**

- **Le droit d'être informé ;**
- **Le droit d'être consulté et le droit de donner un avis non-contraignant.**

**4.b. Cela dépend-il de la nature de l'acte en question ?**

Voir la réponse à la question 3.

**4.c. La législation nationale donne-t-elle au Parlement national le pouvoir d'engager une action pour violation du principe de subsidiarité ?**

Depuis l'entrée en vigueur du Traité de Lisbonne (2007), les parlements sont compétents pour contrôler les propositions législatives européennes à la lumière du principe de subsidiarité et pour communiquer leurs éventuelles objections directement aux institutions européennes.

En Belgique, le contrôle des propositions législatives européennes à la lumière du principe de subsidiarité requiert des conventions claires entre le parlement fédéral et les parlements des entités fédérées. Ces conventions sont inscrites dans l'accord de coopération parlementaire du 29 mars 2017 entre l'Etat fédéral, les Régions, les Communautés, la Commission communautaire française et la Commission communautaire commune relatif à l'exercice des compétences attribuées aux parlements nationaux par le Traité sur l'Union européenne, le Traité sur le fonctionnement de l'Union européenne et les protocoles y annexés.<sup>9</sup>

Les présidents des divers parlements de Belgique ont signé l'accord le 29 mars 2017. Le 23 mars 2018, le Sénat et le 25 mai 2018, ont approuvé en séance plénière la proposition d'assentiment à cet accord de coopération. L'accord de coopération a également été adopté au Parlement flamand et au Parlement wallon (le 24 janvier 2018), au Parlement de la Communauté française

<sup>7</sup> Art. 68, I, du règlement de la Chambre des Représentants : 1. *Au début de chaque législature, un comité d'avis fédéral pour les Questions européennes peut être constitué en concertation avec le Sénat. Il sera formé du comité de la Chambre et de dix sénateurs.*

2. *Le président du comité de la Chambre et un membre du Sénat assurent, par législature, la présidence du comité fédéral.*

*Le premier vice-président est un membre de l'autre chambre, le deuxième vice-président est un membre du Parlement européen.*

3. *Le comité fédéral organise ses travaux et délibère conformément aux dispositions de l'article 68.I.*

<sup>8</sup> ART. 78. — Après chaque renouvellement de la Chambre des représentants, le Sénat désigne en son sein dix membres qui le représenteront au sein du comité d'avis fédéral chargé des questions européennes. Pour chaque liste de membres effectifs sont désignés, dans les mêmes conditions, un nombre égal de membres suppléants.

<sup>9</sup> *Mon.b.*, 17 juillet 2018.

(le 25 janvier 2018), au Conseil de la Commission communautaire française (le 23 février 2018) et au Parlement de la Communauté germanophone (le 26 février 2018).<sup>10</sup>

**4.d. Comment ces dispositions nationales, ou d'autres dispositions nationales pertinentes, s'articulent-elles avec les dispositions des Protocoles n° 1 et 2 annexés aux Traités fondateurs de l'Union européenne, qui prévoient le droit des parlements nationaux de recevoir directement de la Commission et de la Cour des Comptes plusieurs types de documents (dont les propositions législatives) et de présenter un avis motivé s'ils estiment qu'une proposition législative viole le principe de subsidiarité ?**

Dans la déclaration n° 51 du Royaume de Belgique relative aux parlements nationaux, annexée à l'Acte final de la Conférence intergouvernementale qui a adopté le Traité de Lisbonne, signé le 13 décembre 2007, la Belgique a précisé qu'en vertu de son droit constitutionnel, tant la Chambre des représentants et le Sénat du Parlement fédéral que les assemblées parlementaires des Communautés et des Régions agissent, en fonction des compétences exercées par l'Union, comme composantes du système parlementaire national ou chambres du Parlement national

**5. Quelle est la procédure dans les parlements bicaméraux, par exemple en cas de désaccord entre les deux chambres ?**

Afin de mettre en œuvre le protocole n°2 du Traité de Lisbonne et en conformité avec la déclaration 51 de la Belgique, les parlements belges ont conclu l'Accord de coopération du 27 mars 2017, définissant les modalités de partage des deux votes nationaux sur base de leurs compétences respectives.

L'accord de coopération parlementaire du 29 mars 2017 prévoit un contrôle de subsidiarité a priori d'une part (art. 4,5 et 6) et un contrôle de subsidiarité a posteriori (art. 7) d'autre part.

« [Section 1re.](#) - Contrôle de subsidiarité a priori Détermination de la position des parlements et information réciproque [Art. 4.](#) Le parlement qui estime qu'un projet d'acte législatif qui relève de sa compétence viole le principe de subsidiarité communique son avis motivé sur la subsidiarité au secrétariat de la Conférence des présidents des assemblées parlementaires au plus tard dans le courant de la septième semaine de la période de huit semaines et en informe les autres parlements.

Répartition des voix

[Art. 5.](#) § 1er. Lorsqu'un parlement communique un avis motivé sur la subsidiarité concernant un projet d'acte législatif et que celui-ci porte sur des matières relevant de la compétence d'autres parlements, une voix est exprimée.

Lorsqu'un parlement communique un avis motivé sur la subsidiarité concernant un projet d'acte législatif et que celui-ci porte sur des matières relevant de la compétence exclusive de ce parlement, deux voix sont exprimées

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<sup>10</sup> Parlement flamand ([www.vlaamsparlement.be](http://www.vlaamsparlement.be)) : Documents : 1397 (2017-2018). Rapport : 24 janvier 2018. Parlement wallon ([www.parlement-wallonie.be](http://www.parlement-wallonie.be)) : Documents : 991 (2017-2018). Compte rendu intégral : 24 janvier 2018. Parlement de la Communauté française ([www.pfwb.be](http://www.pfwb.be)). Documents : 583 (2017-2018). Compte rendu intégral : 31 janvier 2018. Parlement francophone bruxellois ([www.parlementfrancophone.brussels](http://www.parlementfrancophone.brussels)). Documents : 96 (2017-2018). Compte rendu : 23 février 2018. Parlement de la Communauté germanophone ([www.pdg.be](http://www.pdg.be)). Documents : 221 (2017-2018). Compte rendu intégral : 26 février 2018. Sénat ([www.senat.be](http://www.senat.be)). Documents : 6-406. Annales : 23 mars 2018. Parlement de la Région de Bruxelles-Capitale ([www.parlement.brussels](http://www.parlement.brussels)). Documents : A-663 - 2017/2018. Compte rendu intégral : 25 mai 2018. Assemblée réunie de la commission communautaire commune ([www.parlement.brussels](http://www.parlement.brussels)). Documents : B-115 - 2017/2018. Compte rendu intégral : 25 mai 2018. Chambre des représentants ([www.lachambre.be](http://www.lachambre.be)). Documents : 54-2982. Compte rendu intégral : 21 juin 2018.

§ 2. Lorsque plusieurs parlements communiquent un avis motivé sur la subsidiarité concernant un projet d'acte législatif et que celui-ci porte sur des matières ne relevant pas de la compétence exclusive de ces parlements, le nombre de voix exprimées est calculé comme suit .

1° en ce qui concerne les projets d'actes législatifs européens portant exclusivement sur les compétences de l'autorité fédérale, deux voix sont exprimées lorsque tant la Chambre des représentants que le Sénat communiquent un avis motivé sur la subsidiarité.

2° en ce qui concerne les projets d'actes législatifs européens portant sur les compétences de l'autorité fédérale, d'une part, et sur les compétences des Régions et/ou des Communautés, d'autre part, deux voix sont exprimées dès qu'au moins une assemblée fédérale et un parlement régional ou communautaire communiquent un avis motivé.

3° en ce qui concerne les projets d'actes législatifs européens portant exclusivement sur les compétences des Régions et/ou des Communautés, deux voix sont exprimées dès que deux parlements relevant d'un régime linguistique différent communiquent un avis motivé (voir annexe)<sup>11</sup>. En vue de l'application de cette réglementation, les parlements sont répartis en quatre régimes linguistiques, à savoir le régime linguistique néerlandais (Parlement flamand), le régime linguistique français (Parlement de la Communauté française, Parlement wallon, Assemblée de la Commission communautaire française), le régime linguistique allemand (Parlement de la Communauté germanophone) et le régime linguistique bilingue (Parlement de la Région de Bruxelles-Capitale et Assemblée réunie de la Commission communautaire commune). Communication des avis et des voix des parlements aux institutions européennes

[Art. 6.](#) L'avant-dernier jour ouvrable de la période de huit semaines, le secrétariat de la Conférence des présidents des assemblées parlementaires communique les avis motivés sur la subsidiarité et le nombre de voix exprimées aux présidents du Parlement européen, du Conseil et de la Commission de l'Union européenne. S'il y a plusieurs avis, les différents avis motivés sont rassemblés dans un seul document mentionnant l'identité et la position de chaque parlement.

Le secrétariat de la Conférence des présidents des assemblées parlementaires transmet aux parlements une copie des communications visées au premier alinéa.

[Section 2.](#) - Contrôle de subsidiarité a posteriori Recours auprès de la Cour de justice de l'Union européenne pour violation du principe de subsidiarité par un acte législatif européen.

[Art. 7.](#) Conformément à la réglementation fixée par le législateur spécial, chaque parlement peut introduire auprès de la Cour de justice de l'Union européenne un recours, tel que visé à l'article 8 du Protocole de subsidiarité, pour violation du principe de subsidiarité.

Le parlement qui envisage d'introduire un tel recours en avise les autres parlements. »

## **6. Quelle est la mise en oeuvre effective des dispositions nationales et européennes visées ci-dessus ?**

Dans la pratique l'implication des parlements a été qualifiée de plutôt faible. Un auteur<sup>12</sup> écrit en 2014:

« *Contrôle de la position belge au Conseil européen.*

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<sup>11</sup> Annexes/appendixes to the replies can be sent on request by the Secretariat of the Venice Commission, please email [DGI-VeniceCommission@coe.int](mailto:DGI-VeniceCommission@coe.int).

<sup>12</sup> X. Vanden Bossche, "Les parlements belges et les affaires européennes: les raisons de leur faible implication", European Policy brief, n° 28, Mars 2014,

*La position belge au Conseil européen peut en principe être débattue au sein du Comité d'avis fédéral chargé de Questions européennes qui associe dix membres de la Chambre des représentants, dix membres du Sénat et dix membres du Parlement européen. Les auditions publiques du Premier Ministre avant et après les réunions du Conseil européen constituent l'activité la plus visible et la plus substantielle du Comité.*

*Bien que ces auditions ne soient pas systématiques, la coutume est relativement bien respectée, ce qui fait de la Belgique un Etat Membre où la fréquence de ce genre de réunion est relativement haute (Hefftlér et al., 2013). On peut estimer qu'en moyenne une douzaine de membres des deux chambres fédérales y participent. Les membres belges du Parlement européen ne s'y présentent que très rarement, soit parce que leur agenda ne le leur permet pas, soit parce qu'ils ne considèrent pas ces réunions comme suffisamment utiles vu les canaux d'informations dont ils disposent par ailleurs. Il faut noter que certains parlementaires qui ne sont pas formellement membres du Comité participent néanmoins régulièrement aux auditions.*

*Ce caractère informel des réunions reflète la nature intrinsèquement informative plutôt que délibérative de ce Comité d'avis. L'audition s'apparente surtout à une session d'information lors de laquelle le Premier Ministre fait une déclaration qui est suivie par des commentaires et questions des parlementaires auxquels il s'efforce de répondre en fin de réunion. En pratique, et contrairement à ce que son nom peut laisser entendre, le Comité d'avis n'émet pas d'avis sur la position belge que le Premier Ministre entend défendre au Conseil européen. Ceci ne résulte pas d'une absence de compétence puisque le Comité peut adopter « des avis, propositions de résolution, recommandations ou d'autres textes finaux, qui sont soumis, [...] directement à la séance plénière [...]»<sup>13</sup> Les quelques résolutions adoptées par le passé ont essentiellement porté sur les révisions des traités, et pratiquement jamais sur une session du Conseil européen<sup>14</sup>.*

#### *Le contrôle de la position belge au Conseil de l'UE*

*Les parlements belges ont aussi la possibilité de contrôler et d'influencer la position belge qui sera présentée au Conseil de l'UE. Ils peuvent le faire en examinant les propositions d'actes législatifs ainsi que des documents non législatifs publiés par les institutions européennes. Une certaine influence peut s'exercer avec les instruments classiques du contrôle parlementaire : questions au gouvernement et interpellations de celui-ci, organisation de débats, propositions de résolutions, etc.*

*(...)*

*Bien qu'il soit difficile en pratique d'évaluer le degré de contrôle des parlements sur les affaires européennes, il est évident que leur implication globale est très limitée. Les auditions des ministres qui se tiennent avant et après les réunions du Conseil de l'UE sont loin d'être systématiques. Même s'il doit en principe le faire, le gouvernement ne fournit pas systématiquement un agenda annoté avant chaque réunion du Conseil, ni ne rédige un rapport à la suite de ce dernier. Selon une analyse réalisée par les services de la Chambre des représentants, moins de 5% des questions parlementaires ont un lien avec les affaires européennes (D'Hollander, 2013). A cet égard, le système des europromoteurs ne peut apparemment pas être considéré comme adéquat et satisfaisant<sup>15</sup>. Delreux et Randour (2013) rapportent que seulement cinq questions portant sur les affaires européennes ont été posées en séance plénière en 2012, mais qu'aucune d'entre elles ne traitait spécifiquement d'une proposition législative. Ils rapportent également que les quelques questions posées dans les*

<sup>13</sup> Art. 68 (4) du règlement de la Chambre des représentants.

<sup>14</sup> La dernière résolution adoptée par la Chambre concernait le Conseil européen de Laeken en 2001, voir (Doc. Ch. 50 1527/002). Pour une vue d'ensemble complète de la production de la Chambre sur les affaires européennes, voir : [http://www.lachambre.be/kvvcr/pdf\\_sections/pri/europe/RAPPORTS\\_19\\_10\\_2012.pdf](http://www.lachambre.be/kvvcr/pdf_sections/pri/europe/RAPPORTS_19_10_2012.pdf)

<sup>15</sup> Voir les commentaires faits par Turtelboom, Chevalier, Vautmans et Dierickx dans leur proposition pour une modification du règlement de la Chambre concernant le suivi des affaires européennes. DOC Chambre 51 2337/001, 14 Mars 2006.

*commissions parlementaires permanentes concernent davantage les orientations majeures des politiques européennes plutôt que des actes législatifs spécifiques négociés au Conseil de l'UE. »*

**7. En l'absence de disposition juridique spécifique, le parlement est-il néanmoins impliqué dans le processus ? Dans quelle manière ?**

Pas applicable.

**8. Est-ce que ces dispositions et pratiques s'appliquent aux domaines de l'Union économique et monétaire (notamment pour les pays de la zone euro) ? Est-ce que des dispositions et pratiques spéciales s'appliquent en complément ou en substitution des dispositions et pratiques générales ? Veuillez fournir une copie de ces dispositions.**

Il n'y a pas de dispositions spécifiques s'appliquant aux domaines de l'Union économique et monétaire.

**9. Est-ce que ces dispositions et pratiques s'appliquent au domaine de L'Espace de liberté, de sécurité et de justice ? Est-ce que des dispositions et pratiques spéciales s'appliquent en complément ou en substitution des dispositions et pratiques générales ? Veuillez fournir une copie de ces dispositions.**

Il n'y a pas de dispositions spécifiques s'appliquant aux domaine de l'Espace de liberté, de sécurité et de justice.

**10. Comment la coopération interparlementaire telle que prévue par le Protocole n° 1 est-elle mise en œuvre ?**

Voir réponse à la question 5.

### 3. REPLY FROM CROATIA

**1. Does national law provide for the involvement of the national parliament in the control of acts and positions taken by the representatives of the executive power within European Union bodies?**

The Croatian Parliament conducts European affairs *directly* by exercising the powers conferred on national parliaments by the Treaty of Lisbon and *indirectly* by monitoring/supervising the activities of the Government in the institutions of the European Union.

The Croatian Parliament monitors/supervises the work of the Government in the institutions of the European Union by adopting conclusions on the positions of the Republic of Croatia and the documents of the European Union on the basis of which the Government acts in institutions, by holding debates on the meetings of the European Council and the Council of the European Union and by participating in the procedure for proposing candidates for the institutions and bodies of the European Union.

**2. In the affirmative, what is the legal basis of this involvement? What is its place in the hierarchy of norms (e.g. the Constitution, ordinary legislation, rules of procedures of Parliament?) Please quote the relevant provisions and provide a copy.**

The Croatian Parliament's participation in European affairs is regulated by:

- 2.1. **Article 141b [144]<sup>16</sup> of the Constitution of the Republic of Croatia** (Official Gazette Nos. 56/90, 135/97, 113/00, 28/01, 76/10 and 5/14);
- 2.2. **Act on the Cooperation of the Croatian Parliament and the Government of the Republic of Croatia in European Affairs** (Official Gazette ["Narodne novine"] No. 81/13);
- 2.3. **Standing Orders of the Croatian Parliament** (Official Gazette ["Narodne novine"] Nos. 81/13, 113/16, 69/17, 29/18, 53/20, 119/20 – Decision of the Constitutional Court of the Republic of Croatia, and 123/20).

2.1. Article 141b [144] of the Croatian Constitution reads as follows:

#### 2. PARTICIPATION IN EUROPEAN UNION INSTITUTIONS

##### **Article 141b [144]**

The citizens of the Republic of Croatia shall be directly represented in the European Parliament where they shall, through their elected representatives, decide upon matters falling within their purview.

The Croatian Parliament shall participate in the European legislative process as regulated in the founding treaties of the European Union.

The Government of the Republic of Croatia shall report to the Croatian Parliament on the draft regulations and decisions in the adoption of which it participates in the institutions of the European Union. In respect of such draft regulations and decisions, the Croatian Parliament may adopt conclusions which shall provide the basis for the Government's actions in European Union institutions.

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<sup>16</sup> Articles 141a, 141b, 141c and 141d, contained in new part VIIA titled „EUROPEAN UNION“, were added to the constitutional text by Article 29 of the Amendments to the Constitution of the Republic of Croatia (Official Gazette No. 76/10). In the consolidated text of the Constitution of the Republic of Croatia (Official Gazette No. 85/10) Articles 141a, 141b, 141c, and 141d have been marked as Articles 143, 144, 145 and 146.

Parliamentary oversight by the Croatian Parliament of the actions of the Government of the Republic of Croatia in European Union institutions shall be regulated by law.

The Republic of Croatia shall be represented in the Council of the European Union and the European Council by the Government and the President of the Republic of Croatia in accordance with their respective constitutional powers.

2.2. Article 3 of the Act on the Cooperation of the Croatian Parliament and the Government of the Republic of Croatia in European Affairs reads as follows:

### **Powers of Parliament in European affairs**

#### **Article 3**

In relation to European affairs, Parliament:

- monitors and controls the work of the Government in the institutions of the European Union;
- considers the documents of the European Union and the positions of the Republic of Croatia, and may draw conclusions thereon;
- monitors compliance with the principle of subsidiarity;
- decides on the implementation of the *passerelle clause*;<sup>17</sup>
- participates in the procedure of proposing candidates of the Republic of Croatia for the institutions and bodies of the European Union;
- participates in the procedures of revision of the Treaties of the European Union in line with Article 48 of the Treaty on the European Union;
- within the scope of freedom, security and justice, participates in the evaluation of the mechanisms for the implementation of Union policies in these areas in line with Article 70 of the Treaty on the Functioning of the European Union;
- participates in the political monitoring of the work of Europol and in the evaluation of the activities of Eurojust in line with Articles 85 and 88 of the Treaty on the Functioning of the European Union;
- participates in the interparliamentary cooperation of national parliaments and in the cooperation with the European Parliament in line with the Protocol on the role of national parliaments in the European Union; and
- monitors the work of the Government in relation to securing the sustainability of reforms and implementing all commitments resulting from negotiations with the European Union, and consistently implementing the *acquis* of the European Union.

In line with the Constitution of the Republic of Croatia and the Standing Orders of the Croatian Parliament (hereinafter: Standing Orders of Parliament), Parliament may also consider other European affairs.

In the procedure of consideration of EU documents and the relevant positions of the Republic of Croatia, in the discussions on the meetings of the Council of the European Union and in the procedure of nominating candidates for EU institutions and bodies, the powers of the Croatian Parliament are executed, as a rule, by the European Affairs Committee (see Article 4 of the Act on the Cooperation of the Croatian Parliament and the Government of the Republic of Croatia in

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<sup>17</sup> The implementation of the *passerelle clause* is an example of conducting European affairs directly by exercising the powers conferred on national parliaments by the founding Treaties themselves (see Article 12 of the Act on the Cooperation of the Croatian Parliament and the Government of the Republic of Croatia in European Affairs).

European Affairs). Article 65 of the Standing Orders of the Croatian Parliament reads as follows:

### **European Affairs Committee**

#### **Article 65**

The European Affairs Committee shall:

- monitor the activities of Parliament in European affairs;
- adopt the Work Programme for the Consideration of the Positions of the Republic of Croatia;
- consider the documents of the European Union and the positions of the Republic of Croatia in relation to the documents of the European Union and may adopt conclusions thereon;
- consider the reports of the Government on the meetings of the Council of the European Union;
- conduct the procedure of monitoring compliance with the principle of subsidiarity;
- adopt a conclusion proposing to the competent authority to implement a regulatory impact assessment procedure in accordance with law;
- take part in the process of nominating candidates of the Republic of Croatia for EU institutions and bodies;
- monitor the alignment of the legal system of the Republic of Croatia with the EU acquis;
- participate in the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC);
- co-operate with the European Parliament and the European affairs committees of national parliaments;
- propose to the Speaker of Parliament to conduct a debate on the position of the Republic of Croatia for European Council meetings;
- submit an annual report on its activities to Parliament.

The European Affairs Committee shall have the rights and duties of a competent body in European Affairs pertaining to:

- adopting conclusions on the application of the *passerelle clause*;
- amending the Treaties of the European Union.

The Committee shall perform other duties specified by these Standing Orders and law.

2.3. Part Eight of the Standing Orders of the Croatian Parliament is titled "European Affairs". It consists of two chapters and seven Articles (from 152 to 158), which will be cited at the appropriate places below.

### **3. In which acts are national parliaments involved in the preparation (e.g. legislative acts of the European Union, the budget)?**

The Croatian Parliament is primarily involved in the preparation of legislative acts of the European Union, i.e. draft regulations, directives and decisions which are adopted in the legislative procedure in line with the Treaty on the Functioning of the European Union. In this light, the Act on the Cooperation of the Croatian Parliament and the Government of the Republic of Croatia in European Affairs and the Standing Orders of the Croatian Parliament pay special attention to: the *Work Programme for the Consideration of the Positions of the Republic of Croatia*, i.e. the programme adopted by the European Affairs Committee of the Croatian Parliament on the basis of deliberation of the work programme of the European Commission and the programmes of the presidencies of the Council of the European Union, and the list of draft legislative acts of the European Union submitted to the Croatian Parliament by the Croatian Government.

Article 5 of the Act on the Cooperation of the Croatian Parliament and the Government of the Republic of Croatia in European Affairs reads as follows:

## **Work Programme for the Consideration of the Positions of the Republic of Croatia**

### **Article 5**

Based on the annual work programmes of the European Commission and the programmes of the presidencies of the Council of the European Union, the Government shall, no later than by 15 January of the current year, submit to Parliament a list of draft legislative acts of the European Union for which a debate at the EU level is envisaged during the current year.

The Committee shall consider the work programmes of the European Commission, the programmes of the presidencies of the Council of the European Union and the list of draft legislative acts of the European Union referred to in paragraph 1 of this Article, on the basis of which it shall adopt a Work Programme for the Consideration of the Positions of the Republic of Croatia for the current year (hereinafter: Work Programme).

Along with the list of draft legislative acts of the European Union referred to in paragraph 1 of this Article, the Government shall deliver to Parliament information on other documents of the European Union for which a debate in the institutions of the European Union is envisaged.

Based on the information referred to in paragraph 3 of this Article and upon the proposal of the working bodies of Parliament or on its own initiative, the Committee may supplement the Work Programme and shall notify the Speaker of Parliament accordingly.

The procedure of adopting the Work Programme shall be governed by the Standing Orders of Parliament and the Rules of Procedure of the Committee.

Article 152 of the Standing Orders of the Croatian Parliament further elaborates the above cited legal provisions, as follows:

## **CHAPTER I – PRELIMINARY DISCUSSIONS AND WORK PROGRAMME**

### **Basic provision**

#### **Article 152**

Based on the work programme of the European Commission and the programme of the Presidencies of the EU Council, the European Affairs Committee shall conduct preliminary discussions on the actions of Parliament in European affairs at sessions to which the Speaker of Parliament, the chairpersons of parliamentary working bodies and the chairpersons of political groups shall be invited.

Parliamentary working bodies shall consider the list of draft legislative acts of the European Union submitted by the Government and inform the European Affairs Committee about the draft legislative acts of the European Union from within their scope of competence for the purpose of adopting the Work Programme.

The European Affairs Committee shall adopt the Work Programme upon receiving the proposals of the competent working body.

The European Affairs Committee shall submit the Work Programme referred to in paragraph 3 hereof to the Speaker of Parliament.

Based on the information submitted by the Government on other documents of the European Union for which debate is envisaged in the institutions of the European Union, parliamentary working bodies may propose to the European Affairs Committee to supplement the Work Programme.

In addition to the situation referred to in paragraph 5 of this Article, the European Affairs Committee may supplement the Work Programme at its own initiative and submit it to the Speaker of Parliament.

The Speaker of Parliament shall submit the Work Programme and its supplements to the Government.

### **Submitting the positions of the Republic of Croatia**

#### **Article 153**

The Speaker of Parliament shall submit the received position of the Republic of Croatia on a document of the European Union from the Work Programme to the European Affairs Committee.

The Speaker of Parliament shall submit the received position of the Republic of Croatia on documents of the European Union pertaining to the Common Foreign and Security Policy of the European Union from the Work Programme to the Foreign Affairs Committee.

### **Conclusions of the European Affairs Committee**

#### **Article 154**

The European Affairs Committee shall submit the position of the Republic of Croatia on a document of the European Union from the Work Programme to the competent working body of Parliament immediately upon its receipt.

Taking account of the timeframes in which documents of the European Union are to be enacted in the institutions of the European Union, the European Affairs Committee may specify a timeframe in which the working body referred to in paragraph 1 hereof shall express an opinion thereon.

The European Affairs Committee shall conduct a debate on a document of the European Union and the position of the Republic of Croatia on a document of the European Union, taking into account the opinion of the parliamentary working body referred to in paragraph 1 hereof. After the conducted debate, the European Affairs Committee may adopt a conclusion on the position of the Republic of Croatia and shall submit it to the Speaker of Parliament.

If the parliamentary working body referred to in paragraph 1 hereof does not express an opinion within the specified timeframe, the European Affairs Committee may autonomously adopt a conclusion on the position of the Republic of Croatia.

### **Conclusions of the Foreign Affairs Committee**

#### **Article 155**

The Foreign Affairs Committee shall submit the position of the Republic of Croatia on documents of the European Union pertaining to the Common Foreign and Security Policy of the European Union from the Work Programme to the competent working body of Parliament immediately upon its receipt.

After the conducted debate on the document of the European Union and the position of the Republic of Croatia referred to in paragraph 1 of this Article, the Foreign Affairs Committee may adopt a conclusion on the position of the Republic of Croatia and shall submit it to the Speaker of Parliament.

The provisions of Article 154 of these Standing Orders shall apply accordingly to the work of the Foreign Affairs Committee.

## **Designating European Union documents**

### **Article 156**

In the upper right-hand corner of the title page, documents of the European Union from the Work Programme shall bear the designation "D.E.U. br \_\_\_\_".

All documents of the European Union shall receive a number at the end of the designation referred to in paragraph 1 hereof, and this designation must be cited in all other written materials (positions of the Republic of Croatia, reports, opinions, conclusions, etc.) that pertain to a document of the European Union from the Work Programme until its enactment in the institutions of the European Union.

The ordinal numbers referred to in paragraph 2 hereof shall start from number one and continue consecutively for the duration of one year in line with the Work Programme.

#### **4.a. *What is the type of involvement/the power of the national parliament in the process?***

There are several types of involvement/the power of the Croatian Parliament in the process, as follows:

*a.a. The right to guide the Croatian Government's actions in the institutions of the European Union and the right to know and debate reasons for Government's departure from the Parliament's conclusions.*

The European Affairs Committee of the Croatian Parliament is authorised to hold a debate on the documents of the European Union and the positions of the Republic of Croatia and may draw a conclusion on the position of the Republic of Croatia on the basis of which the Government acts in the institutions of the European Union. The Government is obliged to report to the Croatian Parliament if it departs from the Committee's conclusion. This report of the Government is subject to the parliamentary debate. Article 8 and Article 10, paragraphs 1 and 3 of the Act on the Cooperation of the Croatian Parliament and the Government of the Republic of Croatia in European Affairs read as follows:

### **Consideration of the position of the Republic of Croatia**

#### **Article 8**

The Committee shall consider the documents of the European Union and the positions of the Republic of Croatia in relation to the documents of the European Union in line with this Act and the Standing Orders of Parliament.

The session of the Committee in which the positions of the Republic of Croatia will be considered shall be held upon the receipt of the position of the Republic of Croatia, taking into account the deadlines for adoption in the institutions of the European Union.

The positions of the Republic of Croatia in relation to a document of the European Union shall be presented by a representative nominated by the Government.

The Committee shall hold a debate on the documents of the European Union and the positions of the Republic of Croatia and may draw a conclusion on the position of the Republic of Croatia on the basis of which the Government acts in the institutions of the European Union.

The conclusion referred to in paragraph 4 of this Article shall be delivered by the Committee to the Speaker of Parliament.

The procedure defined in paragraphs 1 to 5 of this Article shall apply accordingly when the conclusion is drawn by the Foreign Affairs Committee and Parliament respectively.

#### **Article 10**

The Government shall report to Parliament if it departs from the conclusions referred to in Article 8 of this Act.

...

The reports set forth in paragraphs 1 and 2 hereof are subject to debate.

##### *ab. The right to order the Croatian Government to conduct a specific procedure*

The European Affairs Committee of the Croatian Parliament is authorised to provide a conclusion ordering the Government to conduct a procedure of assessment of the regulatory impact related to the document of the European Union from the Work Programme in line with the Regulatory Impact Assessment Act (Official Gazette ["Narodne novine"] No. 44/17).<sup>18</sup>

##### *ac. The right to be consulted*

Firstly, the Croatian Parliament has right to be consulted on the proposed amendments to the Treaties of the European Union and the positions of the Republic of Croatia in relation to the proposed amendments to the Treaties of the European Union. Article 9 of the Act on the Cooperation of the Croatian Parliament and the Government of the Republic of Croatia in European Affairs reads as follows:

#### **Amendments to the Treaties of the European Union**

#### **Article 9**

Parliament shall discuss proposed amendments to the Treaties of the European Union and the positions of the Republic of Croatia in relation to the proposed amendments to the Treaties of the European Union delivered to Parliament by the Government.

The positions of the Republic of Croatia in relation to the amendments to the Treaties of the European Union set forth in paragraph 1 of this Article shall be presented at the session of Parliament by the representative nominated by the Government.

Parliament shall provide a conclusion on the positions referred to in paragraph 1 of this Article and shall submit it to the Government. Secondly, the European Affairs Committee of the Croatian Parliament may request the Government to provide a report on the held meeting of the Council of the European Union and the preparations for the next meeting of the Council of the European Union. This report of the Government is subject to the parliamentary debate. Article 10, paragraphs 1 and 3 of the Act on the Cooperation of the Croatian Parliament and the Government of the Republic of Croatia in European Affairs reads as follows:

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<sup>18</sup> The Regulatory Impact Assessment (RIA) system was introduced into the Croatian legal system for the first time in 2012. The purpose of the RIA is to ensure efficient and improved legislation that achieves its goals at a low cost and without unnecessary obstacles. The new 2017 RIA Act significantly reduces the time required for implementing the whole RIA process. Namely, part of the process are the so-called public consultations aimed at including relevant stakeholders' opinions and remarks on legislative proposals. New methodologies – Small and Medium Enterprises (SME) Test and Standard Cost Model (SCM) Methodology – are introduced, primarily assessing the RIA on SMEs. Some legislation is entirely excluded from the RIA process, including the approval of international agreements, *directly applicable EU regulations and related acts*, the State Budget Act, and a decision by which Croatian Parliament authorises the Government to directly regulate issues that are usually within the Parliament's domain.

**Article 10**

The Committee may request the Government to provide a report on the held meeting of the Council of the European Union and the preparations for the next meeting of the Council of the European Union.

The reports set forth in paragraphs 1 and 2 hereof are subject to debate.

Thirdly, the Prime Minister is obliged to submit once a year, at the beginning of the first annual session of Parliament, a report to the Croatian Parliament related to the meetings of the European Council held in the previous year, which is subject to the parliamentary debate. He/she is also obliged to submit to the Croatian Parliament, after every meeting of the European Council (within 15 days of the date of the meeting), a written report related to the meetings of the European Council held, which is subject to the parliamentary debate, too. Finally, as needed, the Speaker of Parliament is authorised to invite the Prime Minister to present the position of the Republic of Croatia for the meeting of the European Council at the session of Parliament or the session of the European Affairs Committee prior to the holding of the meeting of the European Council or present a report related to the meetings of the European Council held. Article 11 of the Act on the Cooperation of the Croatian Parliament and the Government of the Republic of Croatia in European Affairs reads as follows:

Submitting reports to Parliament on meetings of the European Council.

**Article 11**

The Prime Minister shall once a year, at the beginning of the first annual session of Parliament, submit a report to Parliament related to the meetings of the European Council held in the previous year.

Prior to every meeting of the European Council, the Government shall deliver to the Committee in writing the agenda and other supporting documents, as well as the draft of the conclusions of the European Council, if any.

After every meeting of the European Council, the Prime Minister shall submit to Parliament within 15 days of the date of the meeting a written report related to the meetings of the European Council held.

As required, the Prime Minister shall, at the invitation of the Speaker of Parliament, present the position of the Republic of Croatia for the meeting of the European Council at the session of Parliament or at the session of the Committee prior to the holding of the meeting of the European Council, or shall present a report related to the meetings of the European Council held.

The reports and the position of the Republic of Croatia set forth in paragraphs 1 and 3 hereof are subject to debate.

Lastly, as it has been already explained in Point 3 above, the Croatian Parliament is authorised to submit its supplements to the Work Programme for the Consideration of the Positions of the Republic of Croatia for the current year, prepared by the competent parliamentary bodies, to the Government.

*ad. The right to be informed*

The information and application system has been established as a module of the IKOS political documentation system at the Ministry of Foreign and European Affairs that is used as an additional technology tool for harmonising and approving the positions of the Republic of Croatia.

It is known as the “EU Base”. Accordingly, documents of the European Union<sup>19</sup> are made available to Members of Parliament by the announcement in the EU Base or in another appropriate way, except for documents classified as “Restricted”, which are delivered in writing. Along with the list of draft legislative acts of the European Union, the Croatian Government delivers to the Croatian Parliament information on other documents of the European Union for which a debate in the institutions of the European Union is envisaged. Article 6 of the Act on the Cooperation of the Croatian Parliament and the Government of the Republic of Croatia in European Affairs reads as follows:

## **Notification of Parliament**

### **Article 6**

The Government shall deliver to Parliament all documents of the European Union from the Work Programme.

The Government shall deliver to Parliament the documents of the European Union set forth in paragraph 1 of this Article and all other documents in such a manner as to enable Parliament’s access to the “EU Base” or in another appropriate manner.

Along with a document of the European Union set forth in paragraph 1 of this Article, the Government shall provide the following data to Parliament:

- a) information regarding the type of procedure applied during the decision- making process in the institutions of the European Union;
- b) the objectives intended to be achieved by its adoption and the reasons for the adoption of the document;
- c) the expected duration of the debate on the document of the European Union in the institutions of the European Union.

The Government shall deliver to Parliament the position of the Republic of Croatia on the document of the European Union set forth in paragraph 1 of this Article immediately after the adoption of the position of the Republic of Croatia.

The Government shall notify Parliament of any significant amendments in the content of the documents of the European Union set forth in paragraph 1 of this Article and of any amendments to the position of the Republic of Croatia referred to in paragraph 4 of this Article.

The Government shall deliver to Parliament information regarding the actions brought against the Republic of Croatia on the grounds of infringement of EU law.

Upon Parliament’s demand, the Government shall forthwith also deliver any other documents and information pertaining to European affairs as requested by Parliament.

The provisions of special regulations governing the right of access to information and data confidentiality shall apply accordingly to the handling of the documents of the European Union set forth in this Article.

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<sup>19</sup> *Documents of the European Union* are all legislative and non-legislative acts and drafts and proposals thereof considered within the scope of the Council of the European Union and the European Council, as well as other political or legal acts and documents considered and/or adopted by the institutions and other bodies of the European Union or by the Representatives of the Governments of the Member States at the EU level (Article 2, paragraph 3 of the Act on the Cooperation of the Croatian Parliament and the Government of the Republic of Croatia in European Affairs).

**4.b. Does this depend on the nature of the act under consideration?**

As follows from the previous answer, the type of involvement/the power of the Croatian Parliament depends on the document of the European Union or, more broadly, the particular European affair (i.e. issue arising from the membership of the Republic of Croatia in the European Union) under consideration.

**4.c. Does national legislation provide the national parliament with the power to initiate an action for violation of the principle of subsidiarity?**

Yes. The European Affairs Committee of the Croatian Parliament is authorised to submit the reasoned opinions to the President of the European Parliament, the President of the European Commission and the Presidency of the Council of the European Union after establishing that an EU draft legislative act does not comply with the principle of subsidiarity. The Committee is also authorised to issue a reasoned conclusion, on the basis of which the Government brings an action before the Court of Justice of the European Union on the grounds of infringement of the principle of subsidiarity. Articles 13 and 14 of the Act on the Cooperation of the Croatian Parliament and the Government of the Republic of Croatia in European Affairs read as follows:

**Monitoring compliance with the principle of subsidiarity****Article 13**

The Committee shall conduct a procedure of monitoring compliance with the principle of subsidiarity in draft legislative acts of the European Union in accordance with the Treaty on the European Union, the Treaty on the Functioning of the European Union and the provisions of this Act and the Standing Orders of Parliament.

If, within seven weeks from the submission of the draft legislative act of the European Union by the institutions of the European Union, the Committee establishes that the said draft legislative act does not comply with the principle of subsidiarity, it shall send a reasoned opinion to the Speaker of Parliament, who shall deliver it to the Government, the presidents of the European Parliament and the European Commission and to the Presidency of the Council of the European Union.

**Article 14**

If the Committee establishes that a legislative act of the European Union does not comply with the principle of subsidiarity, it may issue a reasoned conclusion, on the basis of which the Government brings an action before the Court of Justice of the European Union on the grounds of infringement of the principle of subsidiarity in accordance with Article 8 of Protocol 2 on the Application of the Principles of Subsidiarity and Proportionality accompanying the Treaty of the European Union and the Treaty on the Functioning of the European Union.

The relevant provisions of the Standing Orders of the Croatian Parliament read as follows:

**CHAPTER II – CONSIDERING REPORTS AND THE PRINCIPLE OF SUBSIDIARITY****Considering the Government's reports on the meetings of the Council of the European Union.****Article 157.**

The chairperson of the European Affairs Committee shall convoke a session of the Committee to discuss the Government's report on a held meeting of the Council of the European Union and preparations for the next meeting of the Council of the European Union immediately upon receiving the report.

After the conducted debate on the report referred to in paragraph 1 hereof, the European Affairs Committee may adopt a conclusion thereon and shall submit it to the Speaker of Parliament.

The Committee may hold a joint session with the competent working body of Parliament on the report referred to in paragraph 1 hereof.

### **Monitoring compliance with the principle of subsidiarity**

#### **Article 158**

Every Member of Parliament and political groups, parliamentary working bodies and the Government shall have the right to launch a procedure of monitoring compliance with the principle of subsidiarity in the draft legislative acts of the European Union.

A proposal to initiate a procedure of monitoring compliance with the principle of subsidiarity shall be submitted to the Speaker of Parliament within a period of two weeks after the date on which a draft legislative act was submitted by the institutions of the European Union.

The Speaker of Parliament shall submit the proposal to initiate a procedure of monitoring compliance with the principle of subsidiarity to the European Affairs Committee, which shall conduct the monitoring procedure within a period of seven weeks after the date on which the draft legislative act was submitted by the institutions of the European Union.

The European Affairs Committee may, at its own initiative, initiate a procedure of monitoring compliance with the principle of subsidiarity after an elapse of two weeks after the date on which the draft legislative act was submitted by the institutions of the European Union and shall inform the Speaker of Parliament thereof.

If the Committee establishes that the said draft legislative act of the European Union breaches the principle of subsidiarity, it shall adopt a reasoned opinion thereon and submit it to the Speaker of Parliament.

The Speaker of Parliament shall submit the reasoned opinion referred to in paragraph 5 hereof to the Government, the Presidents of the European Parliament and of the European Commission and to the Presidency of the Council of the European Union.

The date on which the draft legislative act of the European Union was transmitted to the national parliaments of the EU Member States in the official languages of the European Union shall be regarded as the date on which the draft legislative act was submitted by the institutions of the European Union.

The provisions of this Article shall apply accordingly to the procedure of monitoring compliance with the principle of subsidiarity in the legislative acts of the European Union.

**4.d. *How do these or other relevant national provisions relate to the provisions of Protocols 1 and 2 annexed to the founding Treaties of the European Union, which provide for the right of national parliaments to receive several types of documents (including legislative proposals) directly from the Commission and the Court of Auditors and to submit a reasoned opinion if they consider that a legislative proposal infringes the principle of subsidiarity?***

As follows from the previous answer, the provisions of the Act on the Cooperation of the Croatian Parliament and the Government of the Republic of Croatia in European Affairs, as well as the provisions of the Standing Orders of the Croatian Parliament, are in full accordance with the provisions of Protocol (No 1) on the Role of National Parliaments in the European Union and

Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality, annexed to the founding Treaties of the European Union.

**5. *What is the procedure in bicameral parliaments, for example, in the case of disagreement between both chambers?***

The Croatian Parliament is unicameral (it has no fewer than 100 and no more than 160 Members elected on the basis of direct, universal and equal suffrage by secret ballot). Accordingly, the question is not applicable to Croatia.

**6. *What is the effective implementation of the national and European provisions referred to above?***

There has not been the effective implementation of the national and European provisions concerning a possible violation of the principle of subsidiarity so far in Croatia.

**7. *In the absence of a specific legal provision, is the parliament nevertheless involved in the process? If so how?***

There is neither absence of specific legal provisions in Croatia nor the Croatian Parliament did get involved in the process in any way.

**8. *Do these provisions and practices apply in the area of the Economic and Monetary Union (in particular for the countries of the eurozone)? Do special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.***

Croatia is not a member state of the eurozone. It joined the Exchange Rate Mechanism (ERM II) only on 10 July 2020.

**9. *Do these provisions and practices apply in the field of the Area of Freedom, Security and Justice? Do any special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.***

The Croatian Parliament has not applied these provisions in the field of the Area of Freedom, Security and Justice in any way.

**10. *How is interparliamentary cooperation as provided for in Protocol No. 1 implemented?***

Various forms of interparliamentary cooperation are available to the Croatian Parliament. They involve conferences and meetings as well as information exchange platforms, as follows.

- a) Conferences and meetings
- b) Conference of Speakers of European Union Parliaments
- c) COSAC

The European Affairs Committee of the Croatian Parliament is a full member of the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC), which implies, *inter alia*, that it is entitled to take part in passing decisions and that simultaneous interpretation into Croatian is provided during the COSAC plenary meetings.

During the Croatian Presidency of the Council of the European Union from 1 January to 30 June 2020 (Parliamentary Dimension), the LXIII COSAC Conference was scheduled to take place from

24 to 26 May 2020 in Zagreb. However, it was cancelled due to the global COVID-19 outbreak and the consequences of the earthquake that affected Zagreb on 22 March 2020. Intending to ensure that the COSAC remains a relevant forum of interparliamentary exchange and a channel of communication with the institutions of the European Union, the European Affairs Committee of the Croatian Parliament proposed some form of electronic exchange of views to take place instead of the meeting.

- d) Interparliamentary Conference on Stability, Economic Coordination and Governance in the European Union.
- e) Interparliamentary Conference for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP).
- f) Joint Parliamentary Scrutiny Group (JPSG) for the European Union Agency for Law Enforcement Cooperation – Europol.
- g) Interparliamentary Committee Meetings.

As it has already been said, the Croatian Parliament participates, within the scope of freedom, security and justice, in the evaluation of the mechanisms for the implementation of Union policies in these areas in line with Article 70 of the Treaty on the Functioning of the European Union. However, it is worth mentioning that, unlike other European affairs (which are executed by the European Affairs Committee of the Croatian Parliament), issues related to the Common Foreign and Security Policy of the European Union fall as a rule within the competence of the Foreign Affairs Committee. Hence, the Foreign Affairs Committee of the Croatian Parliament participates in interparliamentary oversight of the Common Foreign and Security Policy of the European Union by participating in meetings of the Interparliamentary Conference of the European Union on the Common Foreign and Security Policy of the European Union together with the members of the Defence Committee and/or other committees.

## 2) Information exchange platforms.

### a) The Platform for EU Interparliamentary information exchange (IPEX):

The Croatian Parliament uploads and updates the information regarding parliamentary involvement in European Affairs on IPEX's national page, along with information on scrutiny of individual EU documents.

IPEX Correspondents are:

Ms Jelena Špiljak

Adviser in the European Affairs Committee

Phone: +385 1 45 69 618

Fax: +385 1 63 03 078

e-mail: [jspiljak@sabor.hr](mailto:jspiljak@sabor.hr)

Mr Mario Straka

Adviser in the Office for International and European Affairs

Phone: +385 1 63 03 539

Fax: +385 1 63 03 856

e-mail: [mario.straka@sabor.hr](mailto:mario.straka@sabor.hr)

### b) European Centre for Parliamentary Research and Documentation (ECPRD)

When the Republic of Croatia was admitted to the Council of Europe in 1996, the Croatian Parliament became an ECPRD member and since then has actively been involved in the Centre's work.

ECPRD Correspondent is:

Branka Martinčić

Head of the Library

Phone: +385 1 45 69 589 (12 589)

e-mail: [bmartin@sabor.hr](mailto:bmartin@sabor.hr)

Deputy ECPRD Correspondent is:

Anamarija Nejašmić

Adviser in the Croatian Parliament  
Phone: +385 1 63 03 476 (13 476)  
e-mail: [anamarija.nejasmic@sabor.hr](mailto:anamarija.nejasmic@sabor.hr)

#### 4. REPLY FROM CYPRUS

**1. Does national law provide for the involvement of the national parliament in the control of acts and positions taken by the representatives of the executive power within European Union bodies?**

Following the accession of the Republic of Cyprus to the EU, the House of Representatives, like all national Parliaments of the member states, found itself confronted with obligations and duties that emanate from the above mentioned membership. Cyprus' accession to the EU resulted, inter-alia, in reforming and enhancing the role of its Committee on European Affairs (EAC).

The executive is asked to submit in time to parliament all legislative proposals of the European Commission, as well as the agendas of the meetings of the Council of Ministers. In this respect, the House of Representatives would be facilitated in choosing the issues that influence Cyprus and, at the same time, expressing its opinion in those issues before the adoption of final decision at EU level.

The Committee aims not only at being informed but also at influencing and shaping the Republic's positions in the EU. As it is well known, each national parliament has developed its own monitoring system that is adjusted to its own characteristics.

The Committee is at the current stage the responsible Committee for the scrutiny of proposed European Legislation. The Committee scrutinises mainly legislative proposals and consultation documents, however, Commission working documents are regularly forwarded to the Committee and the sectoral Committees for their consideration.

In addition, the Committee invites the executive to attend its meetings and brief its members on issues being debated in the meetings of the Council of Ministers of the EU.

Based on the relevant provisions of the Amsterdam Treaty, the House of Representatives, demanded to be continuously informed by the executive in relation to documents originating from the EU.

The treaty of Lisbon, by attributing more power to national parliaments, has reinforced the role of the EAC in the process of scrutinizing the documents emanating from EU institutions. In 2011, the EAC was renamed Parliamentary Committee on Foreign and European affairs. Under the current practice it is the only organ which conducts subsidiary checks on EU legislative proposals.

**2. In the affirmative, what is the legal basis of this involvement? What is its place in the hierarchy of norms (e.g. the Constitution, ordinary legislation, rules of procedures of Parliament)?**

Until EU accession, the Constitution of Cyprus was the supreme law of the country, and the Courts were capable of annulling national laws if these were deemed to be 'unconstitutional'.

In July 2006, the Cyprus Constitution was amended giving supremacy to all European Union Law (primary as well as derivative) (fifth amendment of the Constitution, Law No 127(I)/06.

The Fifth amendment is the legal basis for the implementation of the treaty of Lisbon and in particular of article 12 of the treaty on European Union and its protocols 1 and 2 in the Cypriot legal order. No further legislative act implementing the relevant provisions of the Treaty of Lisbon

has been enacted and thus the provisions of the Treaty apply directly to the Cypriot legal order.<sup>20</sup> Other than the provisions of the treaty of Lisbon parliamentary scrutiny of EU proposals is governed by parliamentary practice rather than legislation. The legal framework for the exercise of parliamentary scrutiny is therefore provided by the general constitutional provisions. Article 73 of the Constitution authorizes the House of Representatives to regulate any manner of parliamentary procedure and the functions of its offices in its Standing Orders, subject to the constitutional provisions.<sup>21</sup> Thus, parliamentary scrutiny of EU affairs is governed by the provisions of the treaty of Lisbon and parliamentary practice in accordance with the right of House of Representatives to regulate its own parliamentary procedure and functions. The House of Representatives can also exercise parliamentary control over the executive by submitting questions to the competent ministries and debating matters in the plenary.<sup>22</sup>

### **3. *In which acts are national parliaments involved in the preparation (e.g. legislative acts of the European Union, the budget)?***

The Committee is at the current stage the responsible Committee for the scrutiny of proposed European Legislation. The Committee scrutinises mainly legislative proposals and consultation documents, however, Commission working documents are regularly forwarded to the Committee and the sectoral Committees for their consideration.<sup>23</sup>

In addition, the Committee invites the executive to attend its meetings and brief its members on issues being debated in the meetings of the Council of Ministers of the EU.

The Committee examines whether the proposed EU legislation complies with the principles of subsidiarity and proportionality. During the examination of individual proposals, the Committee may invite members of the executive and/or interested parties to provide information and/or express views as part of the scrutiny process.

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<sup>20</sup> The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) provide for important changes of direct relevance to national parliaments. For the first time, national parliaments are mentioned and assigned specific roles in the body of the Treaty text. National parliaments are to ensure compliance with subsidiarity (Art. 5 TEU) and to contribute to the good functioning of the Union (Art. 12 TEU). With this objective, they are also given some prerogatives in the EU decision-making process.

<sup>21</sup> It should be noted that the adoption of any Directive at EU level, in principle, creates an obligation to the executive to submit implementing legislation or regulations before the Parliament. The aim of the Committee is to timely pinpoint to the executive the obligations arising from the adoption of Community Directives, irrespective of any other mechanisms created by the government aimed at monitoring the above matter.

<sup>22</sup> Under Article 1A of the Constitution and 179 as amended by Law 127 (I) 2006, supremacy is given to EU Law. Article 1A of the Constitution of Cyprus provides that no provision in the Constitution can be deemed as overriding any legislation, acts or measures enacted or taken by the Republic which are obligatory as a member state of the European Union, nor does it hinder Regulations, Directives or other binding provisions or measures of a legislative nature enacted by the European Union from having legal force in the Republic. In the case *Michaelides v. AG*, it was held that the amendment of the Constitution laid the foundation for the supremacy of EU law over the Constitution.

<sup>23</sup> One widespread type of scrutiny system is the document-based model that our country has endorsed, and which focuses on sifting and examining all incoming EU documents (mostly Commission legislative proposals). The document-based models emphasize information processing and the development of parliamentary discussions and positions. Many document-based models are accompanied by a scrutiny reserve which prescribes that ministers should not agree to an EU proposal before parliamentary scrutiny is completed. The parliaments of the United Kingdom, the Czech Republic, Cyprus, France, Germany, Italy, Ireland, Portugal, Belgium, the Netherlands (*Eerste kamer*), Luxembourg and Bulgaria have document-based scrutiny systems. The absence of systematic mandates for government action in the document-based systems does not necessarily imply that these assemblies are without influence. Parliamentary committees often call upon government ministers to clarify their views and positions.

The Committee is engaged in inter parliamentary activities with the European Parliament as well as the parliaments or the corresponding committees of the parliaments of the member states of the EU.

More specifically, the Committee participates in the conferences and meetings such as the Conference of Community and European Affairs Committees of Parliaments of the European Union.

***4.a. What is the type of involvement/the power of the national parliament in the process?***

Cyprus's political system (presidential democracy with a complete separation of powers) does not allow the imposition of views and opinions on the government. The parliament cannot legally bind the government. However, the parliament can exert political pressure on the government in the shaping of its positions.

The flow of information from the executive to the parliament was initially limited, but the situation was improved after the decision of the European Commission of 2006, to forward directly to all national parliaments of the European member states all the legal proposals and other documents of the Commission. This has strengthened the role of our Parliament and effectively helped towards the speedy examination of the legislative proposals and documents.

Our national House of representatives focuses extensively on Commission documents and less on the actual decision-making process in the Council of Ministers.

The goal in regard of this kind of scrutiny is not to systematically mandate Brussels bound ministers or to ensure a close monitoring of government positions in specific inter-institutional negotiations. It emphasizes instead on information processing and the development of parliamentary discussions and positions.

***4.b. Does this depend on the nature of the act under consideration?***

No, as it is generally considered that the Treaty of Lisbon has encouraged increased involvement by national parliaments in the activities of the EU and has enhanced their ability to express views on EU draft the EU draft legislative acts and other matters which are of particular interest to them.

However, the small size of our country (Cyprus) and the difficulties associated with the scrutiny of legislation in the relatively short time frame of eight weeks unavoidably restrict the effectiveness of the participation of the Republic of Cyprus in the EU policy making process.

***4.c. Does national legislation provide the national parliament with the power to initiate an action for violation of the principle of subsidiarity?***

No, but the House of Representatives is supportive of the parliamentary scrutiny mechanism introduced by the Treaty of Lisbon. EU draft legislative acts are distributed to the members of the committee on Foreign and European and in this respect, it can make recommendations on either the substance of the matter or the principle of subsidiarity or proportionality as the case may be.

In cases that the Committee has conducted a subsidiary check on the proposal, a report is compiled on the results of its assessment. If a reasoned opinion has been adopted, it is forwarded to the president of the House of Representatives who signs a covering letter and sends the reasoned opinion to the EU institutions. The committee must conduct its subsidiary checks within the timeframe of eight weeks.

**4.d. How do these or other relevant national provisions relate to the provisions of Protocols 1 and 2 annexed to the founding Treaties of the European Union, which provide for the right of national parliaments to receive several types of documents (including legislative proposals) directly from the Commission and the Court of Auditors and to submit a reasoned opinion if they consider that a legislative proposal infringes the principle of subsidiarity?**

Article 73 of the Constitution authorizes the House of Representatives to regulate any manner of parliamentary procedure and the functions of its offices in its Standing Orders, subject to the constitutional provisions. Thus, parliamentary scrutiny of EU affairs is governed by the provisions of the treaty of Lisbon and parliamentary practice in accordance with the right of House of Representatives to regulate its own parliamentary procedure and functions.

**5. What is the procedure in bicameral parliaments, for example in the case of disagreement between both chambers?**

Non applicable

**6. What is the effective implementation of the national and European provisions referred to above?**

Non applicable

**7. In the absence of a specific legal provision, is the parliament nevertheless involved in the process? If so how?**

Yes, look at our answer in Question 2.

**8. Do these provisions and practices apply in the area of the Economic and Monetary Union (in particular for the countries of the eurozone)? Do special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

No

**9. Do these provisions and practices apply in the field of the Area of Freedom, Security and Justice? Do any special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

**10. How is interparliamentary cooperation as provided for in Protocol No. 1 implemented?**

## 5. REPLY FROM DENMARK

### **1. Does national law provide for the involvement of the national parliament in the control of acts and positions taken by the representatives of the executive power within European Union bodies?**

National law does provide for such involvement. See answer to question 2 below.

### **2. In the affirmative, what is the legal basis of this involvement? What is its place in the hierarchy of norms (e.g. the Constitution, ordinary legislation, rules of procedures of Parliament)?**

The general constitutional provision on the relations between government and Parliament in international affairs is Art. 19(1) of the constitution:

*“The King shall act on behalf of the Kingdom, but, except with the consent of the Folketing, the King shall not undertake any act whereby the territory of the Kingdom is increased or reduced, nor shall he enter into any obligation the fulfilment of which requires the concurrence of the Folketing, or which is otherwise of major importance. Nor shall the King, except with the consent of the Folketing, denounce any international treaty entered into with the consent of the Folketing.”*

However, it is generally accepted that this provision does not regulate actions of the government in EU (except in cases of amendments of the Treaties themselves). The constitution dates from 1953, and when Denmark acceded the EU in 1972, no amendment to the constitution was made. It was understood between all parties that Art. 19 would not apply.

Instead, the law on Danish accession to the EU (Law no. 447/1972) contains the following provision (Art. 6(2)):

*“The government must inform a committee established by Parliament on proposals for EU regulation which will have direct effect or the fulfilment of which requires the concurrence of the Folketing.”*

This is the only general legislative provision on the government’s duty to involve Parliament in day to day EU matters. As is seen, it is very limited in scope – in concerns only “information” to Parliament, and it concerns only certain types of regulation, defined by formal criteria rather than by their actual importance. However, the provision does not give a realistic picture of the relations between government and Parliament in EU matters. Over the years, a far more extensive cooperation has been established in practice. This has not led to any amendments to the EU Accession Law, but it has been formalized in a number of reports issued by Parliament with the consent of government(s).

The key committee in Parliament is the Committee for European Affairs (CfEA) in which every party in Parliament is represented in accordance with its number of MPs.

The CfEA works under basically two different procedures, depending on whether the issue in question is of a) “considerable importance” or b) “major importance”. It is the responsibility of the government to draw this distinction in each individual case.

In cases of “considerable importance”, the government is obliged to inform the CfEA (orally or in writing) of the issue at stake, but the government does not need a mandate from the Committee. If the Committee wishes to discuss the matter with the government, it must request for a consultation.

In cases of “major importance”, the government must present to the CfEA a thorough report on the matter and a proposal for strategy of negotiation. The proposal is deemed to be approved if there is no majority against it. It is thus a matter of “negative” rather than “positive” mandate. If there is a majority against the governmental proposal, the government will be constitutionally entitled to follow its own proposal, but this may have parliamentary consequences, eventually in the form of a vote of no confidence against the relevant minister or the government as such.

As follows from the above, the CfEA is the central institution within Parliament. It should be added that in addition, the government is under an obligation to inform the individual sector committees (The Committee for Legal Affairs etc.) on relevant EU matters. Such committees, however, have no formal power and cannot decide on mandates. The power of mandate lies with the CfEA alone.

**3. *In which acts are national parliaments involved in the preparation (e.g. legislative acts of the European Union, the budget)?***

The above procedures apply to all EU matters, including budgetary issues. As a consequence, in all major budgetary issues, the government must request a (“negative”) mandate from Parliament.

**4.a. *What is the type of involvement/the power of the national parliament in the process?***

See answer to question 2 above.

**4.b. *Does this depend on the nature of the act under consideration?***

See answer to question 3 above. As stated here, the procedures described in the answer to question 2 apply to all EU matters.

**4.c. *Does national legislation provide the national parliament with the power to initiate an action for violation of the principle of subsidiarity?***

I understand this question to refer to whether national legislation provides the national parliament with power to initiate actions before the national courts. The answer is no – Parliament would not as such have the power to bring an action before the courts. Individual MPs would in some circumstances have such power.

**5. *What is the procedure in bicameral parliaments, for example in the case of disagreement between both chambers?***

Denmark has only one chamber in Parliament (the Folketing). As said under question 2, each party in Parliament is represented in the CfEA according to its number of MPs, and this ensures that the CfEA is always representative of the Parliament as such.

**6. *What is the effective implementation of the national and European provisions referred to above?***

This is a difficult question to answer as there will always be individual cases where Parliament claims to be under-informed etc. Generally speaking, however, there is no major debate in Denmark about the involvement of Parliament in EU matters, and requests for more general changes to the system appear to be rare.

**7. *In the absence of a specific legal provision, is the parliament nevertheless involved in the process? If so how?***

Please see answers to question 2 above.

**8. Do these provisions and practices apply in the area of the Economic and Monetary Union (in particular for the countries of the eurozone)? Do special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

Denmark is not a participant to the European Single Currency (the Euro). In matters where Denmark nevertheless participate in the area of the Economic and Monetary Union, the said provisions and practices apply.

**9. Do these provisions and practices apply in the field of the Area of Freedom, Security and Justice? Do any special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

Denmark has certain reservations to the area of Freedom, Security and Justice. Where these reservations are not relevant, the said provisions and practices apply.

**10. How is interparliamentary cooperation as provided for in Protocol No. 1 implemented?**

I take this to refer to Title II (art. 9 and 10) of the said protocol. The interparliamentary cooperation provided for in these provisions have not been implemented through law. According to the information I have been able to obtain, there are no formal regulatives etc. within Parliament to provide for the matter.

## 6. REPLY FROM ESTONIA

**1. Does national law provide for the involvement of the national parliament in the control of acts and positions taken by the representatives of the executive power within European Union bodies?**

Yes

**2. In the affirmative, what is the legal basis of this involvement? What is its place in the hierarchy of norms (e.g. the Constitution, ordinary legislation, rules of procedures of Parliament?) Please quote the relevant provisions and provide a copy.**

The Constitution does not provide for direct involvement of the parliament in the decision-making in the EU matters. In general, the principle of democracy laid down in the constitution is applied to discuss most important issues in the society by the parliament. A detailed regulation is provided in the rules of procedures of the parliament adopted as a law. In addition to this, the State Chancellor (head of the civil service nominated by the prime minister) has adopted guidelines on the procedure of EU matters addressed to all ministries.<sup>24</sup>

### **Riigikogu Rules of Procedure and Internal Rules Act<sup>25</sup>**

Article 13 paragraph 2: The Board of the *Riigikogu* [the Presidency of the Parliament]: 4.1) transmits proposed European Union legislation submitted to the *Riigikogu* to the European Union Affairs Committee or the Foreign Affairs Committee, designates the standing committees which are to provide an opinion on such legislation, and determines the time by which that opinion is to be provided.

Article 18 paragraph 3: The European Union Affairs Committee and, in matters which concern the common foreign and security policy of the European Union, the Foreign Affairs Committee, in co-operation with other standing committees of the *Riigikogu*, develop the position of the *Riigikogu* on proposed European Union legislation and provide their opinion, while the European Union Affairs Committee also provides its position, concerning other affairs of the European Union, and oversee the work of the Government of the Republic in implementing European Union policy.

By Articles 24 and 25, all Members of Parliament (total 101) may belong to the EU Affairs Committee, including the President and Vice Presidents of the parliament.

Article 25 paragraph 2: The European Union Affairs Committee has at least 15 members, and must include at least one member from each of the standing committees listed in clauses 18(1 2)-11) of this Act.

*There are 10 such standing committees and the EU affairs committee has currently 16 members.* Article 47 provides the schedule of the meetings (mainly the Committee on EU affairs meets twice a week).

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<sup>24</sup> Only available in Estonian, [https://www.riigikantselei.ee/sites/default/files/content-editors/Failid/EL/euroopa\\_liidu\\_asjade\\_menetlemise\\_juhised\\_1.09.2020.pdf](https://www.riigikantselei.ee/sites/default/files/content-editors/Failid/EL/euroopa_liidu_asjade_menetlemise_juhised_1.09.2020.pdf).

<sup>25</sup> English translation available at <https://www.riigiteataja.ee/en/eli/504062020005/consolide>.

Chapter 18<sup>1</sup> RULES FOR PROCEEDINGS REGARDING EUROPEAN UNION MATTERS

§ 152<sup>1</sup>. Introduction to the *Riigikogu* of European Union matters

(1) The Government of the Republic introduces the following proposed European Union legislation to the *Riigikogu* for the formation of a position in the matter:

1) draft legislation the scope of whose application, under the Constitution of the Republic of Estonia, requires the passage, amendment or repeal of an Act or resolution of the *Riigikogu*;

2) draft legislation whose passage would entail a significant economic or social impact.

(2) Of its own motion or at the demand of the *Riigikogu*, the European Union Affairs Committee or the Foreign Affairs Committee, the Government of the Republic also introduces other European Union matters of significant importance for opinion to the European Union Affairs Committee or the Foreign Affairs Committee. In the cases provided by law, the Government of the Republic introduces other European Union matters of significant importance to the European Union Affairs Committee for taking a position. In such cases, the provisions of sections 152<sup>2</sup>, 152<sup>3</sup> and subsection 152<sup>4</sup>(1) are not applied to the proceedings of development of the position, and subsections 152<sup>4</sup>(2) and (3) are applied.

§ 152<sup>2</sup>. Submission of and the opening of proceedings on proposed European Union legislation

(1) An explanatory memorandum is annexed to the proposed European Union legislation that sets out the purpose of the draft legislation, the procedure and schedule for proceedings regarding the draft legislation in the institutions of the European Union, an overview of the effects related to the passage of the draft as a legislative instrument, an analysis regarding the conformity of the draft legislation to the principle of subsidiarity, and the position of the Government of the Republic concerning the draft legislation.

(2) The Government of the Republic submits the draft legislation at the earliest opportunity after having received the draft legislation.

(3) The draft legislation is submitted to the Board of the *Riigikogu* which promptly forwards it to the European Union Affairs Committee, or, if the draft legislation concerns the common foreign and security policy of the European Union, to the Foreign Affairs Committee, and assigns one or several standing committees to provide an opinion on the draft legislation.

(4) Members of the *Riigikogu* are notified of the transmitted draft legislation and of the committees that have been assigned to provide an opinion.

§ 152<sup>3</sup>. Opinion of the standing committee concerning the draft legislation. The standing committee that has been assigned by the Board of the *Riigikogu* to provide an opinion on the draft legislation submits the opinion to the European Union Affairs Committee or the Foreign Affairs Committee by the time determined by the Board of the *Riigikogu*.

§ 152<sup>4</sup>. Proceedings regarding the draft legislation in the European Union Affairs Committee and the Foreign Affairs Committee

(1) The European Union Affairs Committee or the Foreign Affairs Committee include the draft legislation in the agenda of their sittings after the expiry of the time-limit referred to in section 152<sup>3</sup> of this Act.

(2) Acting in the name of the *Riigikogu*, the European Union Affairs Committee or the Foreign Affairs Committee takes a position regarding the draft legislation and states the position in the minutes of the sitting of the committee. The committee may decline to take a position. The committee informs the Government of the Republic of its position or of having declined to take a position.

(3) The Government of the Republic is obligated to adhere to the opinion of the *Riigikogu*. If the Government of the Republic has failed to do so, it must at the earliest opportunity explain its reasons to the European Union Affairs Committee or the Foreign Affairs Committee.

**§ 152<sup>5</sup>.** Prime Minister's overview of the activities of the Government of the Republic in implementing European Union policy

(1) During the autumn session of the plenary assembly of the *Riigikogu*, the Prime Minister, on behalf of the Government of the Republic, presents to the *Riigikogu* an overview of the activities of the Government of the Republic in implementing European Union policy. The overview is presented following the procedure provided in section 155 of this Act and having regard to the provisions of subsection (2) of this section.

(2) At the request of the European Union Affairs Committee, the Board of the *Riigikogu* offers an opportunity to a representative of that committee to make a presentation after the overview of the Prime Minister, but before the opening of the debate. Members of the *Riigikogu* may each ask one oral question to the presenter.

**§ 152<sup>6</sup>.** Rules for proceedings on draft resolutions of the *Riigikogu* that contain a reasoned opinion regarding why a draft legislative act of the European Union is not in conformity with the principle of subsidiarity

(1) The European Union Affairs Committee may introduce a draft resolution of the *Riigikogu* that contains a reasoned opinion regarding why a draft legislative act of the European Union referred to in the protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union is not in conformity with the principle of subsidiarity.

(2) When opening proceedings on the draft resolution, the Board of the *Riigikogu* sets the time-limit for the submission of motions to amend the draft resolution. Amendment motions may be submitted by the standing committees and factions. The lead committee for the draft resolution is the European Union Affairs Committee.

(3) The lead committee hears the opinion of the Government of the Republic.

(4) A representative of the European Union Affairs Committee makes a report at the reading of the draft resolution. Members of the *Riigikogu* may each put two oral questions to the presenter.

(5) In the reading of the draft resolution, the floor is opened for debate for representatives of the standing committees and factions to present comments.

(6) If motions to amend the draft resolution are submitted, such motions are put to the vote, having regard to the provisions of section 106 of this Act. Thereafter, the draft resolution is put to the final vote.

(7) When the resolution of the *Riigikogu* has been signed, the President of the *Riigikogu* promptly transmits it to the relevant institution of the European Union.

**§ 152<sup>7</sup>.** Rules for proceedings on a draft resolution of the *Riigikogu* that contains a demand that the Government of the Republic bring an action before the Court of Justice of the European Union

(1) A standing committee or a faction may submit a draft resolution of the *Riigikogu* that contains a demand that the Government of the Republic bring an action before the Court of Justice of the European Union regarding violation of the principle of subsidiarity in a legislative act of the European Union.

(2) The draft resolution must include the text of the action.

(3) Proceedings on the draft resolution are conducted following the provisions of Divisions 2–6 of Chapter 11 without prejudice to the special rules set out in this section.

(4) The lead committee for the draft resolution is the European Union Affairs Committee.

(5) The draft resolution is transmitted to the Government of the Republic for an opinion in accordance with subsection 94 (1) of this Act. The Government of the Republic presents its opinion to the European Union Affairs Committee in writing within three weeks from receiving the draft resolution. The Government of the Republic may not decline to present its opinion.

(6) The Government of the Republic arranges the filing of the action in the Court of Justice of the European Union.

**§ 152<sup>8</sup>.** Rules for proceedings on a draft resolution of the *Riigikogu* that expresses opposition to an initiative of the European Council or a proposal of the European Commission

(1) A standing committee or a faction may submit a draft resolution of the *Riigikogu* that expresses opposition to an initiative of the European Council to adopt a decision referred to in the first or second subparagraph of Article 48(7) of the Treaty on European Union or to a proposal of the European Commission to adopt a decision referred to in Article 81(3) of the Treaty on the Functioning of the European Union.

(2) When opening proceedings on the draft resolution, the Board of the *Riigikogu* sets the time-limit for the submission of motions to amend the draft resolution. Amendment motions may be submitted by the standing committees and factions. The lead committee for the draft resolution is the European Union Affairs Committee.

(3) The lead committee hears the opinion of the Government of the Republic.

(4) At the reading of the draft resolution, reports are made by a representative of the body that introduced the draft resolution and by a representative of the European Union Affairs Committee. Members of the *Riigikogu* may each ask one oral question to each presenter. If the draft resolution is submitted by the European Union Affairs Committee, members of the *Riigikogu* may ask two oral questions each to the presenter.

(5) At the reading of the draft resolution, the floor is opened for debate for representatives of the standing committees and factions to present comments.

(6) If motions to amend the draft resolution are submitted, such motions are put to the vote, having regard to the provisions of section 106 of this Act. Thereafter, the draft resolution is put to the final vote.

(7) When the resolution of the *Riigikogu* has been signed, the President of the *Riigikogu* promptly transmits it to the relevant institution of the European Union.

### **3. In which acts are national parliaments involved in the preparation (e.g. legislative acts of the European Union, the budget)?**

By law, all proposals for directives, regulations which lead to the amendments in Estonian legislation or a decision by the parliament, as well as those issues which have a significant impact. According to the Guidelines of the State Chancellor, EU affairs are discussed in the government in addition to those listed in the Guidelines (Article 6) if the parliament (plenary, EU Affairs Committee of Foreign Affairs Committee) request its submission to the parliament. In any case, the Guidelines foresees that the position of the Government, once adopted, is presented to the parliament. If the position on the EU legislative initiative, communication, Green or White Paper or the views on the EU Council meeting are taken to the attention of the EU Coordination Council (an inter-ministerial committee) and are not submitted to the government, the State Chancellery shall inform the *Riigikogu* of them (Article 6 of the Guidelines). In practice, the list of documents submitted to the parliament and discussed there is wide, including: 1) any draft document on EU affairs submitted to the government meeting; 2) EU Council decisions on the mandates to conclude international agreements by the EU; 3) issues which the parliament or minister considers as important to be discussed by the parliament; 4) quite often the draft EU Commission implementation acts, if they contain any substantial issues; 5) the EU Commission consultation documents. If the same issue has already been discussed by the parliamentary committee and an amended version of the document is submitted again to the national governments, the parliament is not involved, except if there are substantial changes in the draft document. EU budget is one of those documents discussed by the parliament. Even if the government does not consider the document to contain substantial issues, the parliamentary committee may ask and in practice quite often asks for the document to be presented to the parliamentary committee to discuss the issue. Representative of the parliamentary committee attends the meetings of inter-ministerial committee coordinating the governmental work on EU affairs.

**4.a. What is the type of involvement/the power of the national parliament in the process?**

Most of the draft documents are submitted to the parliament already by EU institutions based on the First protocol of the TFEU, Articles 1 and 2. In addition to this, the government has to submit an explanatory report, its opinion and impact assessment at the earliest opportunity (See Article 152<sup>2</sup> of the parliamentary rules of procedure). All ministers attend the sessions of the committee before attending Council meetings and the prime minister before attending the European Council meetings. In addition, the prime minister has to discuss in the plenary session of the parliament once a year in general the activities of the government in implementing EU policy (see Article 152<sup>5</sup> of the rules of procedure). In most important issues, such as concerns the work of the European Stability Mechanism or lately, whether the EU may take loan to implement its budgetary tasks, the prime minister has addressed the plenary session of the parliament additionally. According to Article 6 of the Guidelines of the State Chancellor, all government positions are sent to the parliament to be taken into note or to be given the parliament's opinion, as well. State Chancellery has to provide a written overview of the European Council meetings to the parliament.

In cases the parliament is informed about a draft document it has the right to make its own statement and be consulted. In practice, the parliament tends to accept the government proposals, making sometimes minor additions, but almost never does not take a position, although it has such a right. In my opinion, quite often the parliamentary committee might be overloaded with not so important issues that it does not have enough resources or time to discuss in detail the most important issues.

As the documentation has to be submitted to the parliamentary committee as soon as possible, there has not been a problem that the debate in the parliament does not end in time.

The primary task of the EU Affairs Committee is to observe that the positions of the *Riigikogu* would take into account both the general context of the EU – political situation, relations and agreements between the Member States – and Estonia's priorities in the EU politics. The EU Affairs Committee also follows the activities of the Council of the European Union and the European Council. The Government of the Republic submits its positions on the issues dealt with at the meetings and discussions to the *Riigikogu*. At the meetings of the EU Affairs Committee, the ministers present these positions. After discussion, the EU Affairs Committee forms its position or gives a mandate for the meeting of the Council of the European Union. Before the European Council meetings, the Prime Minister meets with the EU Affairs Committee.

The positions of the EU Affairs Committee are binding for the government. The government proceeds from them in the discussions held in Europe. The positions of the parliament are binding in principle. Still, in some cases, the government may not follow them in order to avoid deadlock in the negotiations in the EU institutions or if it faced to be in a clear minority without possibility to make any compromise proposals. In case the government has not proceeded from the positions of the EU Affairs Committee, it has to provide the reasons for it to the Committee. As usually these compromise negotiations do not leave time for a further discussion in the parliament, the parliament cannot be involved in developing its own position. Still, if the proceedings is time-consuming, the parliament may and in practice is involved once again. If the European Commission submits an amended version of the draft document, it is presented to the parliament once again. Thus, the country can take a position contrary to the position of the parliament before giving reasons, but it has to give those reasons afterwards. A detailed memo has to be submitted

according to the Guidelines by the State Chancellor<sup>26</sup> within two working days to the government. The parliament has to be informed in the earliest opportunity (Article 152<sup>4</sup> paragraph 3 of the *Riigikogu* code of procedure).

**4.b. Does this depend on the nature of the act under consideration?**

No. There are only procedural specificities concerning EU foreign policy, as the key role in the *Riigikogu* is not vested to the EU Affairs Committee, but the Foreign Affairs Committee. Those two committees often have joint meetings to discuss the items concerning EU foreign and security policy.

**4.c. Does national legislation provide the national parliament with the power to initiate an action for violation of the principle of subsidiarity?**

Yes (see citation above of the Article 152<sup>6</sup> of the *Riigikogu* rules of procedure act). It has to take into consideration the position of the government. All parliamentary committees may submit proposals of amendments to the draft decision of the parliament. The decision is made in the plenary session of the *Riigikogu*.

**4.d. How do these or other relevant national provisions relate to the provisions of Protocols 1 and 2 annexed to the founding Treaties of the European Union, which provide for the right of national parliaments to receive several types of documents (including legislative proposals) directly from the Commission and the Court of Auditors and to submit a reasoned opinion if they consider that a legislative proposal infringes the principle of subsidiarity?**

Information received directly from the Commission and the Court of Auditors is the first step, but in any case, the government has to submit an additional explanatory report and its own position to the parliament. The discussion in the parliamentary committee(s) takes place only after the government has submitted its own position. It has not been the case that the parliament would discuss an item based on information only received by the EU institutions, not by the government. The position of the government has to include the analysis of accordance with the proportionality and subsidiarity principles (guidelines of the State Chancellor, paragraph 24 and its annex). The parliament has couple of times adopted such opinion (having debated the issue also with other parliaments, not being a sole parliament in the EU to submit such an opinion) but as the EU Commission has been quite reluctant to accept such opinions, the *Riigikogu* has not been very active in this procedure and has relied more on the opinions submitted to the government. The government has thus the main task to defend the national position also concerning subsidiarity.

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<sup>26</sup> Article 33: (1) After the meeting of the Council and the meeting of the working group of the Council or the Commission, the staff member who participated in the meeting shall always prepare a report on the course of the meeting and the results of the meeting.

(2) In general, a short report will be sent by e-mail immediately after the end of the meeting in the same or extreme case the following day. The brief report contains a couple of sentences summary of the meeting, results and their compliance with Estonian positions and the next steps. The short report does not use abbreviations or references to the sections. A short report on the meetings of the European Commission Working Group will be prepared for the transmission of quick and important information, in other cases according to the Ministry's organisation of work.

(3) In addition to the short report, a detailed report on the Council's meetings will be prepared within two working days after the meeting or event. A detailed report of the meetings of the working group shall be drawn up if the organization of work of the institution, taking into account the position of the co-responsible ministries, provides for this. The report is a comprehensive overview of the discussions and outcomes of the meeting.

**5. What is the procedure in bicameral parliaments, for example in the case of disagreement between both chambers?**

Estonia has a unicameral parliament.

**6. What is the effective implementation of the national and European provisions referred to above?**

The provisions explained above have been implemented very widely and certainly the parliament has got all the information on any item discussed in the EU institutions with national authorities. In my opinion, the biggest problem is that the parliament is overloaded with such information and almost all, not only the most important issues, have been put on the parliamentary commission's agenda. Thus, the parliamentary debate is not held thoroughly, except some particular items (e.g. monetary union issues, personal data regulation, copyright issues).

**7. In the absence of a specific legal provision, is the parliament nevertheless involved in the process? If so how?**

The national rules are worded generally and cover all issues of importance. The practice has been even wider as the parliament is requesting the government to submit its positions to be discussed in the parliament even if the same draft EU document is only slightly amended and a position previously taken both by the government and the parliamentary committee. As the parliament has the right to request information from the government in any matter (not only concerning EU affairs), there is legal basis for it. In practice, the parliamentary committee can put any other issue in its agenda concerning other EU related documents and invite the government to participate in its meetings by either a minister or an expert (civil servant). Those invitations are always accepted.

**8. Do these provisions and practices apply in the area of the Economic and Monetary Union (in particular for the countries of the eurozone)? Do special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

Yes, they apply. There are no special provisions nor practices.

**9. Do these provisions and practices apply in the field of the Area of Freedom, Security and Justice? Do any special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

Yes, these provisions apply to also in the field of the Area of Freedom, Security and Justice. There are no special provisions on this matter.

**10. How is inter-parliamentary co-operation as provided for in Protocol No. 1 implemented?**

One of the councillors to the parliamentary committee is residing in the European Parliament; Estonian Parliament takes part in the work of COSAC. The parliamentary committee uses IPEX to exchange documents on EU affairs.

## 7. REPONSE DE LA FRANCE

### CONSTITUTION

Dispositions en vigueur à compter de l'entrée en vigueur du traité de Lisbonne le 1er décembre 2009.

#### Article 88-4

Le Gouvernement soumet à l'Assemblée nationale et au Sénat, dès leur transmission au Conseil de l'Union européenne, les projets d'actes législatifs européens et les autres projets ou propositions d'actes de l'Union européenne.

Selon des modalités fixées par le règlement de chaque assemblée, des **résolutions** européennes peuvent être adoptées, le cas échéant en dehors des sessions, sur les projets ou propositions mentionnés au premier alinéa, ainsi que sur tout document émanant d'une institution de l'Union européenne.

Au sein de chaque assemblée parlementaire est instituée une **commission** chargée des affaires européennes.

#### Article 88-5

Tout projet de loi autorisant la **ratification d'un traité relatif à l'adhésion** d'un État à l'Union européenne est soumis au référendum par le Président de la République.

Toutefois, par le vote d'une motion adoptée en termes identiques par chaque assemblée à la majorité des trois cinquièmes, le Parlement peut autoriser l'adoption du projet de loi selon la procédure prévue au troisième alinéa de l'article 89.

**Ad** Loi constitutionnelle n° 2008-724 du 23 juillet 2008 article 47 III : L'article 88-5 de la Constitution, dans sa rédaction résultant tant de l'article 44 de la présente loi constitutionnelle que du 2° du I du présent article, n'est pas applicable aux adhésions faisant suite à une conférence intergouvernementale dont la convocation a été décidée par le Conseil européen avant le 1er juillet 2004.

#### Article 88-6

L'Assemblée nationale ou le Sénat peuvent émettre un **avis motivé** sur la conformité d'un **projet d'acte législatif européen** au principe de subsidiarité. L'avis est adressé par le président de l'assemblée concernée aux présidents du Parlement européen, du Conseil et de la Commission européenne. Le Gouvernement en est informé.

Chaque assemblée peut former **un recours devant la Cour de justice de l'Union européenne** contre un acte législatif européen pour violation du principe de subsidiarité. Ce recours est transmis à la Cour de justice de l'Union européenne par le Gouvernement.

À cette fin, des **résolutions** peuvent être adoptées, le cas échéant en dehors des sessions, selon des modalités d'initiative et de discussion fixées par le règlement de chaque assemblée. À la demande de soixante députés ou de soixante sénateurs, le recours est de droit.

#### Article 88-7

Par le vote d'une **motion adoptée en termes identiques par l'Assemblée nationale et le Sénat**, le Parlement peut s'opposer à une modification des règles d'adoption d'actes de l'Union européenne dans les cas prévus, **au titre de la révision simplifiée des traités ou de la coopération judiciaire civile**, par le traité sur l'Union européenne et le traité sur le fonctionnement de l'Union européenne, tels qu'ils résultent du traité signé à Lisbonne le 13 décembre 2007.

**ORDONNANCE N° 58-1100 DU 17 NOVEMBRE 1958** relative au fonctionnement des assemblées parlementaires les commissions chargées des affaires européennes

« Art. 6 bis.-I. — Le **règlement de chaque assemblée** parlementaire fixe la composition et le mode de désignation des membres des commissions chargées des affaires européennes mentionnées à l'article 88-4 de la Constitution ainsi que les règles de leur fonctionnement.

« II. — Les commissions chargées des affaires européennes suivent les travaux conduits par les institutions de l'Union européenne. A cet effet, le Gouvernement leur communique les projets ou propositions d'actes des Communautés européennes et de l'Union européenne dès leur transmission au Conseil de l'Union européenne. Le Gouvernement peut également leur communiquer, de sa propre initiative ou à la demande de leur président, tout document nécessaire. Il les tient en outre informées des négociations en cours. »

II. — L'article 6 septies de l'ordonnance n° 58-1100 du 17 novembre 1958 précitée est ainsi modifié :

1° A la première phrase du premier alinéa des III et IV, les mots : « délégations pour l'Union européenne » sont remplacés par les mots : « commissions chargées des affaires européennes » ;

2° Au cinquième alinéa du III, les mots : « la délégation pour l'Union européenne » sont remplacés par les mots : « les commissions chargées des affaires européennes ».

**REGLEMENT ASSEMBLEE NATIONALE Article 151-1 à -12**

Article 151-1, al 2 et 3.

2. La Commission des affaires européennes est composée de quarante-huit membres désignés, suivant la procédure fixée à l'article 25, de manière à assurer une représentation proportionnelle des groupes politiques et une représentation équilibrée des commissions permanentes.

3. Les membres de la Commission des affaires européennes sont nommés au début de la législature et pour la durée de celle-ci.

**REGLEMENT SENAT Articles 73 bis à decies**

Article 73 bis

1.-La commission des affaires européennes comprend 41 membres.

2.-Après chaque renouvellement partiel, le Sénat la nomme en séance publique de façon à assurer une représentation proportionnelle des groupes politiques et une représentation équilibrée des commissions permanentes. À l'issue de la nomination des commissions permanentes, les bureaux des groupes et le délégué des sénateurs ne figurant sur la liste d'aucun groupe, après s'être concertés, remettent au Président du Sénat la liste des candidats qu'ils ont établie à cet effet. Les alinéas 3 à 11 de l'article 8 sont applicables. Les dispositions de l'article 13 sont applicables au bureau de la commission des affaires européennes.

**La réserve d'examen parlementaire**

Depuis 1994 (circulaire du Premier Ministre)

Le délai de transmission aux Assemblées des actes avant leur adoption par le Conseil européen de un mois a été porté en 2010 à huit semaines s'agissant d'un acte législatif de l'UE et de quatre semaines pour les autres projets ou propositions. Ce délai s'insère dans le délai de huit semaines prévu par le protocole annexe au traité de Lisbonne.

Sites des deux commissions des affaires européennes

<http://www2.assemblee-nationale.fr/15/autres-commissions/commission-des-affaires-europeennes> <http://www.senat.fr/europe/broch.html>

## 8. REPLY FROM GERMANY

### **1. Does national law provide for the involvement of the national parliament in the control of acts and positions taken by the representatives of the executive power within European Union bodies?**

In Germany the participation of the parliament was already provided for in the 1957 law on the Treaties of Rome. By today, participation rights not only of the *Bundestag* but also of the *Bundesrat* representing the *Länder* have been steadily expanded and regulated in great detail both in the constitution and in executive legislative acts.

A major step was taken in the framework of the ratification of the Maastricht Treaty. The rights of the *Bundestag* and the *Bundesrat* were not only substantially strengthened, but were given constitutional status with the new provisions of Article 23 and 45 of the Basic Law.<sup>27</sup> Detailed rules of procedure were introduced with the 1993 Act on Cooperation between the Federal Government and the German *Bundestag* in matters concerning the European Union (EUZBBG)<sup>28</sup> and the Act on Cooperation between the Federation and the *Länder* in matters concerning the EU (EUZBIG).<sup>29</sup>

The next step was made in 2005 with the Act on the expansion and strengthening of the rights of the *Bundestag* and the *Bundesrat* in matters of the European Union that expanded and specified the information obligations of the Federal Government.<sup>30</sup> A further specification followed in 2006 by the agreement between the German *Bundestag* and the Federal Government on cooperation in matters concerning the EU (BBV).<sup>31</sup>

In the context of the Lisbon Treaty, the right of the *Bundestag* and the *Bundesrat* to bring legal action in case of a violation of the subsidiarity principle was introduced and enshrined in the Basic Law (Art. 23 para 1a).<sup>32</sup> Since the German Federal Constitutional Court had declared the so-called accompanying laws to the Lisbon Treaty to be unconstitutional insofar as they did not take sufficient account of the fact that the legislative bodies had a special responsibility in the context of participation in EU-matters,<sup>33</sup> comprehensive new regulations were adopted in 2009; the last strengthening of participation rights so far is due to the state debt and financial crisis (see 2).

### **2. In the affirmative, what is the legal basis of this involvement? What is its place in the hierarchy of norms (e.g. the Constitution, ordinary legislation, rules of procedures of Parliament?) Please quote the relevant provisions and provide a copy.**

According to the Basic Law for the Federal Republic of Germany (Grundgesetz, GG), the *Bundestag* and the *Länder* participate in the political opinion-forming process on matters concerning the European Union (Article 23 of the Basic Law). Article 45 of the Basic Law

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<sup>27</sup> 21.12.1992 Gesetz zur Änderung des Grundgesetzes, BGBl. 1992 I, 2086. Eine englische Fassung ist abrufbar unter [https://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.html](https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html).

<sup>28</sup> Gesetz über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union vom 12.03.1993, BGBl. 1993 I, 9, 311.

<sup>29</sup> Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union vom 12.03.1993, BGBl. 1993 I, 313.

<sup>30</sup> Gesetz über die Ausweitung und Stärkung der Rechte des Bundestages und des Bundesrates in Angelegenheiten der Europäischen Union vom 17.11.2005 (AuswG I), BGBl. 2005 I, 71, 3178.

<sup>31</sup> Vereinbarung zwischen dem Deutschen Bundestag und der Bundesregierung über die Zusammenarbeit in Angelegenheiten der Europäischen Union in Ausführung des § 6 des Gesetzes über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union vom 28.09.2006 (BBV), BGBl. 2006 I, 44, 2177.

<sup>32</sup> 08.10.2008 Gesetz zur Änderung des Grundgesetzes (Art. 23, 45 und 93), BGBl. 2008 I, 45, 1926.

<sup>33</sup> BVerfG 30.06.2008, BVerfGE 123, 267.

guarantees the institution of a Committee on European Affairs of the European Union (see Appendix 1).<sup>34</sup>The *Bundestag* may authorise this committee to exercise the rights under Article 23 of the Basic Law vis-a-vis the Federal Government. It may also authorise it to exercise the rights granted to the *Bundestag* in the contractual foundations of the European Union. As a cross-sectoral committee, it deals amongst other things with fundamental questions of European integration, institutional topics and enlargement issues. It therefore has special powers.

Participatory Rights and competences of *Bundestag* and *Bundesrat* are determined in several legal acts:

- The 1993 Act on Cooperation between the Federal Government and the German *Bundestag* in matters concerning the European Union (EUZBBG), which was substantially reformed in 2009 and substantially reformed and re-proclaimed in 2013<sup>35</sup> regulates the decision-making process of the Federation and the *Bundestag*'s right to state its position (see Appendix 2).<sup>36</sup>
- The *Länder* participation rights are specified in the Act of Cooperation between the Federation and the *Länder* in matters concerning the EU) also adopted in 1993 and modified in 2009 (see Appendix 3).<sup>37</sup>
- The 2009 Act on the Exercise of the Integration Responsibility (IntVG)<sup>38</sup> implements the requirements of the Constitutional Court made shortly before. The IntVG expanded the participation of *Bundestag* und *Bundesrat* in amendments to European primary law which are not subject to the usual ratification procedures, where the Lisbon treaty allows an expansion of competences and where single member states can prevent further integration (see Appendix 4).<sup>39</sup>
- The 2010 Act on the Assumption of Guarantees within the Framework of a European Stabilisation Mechanism (StabMechG, see Appendix 5).<sup>40</sup>  
The 2012 Act on Financial Participation in the European Stability Mechanism (ESM Financing Act)<sup>41</sup> regulate the participation of the *Bundestag* and its budget committee in

<sup>34</sup> Annexes/appendixes to the replies can be sent on request by the Secretariat of the Venice Commission, please email [DGI-VeniceCommission@coe.int](mailto:DGI-VeniceCommission@coe.int)

<sup>35</sup> Gesetz über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union i.d.F. vom 4.7.2013 BGBl. 2013 I, 2175. Eine englische Fassung ist abrufbar unter: [https://www.bundestag.de/resource/blob/194644/3bb22495d486c0808721839b96dbc1a3/euzbbg\\_juli\\_2013\\_en-data.pdf](https://www.bundestag.de/resource/blob/194644/3bb22495d486c0808721839b96dbc1a3/euzbbg_juli_2013_en-data.pdf).

<sup>36</sup> Annexes/appendixes to the replies can be sent on request by the Secretariat of the Venice Commission, please email [DGI-VeniceCommission@coe.int](mailto:DGI-VeniceCommission@coe.int)

<sup>37</sup> Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union vom 12.03.1993 i.d.F. vom 22.09.2009, BGBl. 2009 I, 3031. Eine englische Fassung ist abrufbar unter: <https://germanlawarchive.iuscomp.org/?p=253>.

<sup>38</sup> Gesetz über die Wahrnehmung der Integrationsverantwortung des Bundestags und des Bundesrats in Angelegenheiten der Europäischen Union (Integrationsverantwortungsgesetz) vom 01.12.2009, BGBl. 2009 I, 3822. Eine englische Fassung ist abrufbar unter [https://www.gesetze-im-internet.de/englisch\\_intvg/englisch\\_intvg.html](https://www.gesetze-im-internet.de/englisch_intvg/englisch_intvg.html).

<sup>39</sup> Annexes/appendixes to the replies can be sent on request by the Secretariat of the Venice Commission, please email [DGI-VeniceCommission@coe.int](mailto:DGI-VeniceCommission@coe.int)

<sup>40</sup> Gesetz zur Übernahme von Gewährleistungen im Rahmen eines europäischen Stabilisierungsmechanismus vom 22.5.2010, amended 23.05.2012, BGBl. 2010 I, 627; 2012 I, 1166.

<sup>41</sup> Gesetz zur finanziellen Beteiligung am Europäischen Stabilitätsmechanismus (ESM-Finanzierungsgesetz, ESMFinG) vom 13.09.2012, BGBl. 2012 I, 1918; amended 29.11.2014, BGBl. 1829, 2193. Eine englische Fassung ist abrufbar unter [https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Ministry/Laws/2012-09-13-esm-financing-act.pdf?\\_\\_blob=publicationFile&v=3](https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Ministry/Laws/2012-09-13-esm-financing-act.pdf?__blob=publicationFile&v=3).

matters relating to the European financial stabilization facility and introduces a parliamentary scrutiny reservation for certain matters (see Appendix 6).<sup>42</sup>

- Additional procedural rules in EU-matters were adopted by both chambers – Article 93, 93a-d of the Rules of Procedure of German *Bundestag* (see Appendix 7) and Article 45a-I Rules of Procedure of German *Bundesrat* (see Appendix 8).<sup>43</sup>

### **3. In which acts are national parliaments involved in the preparation (e.g. legislative acts of the European Union, the budget)?**

According to the Basic Law the participation of *Bundestag* refers to the Treaties of the European Union (Article 23 para. 1) and to all other matters of the European Union (Article 23 para. 2, 3). While the amendment of the contractual basis of the European Union requires a parliamentary law (commonly with a two-thirds majority of the *Bundestag* and the *Bundesrat*), the involvement in other matters of the European Union is limited to the right to be informed as early as possible by the Federal Government and to issue opinions.

By means of legal implementation, projects of the European Union within the extent of the EUZBBG are in particular *Proposals and initiatives* for decisions to open negotiations on amendments to the European Union's treaty foundations, for decisions to open negotiations in preparation for accession to the European Union, under Article 140 para. 2 of the Treaty on the Functioning of the European Union on the introduction of the Euro, proposals for legislative acts of the European Union; negotiation mandates for the European Commission for negotiations on international treaties of the European Union, initiatives as well as negotiating mandates and negotiating guidelines for the European Commission in the context of the common trade policy and the world trade rounds, communications, opinions, green and white papers and recommendations of the European Commission, reports, action plans and political programmes of the institutions of the European Union, interinstitutional agreements between the institutions of the European Union, budgetary and financial planning of the European Union, draft international treaties and other agreements, if they are in a supplementary or other special proximity to the law of the European Union and matters of consultation, proposals and initiatives dealt with in the framework of international treaties and agreements (Article 5 para. 1 EUZBBG).

Furthermore, projects within the realm of the EUZBBG also include proposals and initiatives of the European Union for which the involvement of the *Bundestag* is required under the IntVG, § 5 para. 2 EUZBBG. As acts of assent under the IntVG are considered, for instance, contract amendments in simplified procedure according to Article 48 para. 6 TEU (§ 2 IntVG) or special contract amendment procedures under Article 262 TFEU (§ 3 IntVG). The requirement of a resolution exists, as an example, in the field of special bridging clauses like Article 31 para. 7 TEU (Article 5 IntVG).

#### **4.a. What is the type of involvement/the power of the national parliament in the process?**

##### **The right to be informed:**

The EUZBBG and IntVG provide for the right to be informed and various participation rights of the *Bundestag*. In order for being able to exercise participation rights responsible bodies need comprehensive information on the content and the state of negotiations of the respective European Union projects.

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<sup>42</sup> Annexes/appendixes to the replies can be sent on request by the Secretariat of the Venice Commission, please email [DGI-VeniceCommission@coe.int](mailto:DGI-VeniceCommission@coe.int)

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Article 23 para. 3 Basic Law imposes certain obligations on the Federal Government to ensure the participation of the *Bundestag* in the legislative process. It must inform the *Bundestag* in European Union matters comprehensively, as early as possible, continuously and comprehensively (Article 3 sent 1 EUZBBG). This notification shall, in principle, be made in writing through forwarding documents or submitting the Federal Government's own reports. Oral information has a supplementary and explanatory function (Article 3 sent. 2 EUZBBG).

A sub-department (PE) of the *Bundestag* administration supports the deputies, political groups and committees in their European policy tasks. With EuDox a central information system was created that retains all documents transmitted directly from European institutions or by the Federal Government or produced within the *Bundestag*.

**The right to be consulted (Parliamentary reservation):**

The right to be consulted is regulated in Article 8 para. 4 EUZBBG:

“If the *Bundestag* avails itself of the opportunity to deliver an opinion under the first sentence of Article 23 para. 3 of the Basic Law, the Federal Government shall invoke the requirement of prior parliamentary approval in the negotiations if the main interests expressed in the decision of the *Bundestag* cannot be asserted. The Federal Government shall notify the *Bundestag* thereof without delay in a special report. In its form and content, this report must lend itself to discussion by the bodies of the *Bundestag*. This shall also apply if the *Bundestag* delivers an opinion on matters concerning municipal services of public interest in connection with projects of the European Union. The foregoing provisions shall not prejudice the right of the Federal Government, in awareness of the *Bundestag*'s opinion, to take divergent decisions for good reasons of foreign or integration policy.”

**4.b. Does this depend on the nature of the act under consideration?**

According to Article 23 para. 2 of the Basic Law *Bundestag* and, through the *Bundesrat*, the Länder shall participate in matters concerning the European Union. Matters concerning the European Union are interpreted in a broad way. This includes not only legislative acts, but all acts relating to the preparation and implementation of European Union powers, competences and objectives.

**4.c. Does national legislation provide the national parliament with the power to initiate an action for violation of the principle of subsidiarity?**

According to Article 23 para. 1a of the Basic Law the *Bundestag* and the *Bundesrat* shall have the right to bring an action before the Court of Justice of the European Union to challenge a legislative act of the European Union for infringing the principle of subsidiarity. The *Bundestag* is obliged to initiate such an action at the request of one fourth of its Members. This constitutional provision was incorporated into the Basic Law in 2008 in the context of the ratification of the Lisbon Treaty. The details of the action are laid down in Article 12 IntVG.

**4.d. How do these or other relevant national provisions relate to the provisions of Protocols 1 and 2 annexed to the founding Treaties of the European Union, which provide for the right of national parliaments to receive several types of documents (including legislative proposals) directly from the Commissions and the Court of Auditors and to submit a reasoned opinion if they consider that a legislative proposal infringes the principle of subsidiarity?**

In order to implement Protocols 1 and 2 annexed to the founding Treaties of the European Union the Basic Law and the so-called accompanying laws – EuZBBG and EUZBLG – were amended. Being not sufficient and, therefore, unconstitutional in regard of the responsibility for integration

of *Bundestag* and *Bundesrat* in the opinion of the Constitutional Court the latter were amended, and the IntVG was adopted.

The Federal Government has to notify the *Bundestag* comprehensively, as early as possible and continuously of all matters concerning the European Union. The notification includes the transmission of all kinds of official and unofficial documents, reports, relevant opinions and initiatives (Article 4 EUZBBG). Form and procedure are regulated by Article 6 EUZBBG. Within the scope of the provisions on data protection, the Federal Government shall grant the *Bundestag* access to the documentary databases of the European Union that are accessible to the Federal Government (Article 10 para. 1 EUZBBG). According to Article 11 para. 1 EUZBBG the *Bundestag* may maintain direct contacts with bodies of the European Union through a liaison office. The parliamentary groups in the *Bundestag* shall second representatives to the liaison office.

Since 2007, the *Bundestag* has a liaison office in Brussels. It serves the purpose of pre-field-observation and supports the *Bundestag* to exercise control and participation rights at an early stage. Since 2013, the *Bundesrat* has been sending its own representative to Brussels. Already since the 1980s, the *Länder* have their own or joint offices in Brussels.

**5. What is the procedure in bicameral parliaments, for example in the case of disagreement between both chambers?**

The legislative competences and the fact of being concerned define the scope of participation of *Bundestag* and *Bundesrat*. Before participating in legislative acts of the European Union, the Federal Government shall provide the *Bundestag* with an opportunity to state its position (Article 23 para. 2 sent. 1 of the Basic Law). The *Bundesrat* shall participate in the decision-making process in the same way as if it would have been competent to do so in a comparable domestic matter and insofar as the subject falls within the domestic competence of the *Länder* (Article 23 para. 4 of the Basic Law). Insofar as, in an area within the exclusive competence of the Federation, interests of the *Länder* are affected and in other matters, insofar as the Federation has legislative power, the Federal Government shall take the position of the *Bundesrat* into account. To the extent that the legislative powers of the *Länder*, the structure of *Land* authorities, or *Land* administrative procedures are primarily affected, the position of the *Bundesrat* shall receive prime consideration in the formation of the political will of the Federation; this process shall be consistent with the responsibility of the Federation for the nation as a whole. In matters that may result in increased expenditures or reduced revenues for the Federation, the consent of the Federal Government shall be required (Article 23 para. 5 of the Basic Law). When legislative powers exclusive to the *Länder* concerning matters of school education, culture or broadcasting are primarily affected, the exercise of the rights belonging to the Federal Republic of Germany as a member state of the European Union shall be delegated by the Federation to a representative of the *Länder* designated by the *Bundesrat*. These rights shall be exercised with the participation of, and in coordination with, the Federal Government; their exercise shall be consistent with the responsibility of the Federation for the nation as a whole (Article 23 para. 6 of the Basic Law).

**6. What is the effective implementation of the national and European provisions referred to above?**

The Basic Law stipulates in Article 45 of the Basic Law that the *Bundestag* shall establish a Committee on the Affairs of the European Union in each electoral term. If empowered to do so by the *Bundestag*, the Committee exercises Parliament's rights (Article 23) vis-à-vis the Federal Government as well as within the scope of the rights granted to the *Bundestag* in EU affairs. The Committee on the Affairs of the European Union deals with all aspects of the primary legislation of the European Union, as well as accession and general EU issues. Furthermore, all the *Bundestag*'s committees deal with European affairs in line with their tasks and specialized area

for which they are responsible. The Administration of the *Bundestag* – and in particular its Department on European Affairs with offices in Berlin and Brussels – supports Members of Parliament, committees and the parliamentary groups in the parliamentary deliberations on EU proposals and in exercising their right to receive information and participatory rights in EU matters on the basis of the EUZBBG and the IntVG and the regulations contained in Rules 93, 93a and 93b of the German Bundestag Rules of Procedure.

On the information level the IPEX database is used for communication between the German *Bundestag* and the European Parliament on European Union projects. In particular this refers to the submission of opinions and subsidiarity complaints.

Concerning the issuance of opinions between the 1<sup>st</sup> October of 2014 and the 11<sup>th</sup> February of 2016, for instance, the German Bundestag has issued 15 statements according to Article 23 para. 2 sent. 1 of the Basic Law and 12 statements according to Article 23 para. 3 of the Basic Law.<sup>44</sup>

**7. *In the absence of a specific legal provision, is the parliament nevertheless involved in the process?***

Specific legal provisions exist.

**8. *Do these provisions and practices apply in the area of the Economic and Monetary Union (in particular for the countries of the eurozone)? Do special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.***

Additional rights of participation and control are exercised by the *Bundestag* on the basis of the German Act on Warranties within a European Stabilization Mechanism (StabMechG) and the Act on Financial Participation in the European Stability Mechanism (ESMFinG). These regulations are based on the European Financial Stabilization Facility (EFSF from 2010) and the European Stability Mechanism (ESM from 2012).

In matters concerning the European Financial Stability Facility, the Federal Government may, through its representative, approve a proposal for a decision which affects the overall budgetary responsibility of the German *Bundestag* or abstain from voting on such a proposal only after the German *Bundestag* has taken an affirmative decision to that effect. In the absence of such a decision by the German *Bundestag*, the German representative must reject the proposal for a decision (Article 3 para. 1 StabMechG). In all matters concerning the European Financial Stability Facility affecting the budgetary responsibility of the German *Bundestag*, in which a decision by the German *Bundestag* is not provided for pursuant to Article 3, the Budget Committee shall be involved. It has the right to deliver an opinion (Art. 4 para. 1 StabMechG). The plenary of the German *Bundestag* may take over the powers of the Budget Committee at any time by means of a decision taken by simple majority and exercise the powers by simple majority (Article 4 para. 4 StabMechG).

Since the granting of loans and guarantees within the framework of the EFSF and ESM affects the overall budgetary responsibility of the *Bundestag*, approving decisions on such measures within the decision-making bodies of the ESM require the consent of either the plenary or the budget committee (Article 4 Abs. 1, 2 ESMFinG). Following, notwithstanding certain provisions of the ESM Finance Act and Stabilization Mechanism Act, general financial matters concern the *Bundestag* (Article 5 para. 3 EUZBBG).

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<sup>44</sup> Wissenschaftlicher Dienst des Bundestags WD 3 – 3000 – 204/16.

**9. Do these provisions and practices apply in the field of the Area of Freedom, Security and Justice? Do any special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

Article 7 para. 1 EUZBBG also obliges the Federal Government in the field of the Common Foreign and Security Policy and the Common Security and Defense Policy to provide comprehensive, continuous notification as early as possible. It shall comprise the forwarding of a summary of the legislative acts that are due to be the subject of discussion, an appraisal of them and a prognosis of the future course of discussions. In principle, the notification duty includes all relevant developments in these fields.

**10 How is interparliamentary co-operation as provided for in Protocol No. 1 implemented?**

Various forms of cooperation exist between the *Bundestag* and the national parliaments of the EU Member States.<sup>45</sup> To strengthen parliamentary scrutiny in the realm of the Common Foreign and Security Policy and the Common Security and Defence Policy, the national parliaments and the European Parliament have established an interparliamentary conference which meets twice a year.

The Fiscal Stability Treaty includes an agreement that the parliaments would meet twice a year in the framework of the Interparliamentary Conference on Stability, Economic Coordination and Governance in the European Union (SECG), in order to cooperate more closely on matters of economic, fiscal and budgetary policy and to engage in dialogue.

In the field of police cooperation, scrutiny of Europol's activities is carried out by the European Parliament together with national parliaments, in the Joint Parliamentary Scrutiny Group (JPSG) (Article 88 (2) TFEU, Article 51 of Regulation (EU) 2016/794).

The Speakers of the national parliaments and the European Parliament meet annually to share experience in the framework of the Conference of the Speakers of European Parliaments. Their aim is to boost the parliaments' role in EU affairs and to engage in joint activities to support the parliaments' work.

The national parliaments' committees on European affairs and the European Parliament meet every six months in the framework of the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC); the *German Bundestag's* Committee on the Affairs of the European Union participates in this conference. COSAC promotes the exchange of information and best practices between the national parliaments and the European Parliament at committee level.

The IPEX database has been set up to facilitate communication between the national parliaments and the European Parliament about EU initiatives, and in particular about the delivery of reasoned opinions and objections based on subsidiarity.

Appendixes<sup>46</sup>

1 Article 23 and 45 of the Basic Law Grundgesetz

2 Act on the Cooperation between the Federal Government and the German Bundestag in European Union Affairs (EUZBBG)

3 Act of Cooperation between the Federation and the *Länder* in matters concerning the EU (EUZBLG)

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<sup>45</sup> German *Bundestag*, Cooperation between parliaments in Europe, [https://www.bundestag.de/en/europe/european\\_policy/eu-parl/eu-parl-197956](https://www.bundestag.de/en/europe/european_policy/eu-parl/eu-parl-197956).

<sup>46</sup> Annexes/appendixes to the replies can be sent on request by the Secretariat of the Venice Commission, please email [DGI-VeniceCommission@coe.int](mailto:DGI-VeniceCommission@coe.int)

4 Act on the Exercise of the Integration Responsibility (IntVG)

5 Act on the Assumption of Guarantees within the Framework of a European Stabilisation Mechanism (StabMechG)

6 Act on Financial Participation in the European Stability Mechanism (ESM Financing Act)

7 Article 93, 93a-d of the Rules of Procedure of German *Bundestag*

8 45a-I Rules of Procedure of German *Bundesrat*

## 9. REPLY FROM HUNGARY

**1. Does national law provide for the involvement of the national parliament in the control of acts and positions taken by the representatives of the executive power within European Union bodies?**

Yes.

**2. In the affirmative, what is the legal basis of this involvement? What is its place in the hierarchy of norms (e.g. the Constitution, ordinary legislation, rules of procedures of Parliament?) Please quote the relevant provisions and provide a copy.**

Article 19 of the Fundamental Law of Hungary defines the framework of the cooperation between the Government and the National Assembly regarding European decision-making. The provision stipulates that the National Assembly has the right to request information from the Government concerning European Union matters. This task is especially important because the Government and the members of the Government represent Hungary in certain institutions of the European Union.

The detailed rules of cooperation are laid down in Chapter VI of the Act XXXVI of 2012 on the National Assembly and Part Eight of the Parliamentary Resolution 10/2014. (II. 24.) OGY on certain provisions of the Rules of Procedure.  
(see ANNEX)<sup>47</sup>

**3. In which acts are national parliaments involved in the preparation (e.g. legislative acts of the European Union, the budget)?**

The National Assembly may request information, regarding any EU draft, about the position the Government intends to represent. Section 63 (1) of Act XXXVI of 2012 on the National Assembly defines "EU drafts" as "draft legal acts, proposals and documents of the European Union that are on the agenda in the decision-making procedures of the European Union institutions working on an intergovernmental basis".

**4.a. What is the type of involvement/the power of the national parliament in the process? For example:**

The National Assembly may request information, regarding any EU draft, about the position the Government intends to represent (hereinafter: "proposal for position"). The Government may send to the National Assembly its proposal for position regarding any EU draft and may initiate the scrutiny of the proposal for position. In the framework of the scrutiny and within a reasonable time with regard to the decision-making agenda of the European Union, the National Assembly may adopt a standpoint on the EU draft. The National Assembly shall specify in its standpoint the aspects it holds necessary to be enforced in the European Union's decision-making process. Prior to the meeting of the Council deciding upon the adoption of the EU draft, the Minister or Minister of State vested with functions relating to the subject matter of the EU draft shall, at the National Assembly's request, appear before the National Assembly, and shall present the Government's position to be represented at the meeting of the Council. The Government shall elaborate its position to be represented in the course of the European Union's decision-making process on the basis of the standpoint of the National Assembly. If the EU draft is related to a subject matter that requires, according to the Fundamental Law, a qualified majority decision in the National Assembly, the Government can only deter from the standpoint in a justified case. If

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the National Assembly does not adopt, until the deadline required by the European Union's decision-making agenda, a standpoint regarding the Government's proposal for position, the Government shall decide in the absence of such standpoint on the position to be represented in the course of the European Union's decision-making process.

The Government may amend its proposal for position in the light of the European Union's decision-making process. The Government shall inform the National Assembly on a continuous basis of substantial changes to the content of the EU drafts and the proposals for position. Based on this, the National Assembly may also amend its earlier standpoint.

The Government shall inform the Committee on European Affairs in writing of the decisions adopted by the European Union institution working on an intergovernmental basis regarding which the Committee on European Affairs had adopted a standpoint or had specified properly. If the position represented by the Government was different from the parliamentary standpoint, the Government is obliged to give a report to the Committee on European Affairs. If the difference is related to subject matter that requires, according to the Fundamental Law, a qualified majority decision in the National Assembly, the Committee on European Affairs decides on the acceptability of the reasoning.

**4.b. Does this depend on the nature of the act under consideration?**

No.

**4.c. Does national legislation provide the national parliament with the power to initiate an action for violation of the principle of subsidiarity?**

Yes.

**4.d. How do these or other relevant national provisions relate to the provisions of Protocols 1 and 2 annexed to the founding Treaties of the European Union, which provide for the right of national parliaments to receive several types of documents (including legislative proposals) directly from the Commission and the Court of Auditors and to submit a reasoned opinion if they consider that a legislative proposal infringes the principle of subsidiarity?**

The EU drafts as laid down in the Act on the National Assembly, as well as other documents of the European Union shall be accessible to Members of the National Assembly, parliamentary groups, nationality advocates and staff members of the Office of the National Assembly in the parliamentary information system [see Section 139 (1) of the Resolution 10/2014. (II. 24.) OGY on certain provisions of the Rules of Procedure].

The National Assembly may take a position on whether a draft legal act complies with the principles of subsidiarity and proportionality. The National Assembly shall inform the Government of its reasoned opinion sent to the institutions of the European Union according to Protocol No 2 annexed to the founding Treaties of the European Union. The National Assembly may initiate, within one month of the publication of the legislative act of the European Union in the Official Journal of the European Union, that the Government bring an action before the Court of Justice of the European Union on grounds of infringement of the principle of subsidiarity by the legislative act of the European Union. In its initiative, the National Assembly shall specify the arguments supporting the National Assembly's opinion about the legislative act infringing the principle of subsidiarity. At the initiative of the National Assembly, the Government shall bring an action before the Court of Justice of the European Union or shall reject it by giving a detailed reasoning of the rejection. Before bringing an action or rejecting it, the Government may request a consultation on the initiative of the National Assembly. Should the Government bring an action before the Court of Justice of the European Union on the basis of the initiative of the National

Assembly, it shall inform the National Assembly of the action and of any other document of the procedure without delay upon filing or receiving such documents.

**5. *What is the procedure in bicameral parliaments, for example in the case of disagreement between both chambers?***

The National Assembly is a unicameral body.

**6. *What is the effective implementation of the national and European provisions referred to above?***

It must be emphasized that, according to Section 140 of the Resolution 10/2014. (II. 24.) OGY on certain provisions of the Rules of Procedure, the Committee on European Affairs is vested with decision-making power. The Committee on European Affairs is granted competences that are otherwise carried out jointly by the plenary and the standing committees as part of the legislative process. This means that the proposal for position is debated by the Committee on European Affairs, and the debate is followed by the adoption of a parliamentary standpoint in an in camera meeting. The Government acts on the basis of this standpoint in developing its position to be represented in the European Union decision-making process.

Section 142 of the Resolution 10/2014. (II. 24.) OGY on certain provisions of the Rules of Procedure stipulates that the tasks stemming from subsidiarity checks are carried out by the Committee on European Affairs. If the Committee on European Affairs considers that a draft Union legislative act fails to comply with the principle of subsidiarity, it submits a report and a proposal for resolution to the plenary on the adoption of a reasoned opinion within the period set down in Protocol 2. The adopted reasoned opinion shall be sent by the Speaker to the Presidents of the European Commission, the European Parliament and the Council of the European Union as well as to the Government of Hungary.

The Committee on European Affairs is also entitled to examine adopted legislative acts of the European Union and to propose to the Government to bring an action before the Court of Justice of the European Union on the grounds of infringement of the principle of subsidiarity. Based on the initiative the Government either brings an action before the Court of Justice of the European Union or rejects the submission of the action with a detailed justification. Before the submission of the action or the rejection of the submission, the Government may ask for consultation at the initiative of the National Assembly. The consultation takes place between the Government and the Committee on European Affairs.

**7. *In the absence of a specific legal provision, is the parliament nevertheless involved in the process? If so how?***

**8. *Do these provisions and practices apply in the area of the Economic and Monetary Union (in particular for the countries of the eurozone)? Do special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.***

As mentioned above, the National Assembly may request information, regarding any EU draft, about the position the Government intends to represent. Section 63 (1) of Act XXXVI of 2012 on the National Assembly defines "EU drafts" as "draft legal acts, proposals and documents of the European Union that are on the agenda in the decision-making procedures of the European Union institutions working on an intergovernmental basis".

**9. Do these provisions and practices apply in the field of the Area of Freedom, Security and Justice? Do any special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

As mentioned above, the National Assembly may request information, regarding any EU draft, about the position the Government intends to represent. Section 63 (1) of Act XXXVI of 2012 on the National Assembly defines “EU drafts” as “draft legal acts, proposals and documents of the European Union that are on the agenda in the decision-making procedures of the European Union institutions working on an intergovernmental basis”.

**10. How is interparliamentary co-operation as provided for in Protocol No. 1 implemented?**

There are numerous fora for interparliamentary cooperation within the European Union, where the Hungarian National Assembly is a regular participant.

The most decisive and highest level of decision-making is the Conference of Speakers of European Union Parliaments. Its main function is defining the framework and strategic goals for interparliamentary cooperation. The Hungarian National Assembly regularly attends the Conference of Speakers.

It is also important to mention the Conference of Parliamentary Committees for Union Affairs, which brings together the EU affairs committees of national parliaments and is organised by the Member State currently holding the six-monthly rotating Presidency of the Council of the European Union.

Beyond the fora mentioned above, Member States holding the rotating Council Presidency organise meetings of chairpersons of different parliamentary committees on a regular basis; they operate according to established interparliamentary practice but are, however, less institutionalised. The agenda for a meeting of chairpersons of parliamentary committees is usually influenced by the priorities set by the Council Presidency and touches on relevant questions with which a particular committee is likely concerned.

## 10. REPLY FROM IRELAND

**1. Does national law provide for the involvement of the national parliament in the control of acts and positions taken by the representatives of the executive power within European Union bodies?**

Yes, this is provided for by Sections 1 and 2 of the European Union (Scrutiny) Act 2002 (Act no 25 of 2002 amended by the European Union Act 2009, Act no 33 of 2009 see below).

**2. In the affirmative, what is the legal basis of this involvement? What is its place in the hierarchy of norms (e.g. the Constitution, ordinary legislation, rules of procedures of Parliament?) Please quote the relevant provisions and provide a copy.**

The legal basis of this involvement is to be found in primary legislation, in the European Union (Scrutiny) Act 2002 (as amended).

Section 1 of the European Union (Scrutiny) Act 2002 (as amended) provides:

“1.—(1) In this Act, save where the context otherwise requires—

“European Communities” has the meaning assigned to it by the European Communities Act, 1972 ;

“measure” means—

(a) a regulation or directive adopted under the Treaty on the Functioning of the European Union,

(b) a decision adopted under Article 28 or 29 of the Treaty on European Union, or

(c) an act (other than a regulation, directive or decision referred to in paragraph (a) or (b)) requiring the prior approval of both Houses of the Oireachtas pursuant to subsection 7 or 8° of Article 29.4 of the Constitution;”

“Minister”, in relation to a measure, means the Minister of the Government performing functions in relation to the measure or, if there is more than one such Minister of the Government, such one of them as may be agreed upon by them.

(2) In this Act—

(a) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other provision is intended,

(b) a reference to a subsection or paragraph is a reference to a subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and

(c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

Section 2 of the European Union (Scrutiny) Act 2002 provides:

“2.—(1) As soon as practicable after a proposed measure is presented by the Commission of the European Communities or initiated by a Member State, as the case may be, the Minister shall cause a copy of the text concerned to be laid before each House of the Oireachtas together with a statement of the Minister outlining the content, purpose and likely implications for Ireland of the proposed measure and including such other information as he or she considers appropriate.

(2) The Minister shall have regard to any recommendations made to him or her from time to time by either or both Houses of the Oireachtas or by a committee of either or both such Houses in relation to a proposed measure.

(3) Subsections (1) and (2) shall not apply, if in the opinion of the Minister, there is insufficient time for the carrying out of the procedures aforesaid and the performance of the functions of the Houses of the Oireachtas in relation to the text aforesaid.

(4) Where, pursuant to subsection (3), a text of a proposed measure has not been laid before each House of the Oireachtas and the measure concerned is adopted by an institution of the European Communities, the Minister shall cause a copy of the text of the measure to be laid before both Houses of the Oireachtas together with a statement outlining the implications for Ireland of the measure and the circumstances of its adoption and including such other information as he or she considers appropriate.

(5) Every Minister of the Government shall make a report to each House of the Oireachtas not less than twice yearly in relation to measures, proposed measures and other developments in relation to the European Communities and the European Union in relation to which he or she performs functions.”

**3. *In which acts are national parliaments involved in the preparation (e.g. legislative acts of the European Union, the budget)?***

Those as defined in Section 1 of the European Union (Scrutiny) Act 2002 (as amended). See definition of ‘measure’ above. Pursuant to s.3 exempt measures include:

“3.—(1) Subsections (1) and (2) of section 2 shall not apply to a proposed measure which, in the opinion of the Minister, **is confidential**.

(2) Where by virtue of subsection (1), subsections (1) and (2) of section 2 do not apply to a proposed measure, the Minister may make a report to either or both Houses of the Oireachtas or to a committee of either or both such Houses in relation to the proposed measure as he or she deems appropriate in the circumstances.” (Emphasis added)

**4.a. *What is the type of involvement/the power of the national parliament in the process?***

**4.b. *Does this depend on the nature of the act under consideration?***

Yes, pursuant to the European Union (Scrutiny) Act 2002, s.3 which provides “(1) Subsections (1) and (2) of section 2 shall not apply to a proposed measure which, in the opinion of the Minister, **is confidential**.” (Emphasis added)

**4.c. *Does national legislation provide the national parliament with the power to initiate an action for violation of the principle of subsidiarity?***

Yes, section 7(4) of the European Union Act 2009 provides:

“(4) Where either House of the Oireachtas is of opinion that an act of an institution of the European Union infringes the principle of subsidiarity provided for in the treaties governing the European Union and wishes that proceedings seeking a review of the act concerned be brought in the Court of Justice of the European Union in accordance with Article 263 of the Treaty on the Functioning of the European Union, it shall so notify the Minister in writing for the purposes of Article 8 of Protocol No. 2 to that treaty and the Treaty on European Union and

the Minister shall, as soon as may be after being so notified, arrange for such proceedings to be brought.”

**4.d. How do these or other relevant national provisions relate to the provisions of Protocols 1 and 2 annexed to the founding Treaties of the European Union, which provide for the right of national parliaments to receive several types of documents (including legislative proposals) directly from the Commission and the Court of Auditors and to submit a reasoned opinion if they consider that a legislative proposal infringes the principle of subsidiarity?**

Section 7, specifically subsection 3 (below), of the European Union Act 2009 entitled “Role of Houses of Oireachtas” appears to address this.

Section 7(1) of the European Union Act 2009 provides:

“(a) Either House of the Oireachtas may, not later than 6 months after receiving a notification under the third subparagraph of Article 48.7 of the Treaty on European Union, pass a resolution opposing the adoption of the decision to which the notification relates.

(b) A resolution referred to in paragraph (a) shall constitute an opposition to the decision concerned for the purposes of the third subparagraph of Article 48.7 of the Treaty on European Union, and the European Council shall be informed accordingly thereof.”

Section 7(2) provides:

“(a) Either House of the Oireachtas may, not later than 6 months after receiving a notification under the third subparagraph of Article 81.3 of the Treaty on the Functioning of the European Union, pass a resolution opposing the adoption of the decision to which the notification relates.

(b) A resolution referred to in paragraph (a) shall constitute an opposition to the decision concerned for the purposes of the third subparagraph of Article 81.3 of the Treaty on the Functioning of the European Union, and the Council shall be informed accordingly thereof.”

Section 7(3) provides:

“(3) Either House of the Oireachtas may, not later than 8 weeks after the transmission of a draft legislative act referred to in Article 6 of Protocol No. 2 to the Treaty on European Union and the Treaty on the Functioning of the European Union, send to the Presidents of the European Parliament, the Council and the European Commission a reasoned opinion in accordance with that Article if the House concerned passes a resolution in respect of the draft legislative act concerned authorising the House to so do.”

Section 7(4) provides:

“(4) Where either House of the Oireachtas is of opinion that an act of an institution of the European Union infringes the principle of subsidiarity provided for in the treaties governing the European Union and wishes that proceedings seeking a review of the act concerned be brought in the Court of Justice of the European Union in accordance with Article 263 of the Treaty on the Functioning of the European Union, it shall so notify the Minister in writing for the purposes of Article 8 of Protocol No. 2 to that treaty and the Treaty on European Union and the Minister shall, as soon as may be after being so notified, arrange for such proceedings to be brought.”

**5. What is the procedure in bicameral parliaments, for example in the case of disagreement between both chambers?**

Per s.7 European Union Act 2009 “Either House of the Oireachtas” may initiate the steps described therein.

**6. What is the effective implementation of the national and European provisions referred to above?**

See s.7(4) above. The Minister shall arrange for proceedings to be brought in the CJEU.

**7. In the absence of a specific legal provision, is the parliament nevertheless involved in the process? If so how?**

N/A

**8. Do these provisions and practices apply in the area of the Economic and Monetary Union (in particular for the countries of the eurozone)? Do special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

Pursuant to Sections 1(1)(c) and 2 (1) of the European Union (Scrutiny) Act 2002 it appears the answer to this is yes, they do apply in the area of the Economic and Monetary Union.

**9. Do these provisions and practices apply in the field of the Area of Freedom, Security and Justice? Do any special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

Pursuant to Sections 1(1)(c) and 2 (1) of the European Union (Scrutiny) Act 2002 it appears approval of both Houses of the Oireachtas is necessary in the field of the Area of Freedom, Security and Justice, under Articles 29.4.7 and 29.4.8 of the Constitution, Bunreacht na hÉireann. Article 29.4:

“7° The State may exercise the options or discretions—

i to which Article 20 of the Treaty on European Union relating to enhanced cooperation applies,

ii under Protocol No. 19 on the Schengen acquis integrated into the framework of the European Union annexed to that treaty and to the Treaty on the Functioning of the European Union (formerly known as the Treaty establishing the European Community), and

iii under Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, so annexed, including the option that the said Protocol No. 21 shall, in whole or in part, cease to apply to the State, but any such exercise shall be subject to the prior approval of both Houses of the Oireachtas.

8° The State may agree to the decisions, regulations or other acts:

i under the Treaty on European Union and the Treaty on the Functioning of the European Union authorising the Council of the European Union to act other than by unanimity,

ii under those treaties authorising the adoption of the ordinary legislative procedure, and

iii under subparagraph (d) of Article 82.2, the third subparagraph of Article 83.1 and paragraphs 1 and 4 of Article 86 of the Treaty on the Functioning of the European Union, relating to the area of freedom, security and justice, but the agreement to any such decision, regulation or act shall be subject to the prior approval of both Houses of the Oireachtas.”

**10. *How is interparliamentary co-operation as provided for in Protocol No. 1 implemented?***

This is not provided for in the legislation. However, see the attached rules of procedure of the Dail (the lower House) and the Seanad (the upper House). The special committees could initiate an interparliamentary dialogue.

## 11. REPLY FROM ITALY

**1. Does national law provide for the involvement of the national parliament in the control of acts and positions taken by the representatives of the executive power within European Union bodies?**

Yes, since 1989. See next answer for more details.

**2. In the affirmative, what is the legal basis of this involvement? What is its place in the hierarchy of norms (e.g. the Constitution, ordinary legislation, rules of procedures of Parliament?) Please quote the relevant provisions and provide a copy.**

At present, the relevant legislation is law n. 234 of December 24th, 2012, an ordinary piece of legislation, complemented by the Rules of Procedure of each chamber.

Italy was the first country to contemplate a legal instrument to ensure a timely implementation of EU law to be guaranteed by the national Parliament. The necessity to have a sound legislative instrument providing for a general framework to regulate Italian participation to the EU was particularly felt in light of the laconic provisions of the Italian Constitution (art. 11 and after 2001 art. 117, first par.) and in light of significant implementation delays. The very first instrument was Law no. 86 of 9 March 1989 (the so-called Legge La Pergola), and the following Law no. 11 of 4 February 2005 (the so-called Legge Buttiglione). Currently, the procedures through which the Italian Parliament interacts with the European Union are provided by Law no. 234 of 2012 entitled 'General rules on Italy's participation in the formation and implementation of legislation and policies of the European Union', in force since January 19, 2013. This Law is also meant to comply with the Treaty of Lisbon.

**3. In which acts are national parliaments involved in the preparation (e.g. legislative acts of the European Union, the budget)?**

The Italian Parliament is involved in a very broad range of European acts and measures, drafts, documents, preparatory acts and the like which cover all the activities of the European institutions, including all legislative acts, the budget, but also acts concerning judicial procedures and projects of intergovernmental agreements.

In particular, law 234 of 2012 imposes on the Government a number of duties towards the Chambers. The Government shall keep the Chambers informed on all the activities taking place in the European institutions and is required to forward to the Chambers a wide range of documents (art. 4 and 6):

- The draft legislation and policy setting acts of the European institutions, including the preparatory acts, indicating the date on which they will be discussed (with possible profiles of urgency or priority for their discussion) and accompanying cases of particular relevance with an information note assessing the proposal. The Government also has the obligation to prepare, within 20 days of the submission of such projects, a technical report accounting for the compliance with the EU rule on competence, the status of negotiation and the impact of EU measure within the domestic legal order, from the legal and financial point of view.
- Consultation documents of the European Commission and any relevant comments sent by the Government itself to the EU institutions.
- Reports and briefing notes prepared by the Permanent Representation to the EU in relation to meetings of the Council of the EU and its preparatory bodies, also in relation to the pre-litigation and litigation phases of infringement procedures initiated against Italy.

The Government also informs the competent parliamentary bodies:

- a priori: in advance, on the position that it intends to take at the meetings of the European Council and of the Council of the EU;
- a posteriori, subsequently, on the results of the meetings of the European Council and the Council of EU, within 15 days after they took place;
- more generally, on the initiatives or issues related to foreign policy and, most importantly, defence policy, presented to the Council of EU.

Moreover, the Government is required to submit to the Chambers a report on financial flows between Italy and the European Union, every three months (art. 16).

Law no. 234/2012 provides also that the Government present to Parliament two annual reports (art. 13):

- by 31 December of each year, a report on the guidelines and priorities that the Government plans to pursue for the following year, with reference to deepening of the European integration process, to the institutional profiles and to the development of each policy;
- and by 28 February of each year a report which shows the outcomes of the activities carried out in the previous year on the above profiles, including the response of the Government to the guidelines defined by the Chambers.

In the Chamber of Deputies, these reports are reviewed by all the competent Parliamentary Committees and by the EU Affairs Committee which reports to the House of Parliament. The process usually culminates in the adoption of a resolution.

#### ***4.a. What is the type of involvement/the power of the national parliament in the process?***

The parliament has the right to be informed on all drafts of European acts (art. 6) and it is also entitled to address the Government a policy guideline indicating the position to be maintained in the European institutions (art. 7). If the Government does not follow the position indicated by the Parliament, it is required to refer and explain the reasons to the competent parliamentary Committee (art. 7).

Art. 8 implements protocol 2 on the principle of subsidiarity and gives the EU policy Committee of each chamber the opportunity to assess the respect of the principle of subsidiarity on the part of the proposal of European legislative acts. Each chamber in plenary sitting can express a reasoned opinion on the respect of the subsidiarity principle. The President of the chamber shall transmit to the European institutions and to the national Government the documents containing a reasoned negative decision on subsidiarity

In the context of the "political dialogue" envisaged by protocol 1 both houses of the Parliament may forward to the institution of the European Union any relevant document pertaining to the framing of European policies (art. 9)

The parliamentary scrutiny reserve is regulated by art. 10 and can be activated either by one of the Chambers or by the Government and can regard any EU project or act that the Government is required to transmit to the Chambers.

In case the parliamentary scrutiny reserve is requested by one of the Chambers, the other chamber is also informed and the Government informs the Council that it can proceed with its own activities in the EU arena only once the examination of the proposed act by the national parliament is concluded (within a time limit of 30 days from the parliamentary Chamber's request). In case the Government requests the parliamentary scrutiny reserve on a draft act or of one or

more parts of it gives notice to the Chambers. Again, once the period of thirty days has expired, the Government may proceed even in the absence of a preliminary parliamentary opinion.

Art. 12 provides that the Chambers, through a joint action, might ask the Government to activate an 'emergency brake': thanks to this procedural device the matter is referred to the European Council, thus delaying the final deliberation when sensitive issues – particularly related to national sovereignty such as common foreign and security policy and criminal law – are discussed within the European Council of Ministers.

Art. 17 requires the Government to inform the Chambers about the appointment proposal of the Italian members of the European Commission, the CJEU and many other EU institutions and agencies, and provides that parliamentary committees may ask for a hearing of the appointed members, after their taking office.

**5. *What is the procedure in bicameral parliaments, for example in the case of disagreement between both chambers?***

Some of the powers are given to each Chamber; some others require the consensual action of both chambers. For example:

- Each chamber has the power to express a reasoned opinion on the respect of the principle of subsidiarity (art. 8 of law n. 234 of 2012). Each Chamber can send documents to the European institutions within the “political dialogue”.
- In case of parliamentary scrutiny reserve a coordination between the two chambers is required.
- The emergency brake requires a joint action of both chambers.

**6. *What is the effective implementation of the national and European provisions referred to above?***

The instruments provided by the Lisbon Treaty and by law 234 of 2012 undoubtedly strengthen the accountability of the Government to the Parliament in EU affairs. The big amount of information received by the Parliament, some 40.000 acts per year, indeed, enables the Parliament to engage in an in-depth scrutiny of the governmental activity at the EU level. As to the Italian experience, it must be acknowledged that the Minister or the under-secretary on EU affairs and the Minister of the Economy and Finance have been often asked to appear before the competent parliamentary committees and to give evidence about the results of the Council of the EU's meetings through hearings.

By way of praxis, the Prime Minister sends a “communication” to the Presidents of the Chamber of deputies and to the President of the Senate before the meetings of the Council of the EU take place. This communication gives the chambers the opportunity to address the Government with a resolution or another act indicating the line to be maintained at the European level. However, it is to be stressed that the Parliament does not often take advantage of this opportunity and often fails to adopt a resolution before the relevant Council's meeting is held at EU level.

**7. *In the absence of a specific legal provision, is the parliament nevertheless involved in the process? If so how?***

Nothing to report.

**8. Do these provisions and practices apply in the area of the Economic and Monetary Union (in particular for the countries of the eurozone)? Do special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

Yes, Law 234 of 2012 covers all areas of the EU. However, within the specific field of economic and budgetary legislation, it is worth highlighting art. 5 of law 234 of 2012 imposing on the Government specific duties of information to the Chambers in regard to all projects of agreements among the Member States in financial and monetary matters. It also requires that in the context of the European negotiation the Government conforms to the positions expressed by the Chambers and, in case of impossibility, it refers to the Chambers the reasons why he was not able to act in conformity to these positions.

Moreover, Law n. 39 of 2011 which relates to public finances and accounts, requires Government to ensure timely information to and consultation with the two Chambers of the Parliament on the preparation of the national reform programmes for the implementation of the stability program and the growth pact, within the framework of the European semester. It is worth noting that in 2012 the Constitution has been amended in order to introduce at the constitutional level the principle of the balanced budget – “The State shall balance revenue and expenditure in its budget, taking account of the adverse and favourable phases of the economic cycle” (art. 81, 1<sup>st</sup> par) - and to make sure that all the branches of the public administration always respect that principle: “General government entities, in accordance with European Union law, shall ensure balanced budgets and the sustainability of public debt” (art. 97, 1<sup>st</sup> par).

## 12. REPLY FROM LITHUANIA

**1. Does national law provide for the involvement of the national parliament in the control of acts and positions taken by the representatives of the executive power within European Union bodies?**

Yes, Lithuanian law does provide for the involvement of the national parliament – the Seimas of the Republic of Lithuania (hereinafter – the Seimas) – in the control of acts and positions taken by the representatives of the executive power within European Union bodies.<sup>48</sup>

**2. In the affirmative, what is the legal basis of this involvement? What is its place in the hierarchy of norms (e.g. the Constitution, ordinary legislation, rules of procedures of Parliament?) Please quote the relevant provisions and provide a copy.**

The model of the involvement of the Seimas in dealing with European Union matters implemented in Lithuania (hereinafter – the model) is established in the Constitutional Act of the Republic of Lithuania of 13 July 2004 on Membership of the Republic of Lithuania in the European Union (hereinafter – the Constitutional Act), which is a constituent part of the Constitution of the Republic of Lithuania (and therefore has the force of a constitutional norm), and in the Statute of the Seimas of the Republic of Lithuania (hereinafter – the Statute of the Seimas), which has the force of a law.

Article 3 of the Constitutional Act provides: *“The Government shall inform the Seimas about the proposals to adopt the acts of European Union law. As regards the proposals to adopt the acts of European Union law regulating the areas that, under the Constitution of the Republic of Lithuania, are related to the competences of the Seimas, the Government shall consult the Seimas. The Seimas may recommend to the Government a position of the Republic of Lithuania in respect of these proposals. The Seimas Committee on European Affairs and the Seimas Committee on Foreign Affairs may, according to the procedure established by the Statute of the Seimas, submit to the Government the opinion of the Seimas concerning the proposals to adopt the acts of European Union law. The Government shall assess the recommendations or opinions submitted by the Seimas or its Committees and shall inform the Seimas about their execution following the procedure established by legal acts.”*

Under the model, all committees of the Seimas (referred to as “specialised committees” in the Statute of the Seimas) are engaged in consideration of European Union matters, but two of them – the Committee on European Affairs and the Committee on Foreign Affairs – have exclusive powers under the Constitutional Act.<sup>49</sup> The competence of those two parliamentary committees is delimited by assigning to the Committee on European Affairs the general competence to deliberate on European Union matters (Art. 180<sup>2</sup>(2) of the Statute of the Seimas) and by assigning to the Committee on Foreign Affairs the special competence to deliberate on European Union matters related to the issues of the common foreign and security policy and external relations (Art. 180<sup>2</sup>(3) of the Statute of the Seimas).

Chapter XXVII<sup>1</sup> “Debate on and addressing European Union Matters” of the Statute of the Seimas governs the model in detail by establishing:

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<sup>48</sup> According to the Overview of the European Union scrutiny systems of the national parliaments of the EU–27 provided at the Eighth Bi-annual Report of COSAC, the scrutiny system established in Lithuania is considered as the mixed system which combine elements of both a document-based and a procedural system (combined with a power to mandate the government). This Report can be found here: <http://www.cosac.eu/documents/bi-annual-reports-of-cosac/>.

<sup>49</sup> These committees are the only ones that are explicitly mentioned in the Constitution and they are entitled to act on behalf of the Seimas – to submit the opinion of the Seimas to the Government.

- remit of the Committee on European Affairs and the Committee on Foreign Affairs when deliberating on European Union matters (Article 180<sup>1</sup>), as well as special rules that apply when European Union matters are considered in meetings of any of these committees and in joint meeting of these committees (Articles 180<sup>21</sup>–180<sup>24</sup>);
- procedure of informing the Seimas about the European Union matters (Article 180<sup>3</sup>);
- procedure of identification of priorities (Article 180<sup>4</sup>);
- procedure of deliberation on proposals to adopt legal acts of the European Union and other documents of the European Union (Article 180<sup>5</sup>);
- the right of the Seimas to adopt a resolution regarding the proposals with respect to which the Seimas may make known its opposition within six months in accordance with the procedure laid down in the Treaty on European Union or in the Treaty on the Functioning of the European Union (Article 180<sup>5</sup>(4));
- procedure of control of the principle of subsidiarity (Article 180<sup>6</sup>);
- participation of the Seimas in the process of drawing up and deliberation of the position of the Republic of Lithuania at different stages (Articles 180<sup>7</sup>–180<sup>15</sup>);
- the Parliamentary reservation (Article 180<sup>16</sup>);
- the referral of the Government to the Seimas at its own discretion (Article 180<sup>18</sup>); etc.

Even more detailed procedures are set out in the Resolution No 21 of the Government of the Republic of Lithuania on the Coordination of European Union Affairs, adopted on 9 January 2004 and the Regulation of the Deliberation on European Union Matters at the Seimas of the Republic of Lithuania, as approved by the decision No. SV-S-712 of the Board of Seimas of 16 July 2014.

### **3. *In which acts are national parliaments involved in the preparation (e.g. legislative acts of the European Union, the budget)?***

According to the Statute of the Seimas, debate on and addressing European Union matters includes:

- proposals to adopt legal acts of the European Union, which covers draft acts adopted in accordance with the legislative and non-legislative procedure and amended drafts of these acts regulating the areas which, pursuant to the Constitution of the Republic of Lithuania, fall within the remit of the Seimas and with regard to which position of the Republic of Lithuania is being prepared or updated (Article 180<sup>1</sup> (4));
- other documents of the European Union, i.e. consultation documents of the European Union and strategic documents of legislative planning or policy, in particular the European Commission's annual work programme, the European Commission's Annual Growth Survey, draft annual budget of the European Union, the Multiannual Financial Framework, white and green papers, the annual report of the Court of Auditors, the annual report of the European Police Office (Europol), the Eurojust's annual report and other documents, including the documents with regard to which the Government addresses the Seimas at its own discretion (Article 180<sup>1</sup> (5));
- as far as it concerns the control of the principle of the subsidiarity, draft legislative acts that are proposals from the European Commission, initiatives from a group of Member States of the European Union, initiatives from the European Parliament, requests from the Court of Justice of the European Union, recommendations from the European Central Bank, and requests from the European Investment Bank for the adoption of a legislative act to which the provisions of Protocol No. 2 on the Application of the Principles of Subsidiarity and Proportionality annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union apply (Article 180<sup>1</sup>(3)).

**4.a. What is the type of involvement/the power of the national parliament in the process?**

According to the abovementioned provisions of the Constitutional Act and the Statute of the Seimas, the Seimas can be involved in these processes in various ways:

- by the right to be informed about the proposals to adopt the acts of European Union law;
- by the right to be consulted as regards the proposals to adopt the acts of European Union law regulating the areas that are related to the competence of the Seimas;
- by the Parliamentary reservation;
- by the right to recommend to the Government a position of the Republic of Lithuania;
- by the right to submit to the Government the opinion of the Seimas concerning the proposals to adopt the acts of European Union law;
- by the right to be informed about the execution of proposals following the procedure established by legal acts;
- by the right to adopt a resolution regarding the proposals with respect to which the Seimas may make known its opposition within six months in accordance with the procedure laid down in the Treaty on European Union or in the Treaty on the Functioning of the European Union;
- by the right to control whether a draft legislative act complies with the principle of subsidiarity.

It should be mentioned that identification of priorities is very important for the efficiency of the involvement of the Seimas in dealing with European Union matters. Once the Seimas receives an annual work programme of the European Commission, the specialised committees of the Seimas, within one month, consider the Commission's annual work programme and submit to the Committee on European Affairs and the Committee on Foreign Affairs their reasoned conclusions regarding the relevance to Lithuania of the proposals presented in the programme. In view of the relevance to Lithuania of the proposal provided for in the Commission's work programme, the committees assign it to one of the following three categories – highly relevant, relevant and moderately relevant (Article 180<sup>4</sup> of the Statute of the Seimas). Involvement of the Seimas in the procedures differs with regard to the assigned level of the relevance.<sup>50</sup>

**4.b. Does this depend on the nature of the act under consideration?**

Yes, it does. Basically, the Seimas is fully involved with regard to the acts of European Union law regulating the areas that, under the Constitution of the Republic of Lithuania, fall within the remit of the Seimas (Article 180<sup>1</sup>(4) of the Statute of the Seimas). However, the Seimas is informed about other documents of the European Union as well (Article 180<sup>1</sup>(5) of the Statute of the Seimas).

It is worth mentioning that, as provided for in the Article 180<sup>18</sup> of the Statute of the Seimas, the Government, having decided to prepare a position of the Republic of Lithuania on the proposal to adopt a legal act of the European Union or any other document of the European Union, except those specified in Article 180<sup>1</sup> (4) and (5) of the Statute of the Seimas, may at its own discretion address the Seimas requesting the submission of conclusions or proposals with

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<sup>50</sup> For instance, according to the Article 180<sup>16</sup>(2) of the Statute of the Seimas, the parliamentary reservation may be voiced with regard to the issues rated as highly relevant or relevant; according to the Article 180<sup>19</sup>(1) of the Statute of the Seimas, the Government shall consult the Seimas about the other documents of the European Union that are highly relevant or relevant to Lithuania; on the other hand, according to the Article 180<sup>9</sup>(5), the position submitted by the Government regarding the issues which are rated as moderately relevant is deemed approved by Seimas, unless a specialised committee, the Committee on European Affairs and/or the Committee on Foreign Affairs decides otherwise; etc.

regard to that position. It means that Seimas may be involved with regard to the acts of the European Union law regulating the areas that does not fall within its remit as well.

What is more, though mainly the procedures established in the provisions of Chapter XXVII<sup>1</sup> of the Statute of the Seimas are applicable with regard to the proposals to adopt legal acts of the European Union and to the other documents of the European Union, as they are described in the Article 180<sup>1</sup>, it should be mentioned that:

- the control of the principle of subsidiarity is provided regarding the draft legislative acts as they are defined in the Article 180<sup>1</sup>(3) of the Statute of the Seimas (Article 180<sup>6</sup> of the Statute of the Seimas);
- the parliamentary reservation can be expressed regarding the proposals to adopt a legal act of the European Union as they are defined in the Article 180<sup>1</sup>(4) of the Statute of the Seimas (Article 180<sup>16</sup> of the Statute of the Seimas);
- there is a separate procedure of deliberation on the proposals with respect to which the Seimas may make known its opposition within six months in accordance with the procedure laid down in the Treaty on European Union or in the Treaty on the Functioning of the European Union provided in the Article 180<sup>5</sup>(4) of the Statute of the Seimas.

As it was mentioned, the type of the involvement of the Seimas depends on the rated level of the relevance of the proposal as well.

***4.c. Does national legislation provide the national parliament with the power to initiate an action for violation of the principle of subsidiarity?***

Yes, it does. There is not only responsibility of the committees for proper and timely control of the principle of subsidiarity established in the Statute of the Seimas (Article 180<sup>6</sup>), but also the referral of the Seimas to the Court of Justice of the European Union for bringing an action disputing the validity of a legislative act which does not comply with the principle of subsidiarity, as enshrined in Article 180<sup>25</sup>.

***4.d. How do these or other relevant national provisions relate to the provisions of Protocols 1 and 2 annexed to the founding Treaties of the European Union, which provide for the right of national parliaments to receive several types of documents (including legislative proposals) directly from the Commission and the Court of Auditors and to submit a reasoned opinion if they consider that a legislative proposal infringes the principle of subsidiarity?***

Both the relevant national provisions of the Lithuanian law and the abovementioned provisions of Protocols 1 and 2 provide for a corresponding and consistent regulation of the right of the national parliament to directly receive several types of documents and to submit a reasoned opinion if the Seimas considers that a legislative proposal infringes the principle of subsidiarity.

***5. What is the procedure in bicameral parliaments, for example in the case of disagreement between both chambers?***

The national parliament of the Republic of Lithuania (Seimas) is unicameral.

***6. What is the effective implementation of the national and European provisions referred to above?***

With regard to this question, it should be mentioned that so far, the Seimas has effectively implemented many of the abovementioned control possibilities, for example:

- by providing for the Priorities of the Seimas in accordance with the Commission Work Programme<sup>51</sup> (following Article 180<sup>4</sup> of the Statute of the Seimas);
- by providing an Opinion on behalf of the Seimas on the Communication on “The principles of subsidiarity and proportionality: Strengthening their role in the EU’s policymaking” COM(2018)703<sup>52</sup> (following Article 180<sup>9</sup> of the Statute of the Seimas), an Opinion on the Communication from the European Commission on EU enlargement policy and the accompanying progress reports on the countries seeking the EU membership COM(2016)71<sup>53</sup> and an Opinion on the Communication “A credible enlargement perspective for an enhanced European Union engagement with the Western Balkans” COM(2018)65<sup>54</sup> (following Articles 180<sup>2</sup>(3) and 180<sup>9</sup> of the Statute of the Seimas);
- by adopting a Resolution regarding a reasoned opinion on a possible breach of the principle of subsidiarity by the Proposal of the European Commission for a Directive of the European Parliament and of the Council amending Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services COM(2016)128 at a plenary sitting of the Seimas<sup>55</sup> and a Conclusion of the specialised committee that the proposal complies with the principle of subsidiarity<sup>56</sup> (following Article 180<sup>6</sup> of the Statute of the Seimas);
- by obligating the Government or its representative to express parliamentary reservation on the Proposal for a Council framework decision on the use of Passenger Name Record (PNR) for law enforcement purposes<sup>57</sup> and on the Proposal for a Council Decision on the conclusion of the Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments until additional information is provided or until Lithuania receives the European Commission’s clarification on the methodology for calculating annual limits on GHG emissions in sectors not participating in the EU Emissions Trading Scheme and the financial impact of the Proposal on the budget of Lithuania is thoroughly analysed<sup>58</sup> (following Article 180<sup>16</sup> of the Statute of the Seimas);
- by providing Own Initiative Opinions (with and without other Member States of the European Union).<sup>59</sup>

According to the information provided by the European Commission, the number of opinions received by the Commission from the Seimas varies from 1 to 7 opinions per year. Since 2005, the Seimas has provided 11 reasoned opinions with regard to the subsidiarity control mechanism, related with Protocol No. 2 (in 2012, 2014 and 2016 – 1 per year, in 2010 – 2 and in 2013 – 6 reasoned opinions).<sup>60</sup>

With regard to the effective implementation of the abovementioned control possibilities, it is also worth mentioning that during the last term of office of the Seimas (2016–2020) there have

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<sup>51</sup>[https://ec.europa.eu/dgs/secretariat\\_general/relations/relations\\_other/npo/docs/lithuania/2018/com20180800/com20180800\\_seimas\\_opinion\\_lt.pdf](https://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/docs/lithuania/2018/com20180800/com20180800_seimas_opinion_lt.pdf);

[https://ec.europa.eu/dgs/secretariat\\_general/relations/relations\\_other/npo/docs/lithuania/2020/com20200037\\_440/com20200037\\_440\\_seimas\\_opinion\\_en.pdf](https://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/docs/lithuania/2020/com20200037_440/com20200037_440_seimas_opinion_en.pdf)

<sup>52</sup>[https://ec.europa.eu/dgs/secretariat\\_general/relations/relations\\_other/npo/docs/lithuania/2018/com20180703/com20180703\\_seimas\\_opinion\\_en.pdf](https://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/docs/lithuania/2018/com20180703/com20180703_seimas_opinion_en.pdf)

<sup>53</sup><https://secure.ipex.eu/IPEXL-WEB/scrutiny/COM20160715/ltsei.do>

<sup>54</sup>[https://ec.europa.eu/dgs/secretariat\\_general/relations/relations\\_other/npo/docs/lithuania/2018/com20180065/com20180065\\_seimas\\_opinion\\_en.pdf](https://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/docs/lithuania/2018/com20180065/com20180065_seimas_opinion_en.pdf)

<sup>55</sup>[https://ec.europa.eu/dgs/secretariat\\_general/relations/relations\\_other/npo/docs/lithuania/2016/com20160128/com20160128\\_seimas\\_opinion\\_en.pdf](https://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/docs/lithuania/2016/com20160128/com20160128_seimas_opinion_en.pdf)

<sup>56</sup><https://secure.ipex.eu/IPEXL-WEB/scrutiny/APP20120064/ltsei.do>

<sup>57</sup><https://secure.ipex.eu/IPEXL-WEB/scrutiny/CNS20070237/ltsei.do>

<sup>58</sup><https://secure.ipex.eu/IPEXL-WEB/scrutiny/NLE20130376/ltsei.do>

<sup>59</sup>[https://ec.europa.eu/dgs/secretariat\\_general/relations/relations\\_other/npo/lithuania/unsolicited\\_en.htm](https://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/lithuania/unsolicited_en.htm)

<sup>60</sup>[https://ec.europa.eu/info/law/law-making-process/adopting-eu-law/relations-national-parliaments/annual-reports-relations-national-parliaments\\_en](https://ec.europa.eu/info/law/law-making-process/adopting-eu-law/relations-national-parliaments/annual-reports-relations-national-parliaments_en)

been no reasoned opinions (following Article 180<sup>6</sup> of the Statute of the Seimas), no parliamentary reservations (following Article 180<sup>16</sup> of the Statute of the Seimas) and no referrals of the Seimas to the Court of Justice of the European Union (following Article 180<sup>25</sup> of the Statute of the Seimas).

In addition, as an aspect of practical implementation, the LINESIS system, which is intended for registration and management of European Union documents, work with the positions of the Republic of Lithuania, registration of reports from European Union institutions, coordination of the transposition of European Union law into the national law of the Republic of Lithuania, can be mentioned. The coordination of the positions of the Republic of Lithuania in LINESIS is performed in real time, thus giving the responsible state institutions the opportunity to promptly prepare and coordinate the positions of the Republic of Lithuania.

**7. In the absence of a specific legal provision, is the parliament nevertheless involved in the process? If so how?**

**8. Do these provisions and practices apply in the area of the Economic and Monetary Union (in particular for the countries of the eurozone)? Do special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

Yes, these provisions and practices do apply in the area of the Economic and Monetary Union. No special provisions are set out for this area.

**9. Do these provisions and practices apply in the field of the Area of Freedom, Security and Justice? Do any special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

Yes, these provisions and practices do apply in the field of the Area of Freedom, Security and Justice. No special provisions are set out in this field.

**10. How is interparliamentary co-operation as provided for in Protocol No. 1 implemented?**

With regard to this question, firstly, it is worth mentioning that the Statute of the Seimas establishes that the Committee on European Affairs or the Committee on Foreign Affairs shall, within their remit, be responsible for notifying, *inter alia*, national parliaments of the Member States of the European Union of the Seimas resolutions regarding the proposals with respect to which the Seimas may make known its opposition within six months in accordance with the procedure laid down in the Treaty on European Union or in the Treaty on the Functioning of the European Union (Article 180<sup>5</sup>) and regarding a reasoned opinion on the non-compliance of a draft legislative act with the principle of subsidiarity (Article 180<sup>6</sup>).

The Seimas and its committees are also engaged in the consideration of other important European Union matters, as provided for in the Treaty on European Union and the Protocol on the role of national Parliaments in the European Union annexed to this Treaty:

- by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities;
- by taking part in the revision procedures of the Treaties;
- by being notified of applications for accession to the Union;
- by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament.

Forms of inter-parliamentary cooperation applied by the Seimas are:<sup>61</sup>

- participating in the activities of the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC), Interparliamentary Conference for the Common Foreign and Security Policy and the Common Security and Defence Policy, the Interparliamentary Conference on Stability, Economic Coordination and Governance in the EU, the Conference of Speakers of EU Parliaments, Meetings of the Secretaries General of European Union Parliaments, etc.;
- appointing the Permanent Representative of the Seimas to the European Union;
- using the Interparliamentary European Union Information Exchange (IPEX) system and the European Centre for Parliamentary Research and Documentation (ECPRD);
- cooperation of the Committees of the Seimas with the European Parliament and with the committees of the national parliaments of the European Union Member States (for example, in regular meetings of Chairs of Foreign Affairs Committees from the Parliaments of Nordic and Baltic countries (NB8), in traditional meetings of delegations of Foreign Affairs Committees from the Baltic States, which are also attended by parliamentary representatives from neighbouring countries, etc.).

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<sup>61</sup>According to the information provided by the Seimas at [https://www.lrs.lt/sip/portal.show?p\\_r=35670&p\\_k=2](https://www.lrs.lt/sip/portal.show?p_r=35670&p_k=2), [https://www.lrs.lt/sip/portal.show?p\\_r=36222&p\\_k=2](https://www.lrs.lt/sip/portal.show?p_r=36222&p_k=2)

### 13. REPONSE DU LUXEMBOURG

**1. *Le droit national prévoit-il l'implication du parlement national dans le contrôle des actes et des positions des représentants du pouvoir exécutif au sein des organes de l'Union européenne ?***

La Chambre des députés est appelée à contrôler le respect du principe de subsidiarité en vertu des Protocoles nos 1 et 2 du Traité de Lisbonne sur le rôle des parlements nationaux dans l'Union européenne et sur l'application des principes de subsidiarité et de proportionnalité.

La primauté du droit international et européen par rapport au droit national n'est pas inscrite dans la Constitution luxembourgeoise et il n'est pas prévu non plus de l'inscrire dans la nouvelle Constitution. La raison en est que la jurisprudence est bien établie sur ce point.

Dans son avis du 11 février 2020 le Conseil d'Etat définit de jurisprudentiel qui ne requiert pas une consécration constitutionnelle.

La jurisprudence nationale relative au rang du droit européen est en cohérence avec la jurisprudence de la Cour de Justice de l'Union Européenne.

En ce qui concerne la place de l'Europe dans notre constitution elle n'y figure pas à l'heure actuelle.

En revanche la proposition de révision numéro 7700 de divers chapitres de la constitution prévoit l'inscription au chapitre 1er du texte la formulation suivante

Article 5 « Le Grand-Duché de Luxembourg participe à l'intégration européenne. L'exercice des pouvoirs de l'Etat peut être transféré à l'Union Européenne et à des institutions internationales par une loi adoptée à la majorité qualifiée. »

Notons encore qu'au Luxembourg ce n'est pas la Cour Constitutionnelle qui vérifie la conformité de la loi aux traités internationaux mais que ce contrôle est effectué par les cours et tribunaux ordinaires.

L'implication du parlement national dans le contrôle des actes et des positions des représentants du pouvoir exécutif au sein des organes de l'Union Européenne est régie par le Règlement de la Chambre des députés (Voir sous question 2).

**2. *Dans l'affirmative, quelle est la base juridique de cette participation ? Quelle est sa place dans la hiérarchie des normes (par exemple, la Constitution, la législation ordinaire, le règlement intérieur du Parlement) ? Veuillez citer les dispositions pertinentes et en fournir une copie.***

L'article 70 de la Constitution prévoit que « la Chambre détermine par son Règlement le mode suivant lequel elle exerce ses attributions ».

La coopération entre la Chambre des députés et le gouvernement en matière de politique européenne est régie par un règlement de la Chambre des députés au chapitre 17 intitulé « Des affaires européennes ». L'article 177 du règlement de la Chambre des députés ainsi que l'aide-mémoire sur la coopération entre la Chambre et le Gouvernement qui forme l'annexe 3 dudit Règlement, règlent les détails pratiques du contrôle du principe de subsidiarité par la Chambre, tel que prévu par les Protocoles no1 et 2 du Traité de Lisbonne.

En annexe un extrait concernant l'article 177 du Règlement de la chambre des députés et l'aide-mémoire sur la coopération entre la Chambre et le Gouvernement en matière de politique européenne.

**3. Quels sont les actes dans la préparation desquels les parlements nationaux sont impliqués (par exemple les actes législatifs de l'UE, le budget) ?**

Le contrôle porte sur tous les projets d'actes législatifs de l'Union, et plus particulièrement sur les propositions de la Commission européenne, les initiatives d'un groupe d'Etats membres, les initiatives du Parlement européen, les demandes de la Cour de justice de l'Union européenne, les recommandations de la Banque européenne d'investissement, visant à l'adoption d'un acte législatif.

**4.a. Quel est le type d'implication/le pouvoir du parlement national dans le processus?**

Le Parlement a le droit d'être informé et consulté. Le président de la Chambre des députés décide du renvoi en commission des documents européens qui méritent un examen détaillé, sur proposition de la commission ayant les affaires européennes dans ses attributions.

La Chambre des députés et les commissions informent le Gouvernement de leurs conclusions éventuelles. L'accord parlementaire peut être implicite. Si la Chambre décide de faire un avis motivé dans lequel elle expose les motifs pour lesquels elle considère que le texte ne respecte pas le principe de subsidiarité elle informe le Gouvernement de son initiative.

**4.b. Cela dépend-il de la nature de l'acte en question ?**

Tous les projets d'actes législatifs sont visés.

**4.c. La législation nationale donne-t-elle au Parlement national le pouvoir d'engager une action pour violation du principe de subsidiarité ?**

La Chambre des députés, peut communiquer un avis motivé aux institutions européennes dans un délai de huit semaines à compter de la transmission d'un projet d'acte législatif. (voir article 177 du Règlement de la Chambre des députés pour les détails du contrôle du principe de subsidiarité par la Chambre).

**4.d. Comment ces dispositions nationales, ou d'autres dispositions nationales pertinentes, s'articulent-elles avec les dispositions des Protocoles n° 1 et 2 annexés aux Traités fondateurs de l'Union européenne, qui prévoient le droit des parlements nationaux de recevoir directement de la Commission et de la Cour des Comptes plusieurs types de documents (dont les propositions législatives) et de présenter un avis motivé s'ils estiment qu'une proposition législative viole le principe de subsidiarité ?**

Le parlement reçoit les projets d'actes législatifs des différentes institutions européennes. (voir aide-mémoire sur la coopération entre la Chambre des députés et le Gouvernement dont copie en annexe)

**5. Quelle est la procédure dans les parlements bicaméraux, par exemple en cas de désaccord entre les deux chambres ?**

Le Luxembourg monocaméral n'est pas concerné par cette question.

La réponse à la question sur la coopération entre la Chambre des députés et le Gouvernement en matière de politique européenne se trouve dans le Règlement de la Chambre des députés dans son chapitre 17 intitulé « Des affaires européennes » ainsi que dans l'aide-mémoire sur la coopération entre la Chambre des députés et le Gouvernement .

**6. *Quelle est la mise en oeuvre effective des dispositions nationales et européennes visées ci-dessus ?***

**7. *En l'absence de disposition juridique spécifique, le parlement est-il néanmoins impliqué dans le processus ? Dans quelle manière ?***

Au vu des développements ci-dessus, cette question n'est pas pertinente pour le Luxembourg.

**8. *Est-ce que ces dispositions et pratiques s'appliquent aux domaines de l'Union économique et monétaire (notamment pour les pays de la zone euro) ? Est-ce que des dispositions et pratiques spéciales s'appliquent en complément ou en substitution des dispositions et pratiques générales ? Veuillez fournir une copie de ces dispositions.***

Voir réponse sous 7

**9. *Est-ce que ces dispositions et pratiques s'appliquent au domaine de L'Espace de liberté, de sécurité et de justice ? Est-ce que des dispositions et pratiques spéciales s'appliquent en complément ou en substitution des dispositions et pratiques générales ? Veuillez fournir une copie de ces dispositions.***

Voir ci-dessus sous 7 et 8.

**10. *Comment la coopération interparlementaire telle que prévue par le Protocole n° 1 est-elle mise en oeuvre ?***

Les parlements nationaux ont créé des réseaux pour coopérer dans les domaines des questions européennes. La Chambre des députés assiste aux réunions interparlementaires qui ont lieu dans le cadre de la COSAC (conférence des Organes Spécialisés aux Affaires Communautaires et européennes) et de la Conférence des Présidents des Parlements de l'Union européenne. Des informations sur l'analyse des documents européens sont transmises par la banque de données IPEX.

## 14. REPLY FROM THE NETHERLANDS

**1. Does national law provide for the involvement of the national parliament in the control of acts and positions taken by the representatives of the executive power within European Union bodies?**

Yes, there are some legal and semi-legal provisions ensuring to involve the Dutch parliament in controlling the actions of representatives – in general: ministers – within the EU fora, in particular in the (EU) Council of Ministers.

**2. In the affirmative, what is the legal basis of this involvement? What is its place in the hierarchy of norms (Constitution, ordinary legislation, rules of procedures of Parliament?) Please quote the relevant provisions and provide a copy**

The Netherlands has a system of parliamentary democracy, with its checks and balances and overlapping competences. These restrict the executive, but nevertheless leave the executive a wide room for manoeuvring at the international level<sup>62</sup> and even more so at the EU level.

The fundamental principle regulating the relation between the executive and parliament is partly enshrined in the Constitution, partly in unwritten constitutional law, and further specified in parliamentary conventions and practice.

The executive power primarily rests with the government, even more so in international and EU matters, than in domestic issues. Government consists of King and Ministers - Article 42(1) of the Constitution – in which the king is inviolable, and the ministers (individually, and collectively as Council of ministers) are responsible, cf Article 42(2) of the Constitution. The ministers are responsible and accountable to parliament, that has a fundamental right towards the ministers to ask questions, to interpellate, to investigate in government's workings, and has the right to get answers, reasonings, justifications on the basis of Article 68,<sup>63</sup> with the sole exception of (weighty) state reasons. The duty to answer is specified in more detail in the Standing orders of Parliament.<sup>64</sup> As an ultimate sanction for not (adequately) giving answers or justifications of a minister or cabinet, a parliamentary vote of no confidence may be adopted.

There are legal and semi-legal provisions as well as conventions and practices ensuring the involvement of the Dutch parliament in controlling and scrutinizing the actions of representatives – cabinet ministers – within the EU forums, in particular within the (EU) Council of Ministers and the European Council. Most of these provisions and practices are connected with the fundamental parliamentary prerogatives, flowing from Article 42(2) and Article 68 of the Constitution.

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<sup>62</sup> See Article 90 of the Constitution: There is no explicit mention of the European Union, 92

<sup>63</sup> Article 42(2): "The Ministers, and not the King, shall be responsible for acts of government."

Article 68: "Ministers and State Secretaries shall provide, orally or in writing, the Houses either separately or in joint session with any information requested by one or more members, provided that the provision of such information does not conflict with the interests of the State."

<sup>64</sup> The Dutch Parliament Consists of two Houses: the First Chamber or Senate, and the Second Chamber. The Second Chamber in spite of its name comes first in terms of powers and political importance. It has the primary status in that it deals with draft legislation first and has the right of amendment; the First Chamber comes afterwards, and only has the right of veto.

**3. In which acts are national parliaments involved in the preparation, e.g. legislative acts of the European Union, the budget?**

As is stated in the answer to question 2, Parliament has various general rights ensuring its involvement in the preparation of legislative acts of the European Union. More specific modalities are dealt with in the answers to question 4.

**4.a. What is the type of involvement/the power of the national parliament in the process?**

The answers given below concentrate on the position of the **Second Chamber**. *Mutatis mutandis* they also apply to the First Chamber (Senate). Once a year the Second Chamber has a debate with the government and the Dutch Members in the European Parliament, on the 'State of the (European) Union'. This debate not only involves a discussion of the general state of the EU, but also of the Dutch European agenda for the upcoming year.

Every year the (European) Commission presents an overview of its legislative proposals, a working programme to be discussed in the European Parliament and the Council of Ministers. Before the Dutch government gives its views on the working programme, there is a debate in the Second Chamber on the Dutch priorities. Furthermore, there regularly is consultation with the Minister of Foreign Affairs on the main issues in European policy, as well as with the Prime Minister on the position to be taken within the European Council. Before every Council or European Council meeting, the Second Chamber is consulted, on the basis of the annotated agenda for that meeting.

**4.b. Does this depend on the nature of the act under consideration?**

**(ii) EU-legislation; national parliamentary scrutiny of subsidiarity at the EU-level**

The Dutch Parliament is informed of draft EU-legislation by the Commission or the Council on the basis of Protocols no. 1 and no. 2 on the Treaty on the Functioning of the European Union.

The Dutch government must – within 6 weeks after their introduction - provide Parliament with its view on such legislative EU-proposals, through so-called 'BNC-fiches' (Beoordeling Nieuwe Commissievoorstellen).<sup>65</sup> The BNC-fiches describe the content and purposes of the draft, the consequences for the Netherlands, and the Dutch objectives in the upcoming negotiations (the preliminary position of the Dutch government). Furthermore, they give an appraisal of the legality (legal basis), subsidiarity and proportionality of the proposal.

According to Articles 6 and 7 of Protocol 2, national parliaments – including an individual chamber of such parliament (in the Netherlands: the Second and First Chamber) – may give a reasoned opinion stating within 8 weeks of the publication of the proposal why it considers a draft legislative act not to comply with the principle of subsidiarity.

If a third of all opinions of national parliaments are negative, a proposal must be reconsidered (the yellow card procedure). However, even when a majority of national parliaments gives a negative opinion, the proposal is not discarded. Only when a majority in the Council or within the European Parliament also share the opinion of national parliaments (the orange card) a proposal will not be taken in further consideration. It is understandable that the Dutch Parliament does not put much energy in the cumbersome yellow/orange card procedure, and instead concentrates on influencing the position of the Dutch government in the Council.

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<sup>65</sup> Always published in Parliamentary dossier 22112.

**4.c. Does national legislation provide the national parliament with the power to initiate an action for violation of the principle of subsidiarity?**

**(iii) EU-legislation: scrutiny reservation**

The Act of Approval of the Lisbon Treaty (2009)<sup>66</sup> provides in Article 4(1) for a duty of the Government to inform (both Chambers/Houses of) Parliament with respect of EU-legislative proposals if one of the Chambers finds a proposal of such political interest that it wants Government to inform it more specifically. Upon that notification, Government has to make a parliamentary reservation (Article 4(2)) in Brussels. Within four weeks after this reservation, consultation between parliament and government will take place as to the specific political relevance and the information procedure and the follow-up (Article 4(3)). More detailed regulations are laid down in the Standing Orders of the Second Chamber.

**4.d. How do these or other relevant national provisions relate to the provisions of Protocols 1 and 2 annexed to the founding Treaties of the European Union, which provide for the right of national parliaments to receive several types of documents (including legislative proposals) directly from the Commission and the Court of Auditors and to submit a reasoned opinion if they consider that a legislative proposal infringes the principle of subsidiarity?**

**(iv) EU-legislation: requirement of parliamentary consent**

The Dutch Parliament before the Lisbon Treaty had a right to parliamentary consent for decisions under Title VI of the former EU Treaty. A specific – limited - involvement of Parliament has been retained in Article 3 of the Approval Act of the Lisbon Treaty, with regard to those matters where the European Parliament has no (co-)legislative powers (specific fields of the Area of Freedom, Security and Justice). The requirement only concerns passport and identification; police cooperation; and family law issues (Articles 77(3); 81(3); 87(3); and 89 of the TFEU). More detailed regulations are laid down in the Standing Orders of the Second Chamber.

**5. What is the procedure in bicameral parliaments, for example in the case of disagreement between both chambers?**

There is no coordination mechanism. Both chambers have independent rights. In general, the First Chamber shows restraint, and regards its supervisory function as supplementary to that of the Second Chamber.

**6. What is the effective implementation of the national and European provisions referred above?**

This is a question which overall is difficult to answer. But it seems clear that Protocols 1 and 2 in fact have very limited relevance in ensuring the involvement of national Parliaments with regard to EU-legislation. The most effective way to influence EU-decision-making is through parliamentary influence on the Dutch minister in the (European) Council.

**7. In the absence of a specific legal procedure, is the parliament nevertheless involved in the process? If so how?**

When there is no specific legal procedure, there are the general constitutional principles of ministerial responsibility (Articles 42(2) Constitution) and the right to question and answer (Article 68 of the Constitution) that can be relied upon. There are no such specific provisions.

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<sup>66</sup> Article 4 Act of Approval Lisbon Treaty, Staatsblad 2008, 301.

**8. Do these provisions and practices apply in the area of the Economic and Monetary Union (in particular for the countries of the eurozone)? Do special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

**9. Do these provisions and practices apply in the field of the Area of Freedom, Security and Justice? Do any special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

See the answer to Question 4 (iv).

**10. How is interparliamentary co-operation as provided for in Protocol No. 1 implemented?**

## 15. REPLY FROM PORTUGAL

**1. Does national law provide for the involvement of the national parliament in the control of acts and positions taken by the representatives of the executive power within European Union bodies?**

The intervention of the Assembly of the Republic (Portuguese Parliament) with respect to actions and initiatives of European Union institutions is accomplished through the exercise of competences provided for in the Constitution and the law, with regard to follow-up, assessment and pronouncement on Portuguese participation in the process of European integration, as well as in accordance with rights and duties of national Parliaments set out in the Treaties governing the European Union.

For the exercise of the Assembly of the Republic powers in this matter and for the purpose of carrying out its functions, the law establishes a procedure for regular consultation between the Parliament and the Government. The Assembly of the Republic issues opinions on matters within the sphere of its reserved legislative competence pending decision by European Union organs, as well as on other initiatives of European institutions, ensuring the analysis of their content and, when applicable, respect for the principles of subsidiarity and proportionality.

**2. In the affirmative, what is the legal basis of this involvement? What is its place in the hierarchy of norms (Constitution, ordinary legislation, rules of procedures of Parliament?) Please quote the relevant provisions and provide a copy.**

The legal basis for the Parliament involvement in European matters results from the Constitution and ordinary law. The article 161, paragraph e), of the Constitution provides, in the political competence of the Assembly of the Republic, «to pronounce, as laid down by law, on matters awaiting decision by European Union organs that concern the sphere of its exclusive legislative competence», and in article 163, paragraph f), «as laid down by law, to follow-up and consider the participation of Portugal in the process of constructing European Union». The ordinary law is the Law n<sup>o</sup> 43/2006, of 25 August, as amended by Law n<sup>o</sup> 21/2012, of 17 May, and Law n<sup>o</sup> 18/2018, of 2 May. This law (article 1-A, «Pronunciation») provides that the Assembly of the Republic issues opinions on matters within the sphere of its reserved legislative competence pending decision by the European Union bodies and on other initiatives of European institutions, ensuring the analysis of their content and, when applicable, respect for the principles of subsidiarity and proportionality. Pursuant to Article 2 of this law («Pronunciation in matters of reserved legislative competence»), when matters that fall within the sphere of reserved legislative competence of the Assembly of the Republic are pending decision by the European Union bodies it shall pronounce on such matters in the following terms. Whenever this situation occurs, the Government must inform the Assembly of the Republic and request an opinion, sending, in due time, information containing a summary of the project or proposal, an analysis of its implications and the position that the Government intends to adopt, if it is already defined. The opinion is prepared by the European Affairs Committee, in articulation with the parliamentary committees competent in the matter and is submitted to Plenary for the purposes of discussion and voting, in the form of a draft Resolution. At any subsequent stage in the decision-making process by European Union bodies, the Assembly of the Republic may, on its own initiative or at the initiative of the Government, prepare and vote on new opinions or update the one that has been approved.

Article 3 («Pronouncement on compliance with the subsidiarity principle») provides that the Assembly of the Republic ensures the exercise of the powers set out in the Protocol Relating to the Role of National Parliaments in the European Union and the Protocol Relating to the Application of the Principles of Subsidiarity and Proportionality annexed to the treaties governing the European Union. The exercise of competences provided for in law is ensured

by the European Affairs Committee, without prejudice to the competence of the Plenary and other parliamentary committees. The opinion that, having been approved by the European Affairs Committee, concludes that the subsidiarity principle has been violated, is submitted to Plenary, for the purposes of discussion and voting, in the form of a draft Resolution. When the opinion refers to a matter within the competence of the Legislative Assemblies of the Autonomous Regions, these must be consulted in due time.

**3. *In which acts are national parliaments involved in the preparation, e.g. legislative acts of the European Union, the budget?***

Under Article 2 of Law n<sup>o</sup>. 43/2006, the Assembly of the Republic can take position and express an opinion whenever a European Union body decision is pending on matters which fall within the sphere of exclusive competence of national Parliament; the Assembly of the Republic pronounces itself in the form of a "Resolution" voted in Plenary, Following-up and assessing Portuguese participation in the process of European Union construction, the Assembly of the Republic, on its own initiative or at request of the Government, evaluates, under the terms defined in the regimental procedures, the draft guidelines for European Union policies and actions and assesses the European Union's financial programming, namely with regard to the Structural Funds and the Cohesion Fund, under the terms of the Budgetary Framework Law, the Major Options in the Plan, the Regional Development Plan or other national programs where the use of those funds is foreseen - article 4, n<sup>o</sup>. 2, of Law n<sup>o</sup>. 43/2006.

To allow the exercise of Parliament's powers in follow-up the national participation in the process of building European Union, the Government must keep the Assembly of the Republic informed in good time about matters to be debated in European institutions, as well as about the proposals under discussion and the negotiations in progress, sending, as soon as they are presented or submitted to the Council, all relevant documentation, namely: a) draft agreements or treaties to be concluded by the European Union or between member states in the context of the European Union, without prejudice to the reserve or confidentiality rules in force for the negotiation process; b) information on the subjects and positions to be debated in the European institutions, as well as on the proposals under discussion and the ongoing negotiations; c) when requested, the position that has adopted or it intends to adopt regarding a draft legislative act of which the Assembly of the Republic has become aware under the Protocol on the Role of National Parliaments annexed to the treaties governing European Union. The Assembly of the Republic also receives, according to the Protocol on the Role of National Parliaments annexed to the treaties governing the European Union: a) Proposals for legislative and non-legislative acts to be adopted by European Union institutions; b) Annual analysis of growth and work program of the European Commission, as well as any other instrument of legislative programming or political strategy; c) Initiatives taken by the European Council to authorize the Council to act by qualified majority, in cases where the treaties governing the European Union require that the decision be taken unanimously; d) Initiatives taken by the European Council to authorize the Council to adopt legislative acts in accordance with the ordinary legislative procedure, when the treaties governing the European Union require the Council to adopt these acts in accordance with the special legislative procedure; e) Agenda and results of the Council's sessions, including synopsis of the meetings in which it deliberates on draft legislative acts; f) Reports on the application of subsidiarity principle; g) Consultation documents; h) Annual report of the European Court of Auditors. Members of the Assembly of the Republic may also request any available national or European documentation that is relevant to the exercise of the powers provided for in the law.

**4.a. What is the type of involvement/the power of the national parliament in the process?**

The forms of participation and follow-up powers of Portuguese Parliament, as said above, are provided by law: the Assembly of the Republic issues opinions on matters within the sphere of its reserved legislative competence pending decision by the European Union bodies and on other initiatives of the European institutions, ensuring the analysis of their content and, when applicable, respect for the principles of subsidiarity and proportionality.

In the case of dealing with matters that are in decision process by European Union bodies, and which fall within the reserved competence of the Assembly of the Republic, the Government, in accordance with article 2, paragraphs 1 and 2 of Law 43/2006, must inform the Assembly of the Republic and request an opinion, sending, in due time, information containing a summary of the project or proposal, an analysis of its implications and the position that the Government intends to adopt, if it is already defined. The opinion is prepared by the parliamentary European Affairs Committee, in articulation with the parliamentary committees competent in the matter. The opinion is submitted to Plenary, for the purposes of discussion and voting, in the form of a Resolution.

Matters within the reserved competence of the Assembly of Republic are set out in the Constitution: Article 164 (absolute legislative reserved competence) and Article 165 (reserved legislative competences with possibility of authorization to the Government).

Through European Affairs Committee, the Assembly of the Republic exercises powers and ensures the commitments arising from the Protocol on the Role of National Parliaments and the Protocol on the Application of the Principles of Subsidiarity and Proportionality annexed to the Treaties: reasoned opinion on the conformity of a draft legislative act with the principle of subsidiarity, addressed to the Presidents of the European Parliament, the Council and the Commission (Articles 2 and 3 of the 'Parliaments Protocol' ); reasoned opinion setting out the reasons why national Parliament considers that the draft legislative act does not comply with the principle of subsidiarity under the terms defined in Articles 5 and 6 of the 'Principles Protocol'.

The Assembly of the Republic is informed by the Government, can be consulted and issue opinions on the draft acts it receives from the European Union organs in compliance with the duty of information to which they are obliged in terms defined in the 'Parliaments Protocol'. The position to be adopted by the Government in Union's bodies is its exclusive political competence; the Government is not prevented from taking a position that does not coincide with Parliament's opinion; in these matters, the Government's decision does not depend, in constitutional competence, on the position of the Parliament, but it is only subject to parliamentary political judgment in internal relations.

The Assembly of the Republic can only urge the Government to appeal to the European Union Court of Justice on the grounds of violation of the principle of subsidiarity by a European Union legislative act. The national provisions that refer to exercise of the powers of the Assembly of the Republic in monitoring the Portuguese position in European Union relate directly and in harmony with provisions of Protocols 1 and 2 annexed to the Treaties: article 5, paragraph 2, of the national law (Law No. 43/2006 of 25 August) coincides and results from Articles 1 and 2 of Protocol 1.

**5. What is the procedure in bicameral parliaments, for example in the case of disagreement between both chambers?**

The Portuguese Parliament is not bicameral.

**6. What is the effective implementation of the national and European provisions referred above?**

Under Protocol 1 and 2, annexed to the Treaty of Lisbon, national Parliaments are given the prerogative to examine the compliance with the principle of subsidiarity in draft legislative acts of the European Union. In this respect, the Law on the monitoring, assessment and pronouncement by the Assembly of the Republic within the scope of the process of constructing the European Union (Law no. 43/2006, of August 25, as amended by Law no. 21/2012, of May 17, by Law no. 18/2018, of 2 May, and by Law no. 64/2020, of November 2), provides that the Assembly issues opinions on the matters that fall within the sphere of its reserved legislative competence and are pending decision at European Union bodies and on other initiatives of European institutions (article 1a), namely on the compliance of the EU legislative proposals with the principle of subsidiarity (article 3) and, in general terms, on projects to guide EU policies and actions (articles 4 to 7).

The Assembly of the Republic implemented a methodology for systematic follow-up of European initiatives, generating an important internal dynamic, which involves the European Affairs Committee (CAE) and parliamentary committees. The European Affairs Committee is the parliamentary committee responsible for the global follow-up and assessment of European affairs, without prejudice to the competence of the Plenary or other parliamentary committees.

2 - The European Affairs Committee is specifically responsible for:

- a) Assess all matters of interest to Portugal within the framework of European integration, European institutions or cooperation between member states of the European Union;
- b) Assess the performance of the Government in relation to such matters, promoting, namely, the hearings provided for in this law;
- c) To consider, vote on, issue an opinion or formulate a draft resolution when matters that fall within the sphere of reserved legislative competence of the Assembly of the Republic are pending decision by the European Union organs;
- d) Assess, vote on an opinion and, eventually, formulate a draft resolution on compliance with the principle of subsidiarity through a draft legislative act;
- e) Encourage greater participation of the Assembly of the Republic in activity carried out by the European institutions;
- f) Articulate with the parliamentary committees competent on the subject, the exchange of information and appropriate forms of collaboration to achieve an efficient intervention by the Assembly of the Republic in matters relating to the construction of European Union;
- g) Prepare and approve an opinion on a document that the Government submits to the Assembly of the Republic or is required by law or regulation to submit to European Union institutions;
- h) Hold an annual meeting with the members of the Legislative Assemblies of the Autonomous Regions and ask them for their opinion, pursuant to paragraph 4 of article 3, whenever regional legislative powers are at stake;
- i) Intensify the exchange between the Assembly of the Republic and the European Parliament, proposing grant of reciprocal facilities, regular meetings and the possibility of holding videoconferences with Members, namely those elected in Portugal, which are regularly heard by the European Affairs Committee;
- j) Promote meetings or hearings with European Union institutions, bodies and agencies on matters relevant to the participation of Portugal in the construction of the European Union;
- l) Promote inter parliamentary cooperation within the European Union, namely within the scope of the Protocol on the Role of National Parliaments in the European Union and the

Protocol on the Application of the Principles of Subsidiarity and Proportionality annexed to the treaties governing the European Union;

m) Designate the Portuguese representatives to the Conference of Parliamentary Bodies Specialized in Union Affairs (COSAC), assess their performance and the results of the conference;

n) To carry out a hearing of the personalities to be designated or to be appointed by the Portuguese Government and to assess their *curricula*;

o) Promote hearings and debates with representatives of civil society on European issues, contributing to the creation of a European public space at national level.

The European Affairs Committee is also responsible for approving the methodology that defines the process for preparing reports and opinions, in compliance with the principle of subsidiarity by a draft of European Union legislative act, taking into account the deadlines and procedures resulting from the Protocol on the Role of National Parliaments in the European Union and the Protocol on the Application of the Principles of Subsidiarity and Proportionality annexed to the treaties governing the European Union. With regard to internal procedures, the Assembly of the Republic, (European Affairs Committee - CAE) receives the elements sent by European institutions, send them, if necessary, to the parliamentary committees competent in the matter, which may deliberate and produce a Report. Likewise, whenever the object of the European initiative refers to a matter falling within the competence of the Legislative Assemblies of the Autonomous Regions, they must be consulted. When initiatives fall on matter of reserved legislative competence of the Assembly of the Republic, the Government shall inform this, and send in due time, information that contains a summary of the project or proposals, an analysis of its implications and the position that the Government intends to adopt, if already defined. When the report is approved by the competent parliamentary committee, it is sent to the European Affairs Committee, which draws up a final opinion, in which it expresses its opinion on the compliance of the European initiative with the principle of subsidiarity and reflects any concerns about the substance of the proposal expressed by the competent committee in the matter; the opinion is considered and voted on at the CAE meeting.

Finally, the opinion approved by the CAE, with the report of the competent parliamentary committee attached, is sent to the European institutions and to the Government, as well as made available on the IPEX page, together with the opinions of other national Parliaments.

In the event that the proposal under consideration is found to violate the principle of subsidiarity, or that it results from that proposal effects considered politically relevant, the CAE may formulate a draft Resolution to be submitted to the Plenary for discussion and voting.

The analysis of European initiatives must take place within eight weeks, as provided for in the Lisbon Treaty, whenever the national Parliaments' pronouncement on the respect of the subsidiarity principle is at stake. Within the scope of assessment procedure, the Assembly of the Republic organizes hearings with members of the Government, members of the European Parliament, Commissioners and other entities to discuss the content of some European initiatives, develops a close relationship with the Permanent Representation of Portugal to the EU (REPER), contributing to the adoption of the national position in the various subjects.

This procedure is described on the website of the Portuguese Parliament and can be accessed via: <https://www.parlamento.pt/europa/Paginas/AcompanhamentoIniciativasEuropeiasAR.aspx>

**7. In the absence of a specific legal procedure, is the parliament nevertheless involved in the process? If so how?**

(No object)

**8. Do these provisions and practices apply in the area of the Economic and Monetary Union (in particular for the countries of the eurozone)? Do special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

The participation of the Assembly of the Republic in follow-up process can cover all matters that are within the scope of the European Union. Since 2010, the Assembly of the Republic has annually selected, based on the European Commission's Work Program, a set of initiatives, themes and matters which the Assembly considers as priorities (cf. Annex). The Assembly of the Republic scrutinizes European initiatives referred to national Parliaments for consideration, involving the parliamentary committees responsible for the matter, in accordance with the procedure already described in question 6. This scrutiny may involve the examination of initiatives relating to economic and monetary union, as far as the principle of subsidiarity is concerned but also in the context of political dialogue. Specifically, with regard to this issue, it should be noted that this topic is also followed up through:

- A plenary debate in which the Government shall take part, on the various instruments for the economic governance of the European Union that are included in the European Semester, and particularly on the Stability and Growth Programme, in the second quarter of the year;
- joint meetings between the European Affairs Committee, the parliamentary committee responsible for the matter and the member of the government responsible for the various instruments of economic governance of the European Union, which are part of the European Semester;
- joint meetings, whenever deemed necessary, between the European Affairs Committee, the parliamentary committee responsible for the matter and the member of the government responsible, in the week before or after the date of the Council meeting, in its different configurations, here including matters relating to the subject under consideration;
- political control over budgetary options and major macroeconomic options, in accordance with the Budgetary Framework Law (Law No. 151/2015 of 11 September). In fact, considering that the budgetary process comprises two phases, in the first the Government sends to Parliament, by April 15, the Stability and Growth Program for every four years and its updates (Article 33) and also, for approval, the draft law of the major options (34). In the second phase, already, the Government presents to the Assembly of the Republic, for approval until October 10th of each year, the State Budget bill for the following economic year, also sending it to the European Commission (article 36).

In the context of the European Semester, the Member States that are part of it prepare annually, in articulation with the Stability and Growth Plan, a National Reform Programme, which is sent to the Parliament for consideration within the framework of its powers of pronouncement on the major economic and budgetary policy options.

The entire budgetary process is subject to a special duty of information for political control, under which the Government provides Parliament with all the necessary information to enable it to monitor and control the implementation of the State Budget, including reports on financial flows between Portugal and the European Union (article 75, paragraph i).

Furthermore, in the framework of interparliamentary cooperation between national Parliaments and the European institutions, reference should be made to the Conference on Stability, Economic Coordination and Governance in the EU, which allows the discussion and exchange of information and best practices on the implementation by Member States of the Treaty provisions on economic governance and fiscal policy in the EU. The conference is attended by members of three parliamentary committees: the European Affairs Committee, the Budget and Finance Committee and the Labour and Social Security Committee.

It should also be noted that the Assembly of the Republic has a contact point that is part of the network of officials at European level who deal with the European Semester.

**9. Do these provisions and practices apply in the field of the Area of Freedom, Security and Justice? Do any special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

In this context, we reiterate the scrutiny process involving the parliamentary committees on the European initiatives, examining the respect for the principle of subsidiarity, since these initiatives may fall under themes related to the area of freedom, security and justice.

More specifically, these topics are followed up through inter-parliamentary cooperation between national Parliaments and the European institutions, in particular the meetings of the Europol Joint Parliamentary Scrutiny Group, inter-parliamentary meetings under Eurojust and Frontex Regulations, and other meetings organized by European Parliament committees, such as the LIBE Committee, aimed at involving national Parliaments.

The participation in these meetings is ensured by members of the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees and the European Affairs Committee.

Moreover, several hearings on the subject take place in the Assembly of the Republic, such as the hearing of personalities nominated for positions in the EU institutions or bodies, such as the hearings concerning the European Public Prosecutor's Office and members of Eurojust, that take place at the European Affairs Committee.

The Committee on Constitutional Affairs, Rights, Freedoms and Guarantees also analyses and discusses the Eurojust activity report.

Joint meetings, whenever deemed necessary, between the European Affairs Committee, the parliamentary committee responsible for the matter and the member of the government responsible, in the week before or after the date of the Council in its different configurations, might also be held in this matter.

Also noteworthy in this regard is the existence of a contact point from Assembly of the da Republic in the network of officials who monitor the activities of the FRA (European Union Agency for Fundamental Rights).

**10. How is interparliamentary co-operation as provided for in Protocol No. 1 implemented?**

The information provided by national Parliament states that the increasing importance of national Parliaments in the European Union, as a result of the Treaty of Lisbon, made it necessary to deepen the mechanisms of inter-parliamentary cooperation, namely within the framework of the Conference of EU Parliamentary Speakers, which meets once a year and lays down guidelines for inter-parliamentary cooperation, and within the framework of COSAC (Conference of parliamentary bodies specialized in Union affairs), which meets every six months, where parliamentarians from the Parliaments of Member States and from European Parliament have the opportunity to exchange information and discuss topics of common interest, namely on legislative processes under way at European level.

COSAC is an inter-parliamentary body composed of six members of each committee specialized in European affairs within parliaments of Member States and the European Parliament and three observers from the Parliaments of candidate countries for EU membership. This Conference met for the first time on November 1989 in Paris.

COSAC was formally recognized by the Protocol on the Role of National Parliaments annexed to the Treaties, which came into force in 1999 and called for the strengthening of the role of national Parliaments and their involvement in the Union's legislative process. The Lisbon Treaty develops the content of the Protocol, establishing COSAC as the parliamentary forum par excellence for promoting the exchange of information and best practices between national parliaments and the European Parliament in relation to parliamentary scrutiny of European affairs. COSAC can also organize inter-parliamentary conferences on specific issues.

In addition to these Conferences, the Parliament of the Member State that holds the presidency of the Council of the EU every six months, can also organize Conferences with Presidents of specialized commissions, such as Justice and Home Affairs Commissions, Budget and Finance, Agriculture, etc. At the 2012 Conference of EU Parliamentary Speakers in Warsaw, it was agreed to establish an Inter-parliamentary Conference to monitor the Common Foreign and Security Policy and the Common Security and Defence Policy (CFSP-CSDP). Later, in order to materialize the provisions of Article 13 of the Treaty on Stability, Coordination and Governance in EMU, the Conference on Stability, Coordination and Governance of EMU was created, through a decision of the Conference of EU Parliamentary Presidents, meeting in Cyprus on April 2013.

In the context of inter-parliamentary cooperation, it is worth mentioning the network of Representatives of the National Parliaments in Brussels ("Antennas") that has been, especially following the application of the Lisbon Treaty and the provisions regarding the role of national Parliaments in the European legislative process, an important information exchange network on the positions to be adopted by each of the parliamentary chambers in relation to European initiatives.

In addition to these Conferences and meetings, there are those organized by the Committees of the European Parliament, addressed to the national Parliaments, known as Inter-parliamentary Committee Meetings (ICM's), in which the Members of the respective committees of the Assembly of the Republic also participate.

Likewise, IPEX network provides information on the work of parliamentary chambers of 28 Member States in the context of European affairs, as well as, in relation to specific European initiatives, the work of scrutinizing European initiatives of each Parliamentary chambers, reflecting, at each moment, the work being developed by national Parliaments.

IPEX is an inter-computing platform that allows access to information about the work that parliamentary chambers develop in the field of European affairs. The use of this network allows direct access to important documents related to parliamentary scrutiny of initiatives and decisions taken at national and EU level, as well as other information related to activity of EU Parliaments. European institutions - European Commission, European Parliament and Council - have also developing and intensifying relations with national Parliaments, taking into account the parliamentary opinions sent to them.

Especially the European Commission has maintained an increasingly intense political dialogue with each parliamentary chamber, inviting parliaments to also comment on the substance of the initiatives proposed by this institution and responding to comments expressed by national parliamentarians. Also with the European Parliament, inter-parliamentary cooperation has developed in recent years, mainly with the organization of numerous inter-parliamentary meetings, where national and European parliamentarians have had the opportunity to discuss matters in which both, in the respective Parliaments, were working. In this context, exclusively or in liaison with the Parliamentary Committees that are particularly competent in this area, and in addition to the inter-parliamentary meetings that have already been established, within the framework of the parliamentary dimension of each rotating Presidency of the Council, other inter-parliamentary meetings have been organized.

For example, under the parliamentary dimension of the German Presidency of the European Union, were held the inter-parliamentary conferences on "Europe in the pandemic: research and innovation for a more resilient health system" (07.09.2020), "The European Green Deal and CAP: for a sustainable and climate-neutral Europe" (05.10.2020) and "For a social and fair Europe" (09.11.2020).

This will be one of the areas that has developed the most, both in terms of intensity and in the content of inter-parliamentary meetings and exchanges of information on European matters between EU Parliaments, living up to the idea that the Treaty of Lisbon is, above all, the Treaty of Parliaments.

## 16. REPLY FROM SLOVENIA

### **1. Does national law provide for the involvement of the national parliament in the control of acts and positions taken by the representatives of the executive power within European Union bodies?**

Yes. The EU membership has substantially influenced the relationship between the national parliament (*Državni zbor* – the National Assembly) and the Government. Because of the decision-making specifics at the EU level the Government has a leading role in EU-related matters. The process in which decisions are taken in the EU institutions is so complex and dynamic that the National Assembly cannot truly control each of the Government's activities. However, in order to maintain the balance in the relationship between the National Assembly and the Government that is of utmost importance for the functioning of the parliamentary system, the general mechanisms for exercising political control over the Government's work have been enhanced by strengthening the powers of the National Assembly in EU affairs.

The Constitution of the Republic of Slovenia has therefore introduced a special supervision of the Government's actions at the EU level by laying down the duty of the Government to provide to the National Assembly up to date information of all the actions taken and to take into consideration the positions that the National Assembly adopted thereon.

Stemming from this constitutional framework, this supervisory mechanism aims at ensuring that the National Assembly is more closely involved in the EU decision-making process and plays a stronger role vis-à-vis the Government.

### **2. In the affirmative, what is the legal basis of this involvement? What is its place in the hierarchy of norms (e.g. the Constitution, ordinary legislation, rules of procedures of Parliament?) Please quote the relevant provisions and provide a copy.**

The involvement of the National Assembly is governed by:

- the Constitution of the Republic of Slovenia (hereinafter referred to as “the Constitution”),
- the Act on Cooperation between the National Assembly and the Government in EU Affairs (hereinafter referred to as “the Cooperation Act”),
- the Rules of Procedure of the National Assembly, and
- the Rules of Procedure of the Government of the Republic of Slovenia (hereinafter referred to as “the Rules of Procedure of the Government”).

Starting with the Constitution, its Article 3a, paragraph four, lays down the following:

In procedures for the adoption of legal acts and decisions in international organisations to which Slovenia has transferred the exercise of part of its sovereign rights, the Government shall promptly inform the National Assembly of proposals for such acts and decisions as well as of its own activities. The National Assembly may adopt positions thereon, which the Government shall take into consideration in its activities. The relationship between the National Assembly and the Government arising from this paragraph shall be regulated in detail by a law adopted by a two-thirds majority vote of deputies present.

The Cooperation Act furthermore regulates, in Article 4, that the National Assembly shall participate in the formulation of positions of the Republic of Slovenia in those EU affairs which, given their subject matter, fall within its competences in accordance with the Constitution and laws. However, according to the Cooperation Act, the National Assembly may also discuss other EU-related matters on the proposal of the Government or on its own initiative.

The procedures for discussing EU affairs are further described in the Rules of Procedure of the National Assembly under Chapter 2a and in the Rules of Procedure of the Government under Chapter 6.4.

**3. In which acts are national parliaments involved in the preparation (e.g. legislative acts of the European Union, the budget)?**

The National Assembly shall only participate in the formulation of positions of the Republic of Slovenia in those EU affairs which, given their subject matter, fall within its competences.

That means that the National Assembly participates in discussions of:

- amendments to the Treaties on which the EU is founded and of Accession Treaties, and
- any other EU documents concerning the European Semester and the Economic and Monetary Union.

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According to the Rules of Procedure of the Government (Article 49h, paragraphs three and four), if the National Assembly is competent to adopt the position of the Republic of Slovenia in accordance with the Coordination Act, the Government shall prepare the proposal of such position and submit it to the National Assembly for consideration and adoption.

However, the Government may, on its own initiative or at the request of the National Assembly, prepare a position of the Republic of Slovenia for which the National Assembly is not competent to adopt a position of the Republic of Slovenia in accordance with the Coordination Act and submit it to the National Assembly for an opinion. In general, positions of the Republic of Slovenia shall only be prepared in relation to the draft legislative acts of the EU and draft decisions of a political nature decided by the representatives of the governments of the Member States in the EU institutions or subject to intergovernmental cooperation within the EU.

It should be noted that discussion and adoption of the positions of the Republic of Slovenia in EU affairs lie within the competencies of two parliamentary committees, i. e. the Committee on EU Affairs (all EU affairs, with the exception of the EU foreign and security policy) and the Committee on Foreign Policy (EU affairs concerning the EU foreign and security policy), unless the particular EU affair is discussed and the position thereon adopted at the plenary session of the National Assembly, when so required.

**4.a. What is the type of involvement/the power of the national parliament in the process?**

The main type of involvement of the National Assembly is provided for in the Constitution. It arises from the Government's duty to inform the National Assembly of proposals for acts and decisions taken at the EU level and of its activities related thereto. The Constitution further prescribes that the National Assembly may take positions thereon, which the Government shall consider in its ongoing activities. More detailed provisions concerning the right to be informed are contained in the Coordination Act (Article 8) stating that the Government shall keep the National Assembly informed of all EU affairs which fall within the competence of the National Assembly and shall report on the decisions taken and on its activities in relation to those decisions within the EU institutions. This reporting obligation serves as a mechanism for the National Assembly to control the Government's further activities in terms of verifying the observance of the positions that the National Assembly adopted. Moreover, according to the Coordination Act (Article 10), when the Government considers, due to the negotiation process in the EU institutions, that the implementation, either full or partial, of the adopted position is not feasible or would not be in favour of the Republic of Slovenia, the Government may decide otherwise. It shall immediately inform the National Assembly thereof, explaining the circumstances justifying such circumvention. In addition, the Government shall also inform the National Assembly of other issues relevant to the exercise of the constitutional powers of the National Assembly and concerning the political aspects of the functioning of the EU. The consultation procedure is in principle reserved for the EU affairs which, given their subject matter, do not fall within the competences of the National Assembly. In such case, the Government may, on its own initiative or at the request of the National Assembly, prepare a position of the Republic of Slovenia and submit it to the National Assembly for opinion. From the constitutional perspective it is relevant

to highlight that no special mechanism is in place to resolve the situation, if such occurs, where the Government fails to fulfil its obligations to the National Assembly. There is no doubt that the Government's action would be contrary to the Constitution and the relevant legislation. However, the enforcement of the Government's liability, given its merely political nature, could only be realised through a vote of no confidence or interpellation as the Government in its capacity of the college cannot be subject to impeachment.

**4.b. Does this depend on the nature of the act under consideration?**

The main distinguishing criterion for determining the type of involvement of the National Assembly is the nature of the EU-related matter under consideration. All EU affairs that fall within the competence of the National Assembly shall be submitted to the latter for discussion and adoption of the relevant position of the Republic of Slovenia. As regards other EU affairs, the involvement of the National Assembly (discussion within the competent committees and the working bodies, adoption of the position, cooperation with the Government) depends on the initiative either from the Government or from the National Assembly.

**4.c. Does national legislation provide the national parliament with the power to initiate an action for violation of the principle of subsidiarity?**

Yes. Monitoring of compliance with the principle of subsidiarity is provided for in the Coordination Act (Article 11.a) and the Rules of Procedure of the National Assembly (Articles 154m and 154n).

**4.d. How do these or other relevant national provisions relate to the provisions of Protocols 1 and 2 annexed to the founding Treaties of the European Union, which provide for the right of national parliaments to receive several types of documents (including legislative proposals) directly from the Commission and the Court of Auditors and to submit a reasoned opinion if they consider that a legislative proposal infringes the principle of subsidiarity?**

To exercise the powers given to the national parliaments by the Lisbon Treaty, the necessary amendments to the Rules of Procedure of the National Assembly were adopted in 2010. The primary objective was to ensure more effective involvement of the National Assembly in decision-making processes at the EU level in accordance with the provisions of the Treaties and their Protocols, namely the Protocol No. 1 on the Role of National Parliaments in the EU and the Protocol No. 2 on the Application of the Principles of Subsidiarity and Proportionality.

**4.d. What is the procedure in bicameral parliaments, for example in the case of disagreement between both chambers?**

In Slovenia, the National Council is the upper chamber of the Slovenian Parliament whose members represent local and functional interests. One of the competences of the National Council is to convey to the National Assembly the opinions on all matters within the competences of the National Assembly. Against this background, the Rules of Procedure of the National Assembly (Article 154č) prescribe that the EU affairs submitted by the Government which the president of the National Assembly assign to the competent committee and, depending on the subject matter of the file, to the working bodies responsible shall also be sent to the National Council for opinion. The competent committee takes note of such an opinion, if delivered, during its discussion (Article 154h). In addition, the representative of the National Council is invited to attend the meeting of the competent committee (Article 154e). In relation to the procedure for monitoring compliance with the principle of subsidiarity, there is an explicit provision that the National Council is informed by the President of the National Assembly of the beginning and the conclusion of that procedure (Article 154m). The same applies in case of the action before the European Court of Justice on grounds of the infringement of the principle of subsidiarity by a legislative act (Article 154n).

**5. What is the procedure in bicameral parliaments, for example in the case of disagreement between both chambers?**

**6. What is the effective implementation of the national and European provisions referred to above?**

The procedure for monitoring the compliance with the principle of subsidiarity (subsidiarity control mechanism) is initiated upon the request of at least one quarter of the deputies or by decision of the competent committee or the working body responsible. Legislative and Legal Service of the National Assembly prepares an opinion regarding the fulfilment of the conditions for the procedure. If the Legislative and Legal Service is of the opinion that the conditions have been met, the President of the National Assembly refers the request or decision to the competent committee and to the working body responsible for discussion. The opinion on the compliance of the proposal with the principle of subsidiarity is first adopted by the working body responsible during discussion of the draft legislative act. Specific grounds must be provided for any established infringement of the principle of subsidiarity. The working body responsible sends its opinion to the competent committee. Based on the opinion of the working body responsible, the competent committee adopts a decision regarding the compliance of the draft legislative act with the principle of subsidiarity. If an infringement of the principle of subsidiarity is thereby established, the chair of the competent committee sends the decision including a statement of reasons indicating the infringement to the President of the National Assembly. If decided by the competent committee or at the request of at least one quarter of the deputies, the compliance of the draft legislative act with the principle of subsidiarity is decided upon by the National Assembly at the plenary session. In such case, the competent committee only adopts a draft decision on the compliance and forwards it to the National Assembly for adoption. If an infringement of the principle of subsidiarity is established, the President of the National Assembly sends the decision, together with a statement of reasons indicating any infringement, to the Presidents of the European Parliament, the EU Council, and the European Commission.

The President of the National Assembly informs the National Council of the beginning and conclusion of the procedure for monitoring compliance with the principle of subsidiarity.

As regards the procedure for bringing of the action before the European Court of Justice (ECJ) on grounds of infringement of the principle of subsidiarity by a legislative act, it can be initiated at the request of at least one quarter of the deputies, or by a decision of the competent committee or the working body responsible (hereinafter referred to as “the proposer”). The request or decision is sent to the President of the National Assembly who forwards the request or decision to the Legislative and Legal Service for opinion on the fulfilment of the conditions for bringing the action before the ECJ, as stipulated by the Treaties. In case of the affirmative determination of conditions being met, the request or decision is assigned to the competent committee and the working body responsible for discussion. The working body responsible discusses the request or decision and adopts an opinion regarding the infringement of the principle of subsidiarity by a legislative act. Any infringement must be reasoned. Based on the opinion of the working body responsible, the competent committee adopts a draft decision with a statement of reasons regarding the decision or request and submits it to the National Assembly for adoption at its next session.

If the National Assembly establishes a breach of the principle of subsidiarity by means of a legislative act of the EU, it shall submit to the State Attorney’s Office the reasoned decision indicating the infringements, an order for bringing of the action and the directions for representation. The President of the National Assembly informs the National Council of the beginning and the conclusion of any procedure for bringing of the action described above.

The State Attorney's Office prepares, with the participation of the National Assembly, the final text of the action and brings it before the ECJ within the time limits laid down by the Treaties. The State Attorney's Office shall keep the National Assembly informed of the progress of the proceedings before the ECJ.

**7. *In the absence of a specific legal provision, is the parliament nevertheless involved in the process? If so how?***

Not relevant.

**8. *Do these provisions and practices apply in the area of the Economic and Monetary Union (in particular for the countries of the eurozone)? Do special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.***

For the purposes of the Coordination Act, the 'EU affairs' mean the legislative proposals and the proposals for political decisions taken by the representatives of the governments of the Member States in the EU institutions or subject to intergovernmental cooperation within EU. This implies that the EMU-related issues are included and shall be considered in accordance with the general provisions and practices on EU affairs.

**9. *Do these provisions and practices apply in the field of the Area of Freedom, Security and Justice? Do any special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.***

As regards the area of freedom, security and justice, the Rules of Procedure of the National Assembly contain specific provision on how to proceed in this field. According to Article 154s, when the Council of the EU notifies to the National Assembly the content and results of the evaluation of the implementation of EU policies in the area of freedom, security and justice in accordance with Article 70 of the Treaty on the functioning of the EU, the National Assembly takes note thereof at its first session after receipt of such notification.

**10. *How is interparliamentary co-operation as provided for in Protocol No. 1 implemented?***

The Permanent Representative of the National Assembly to the European Parliament follows the plenary sessions of the European Parliament and the work of its committees, and regularly and directly informs the National Assembly thereof.

Moreover, when invited, the deputies of the National Assembly may participate at the meetings of the European Parliament committees.

Interparliamentary cooperation is governed by the Rules of Procedure of the National Assembly within the provisions on international cooperation (Articles 274 and 275). It determines that the National Assembly cooperates with representative bodies of other states, with international parliamentary institutions, and with international organisations and international bodies. Regarding the matters of common interest, the National Assembly harmonises positions, organises common activities and joint meetings of representatives, exchanges delegations, organises study visits by experts, and exchanges documentary material and information. The National Assembly also forms joint working bodies with representative bodies of other states and international institutions and organisations. The rules on the performance of international activities by the National Assembly are adopted by the Council of the President of the National Assembly.

## 17. REPLY FROM THE CZECH REPUBLIC

**1. Does national law provide for the involvement of the national parliament in the control of acts and positions taken by the representatives of the executive power within European Union bodies?**

Yes.

**2. In the affirmative, what is the legal basis of this involvement? What is its place in the hierarchy of norms (e.g. the Constitution, ordinary legislation, rules of procedures of Parliament?) Please quote the relevant provisions and provide a copy.**

The legal basis for this involvement is both in the Constitution<sup>67</sup> and ordinary legislation. Art. 10b of The Constitution of the Czech Republic:

- 1) The government shall inform the Parliament, regularly and in advance, on issues connected to obligations resulting from the Czech Republic's membership in an international organization or institution.
- 2) The chambers of Parliament shall give their views on prepared decisions of such international organization or institution in the manner laid down in their standing orders.
- 3) A statute governing the principles of dealings and relations between both chambers, as well as externally, may entrust the exercise of the chambers' competence pursuant to paragraph 2 to a body common to both chambers.

The Czech Republic has a bicameral Parliament that consists of the Chamber of Deputies and the Senate.

### Chamber of Deputies

The involvement is based on Act No. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies<sup>68</sup> which is ordinary legislation. The relevant provisions are § 109a to § 109l.

### The Senate

The involvement is based on Act No. 107/1999 Coll., on The Standing Rules of the Senate<sup>69</sup> which is ordinary legislation. The relevant provisions are §119a to 119s.

**3. In which acts are national parliaments involved in the preparation (e.g. legislative acts of the European Union, the budget)?**

### Chamber of Deputies

§ 109a of Rules of Procedure of the Chamber of Deputies mentions draft acts of the European Union, legal acts of the European Union, other acts and documents of the European Union and personnel nominations to the European Union bodies.

### Senate

§ 119a of The Standing Rules of the Senate mentions proposals of legislative acts of the EU, proposals of binding measures of EU bodies and documents referred to the Senate directly by bodies of the European Union (based on Articles 1 and 2 of the Protocol on the role of national parliaments in the European Union and Article 3 of the Protocol on the application of the principles of subsidiarity and proportionality).

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<sup>67</sup> English version available at [psp.cz/docs/laws/constitution.html](http://psp.cz/docs/laws/constitution.html)

<sup>68</sup> English version available at <https://public.psp.cz/en/docs/laws/1995/90.html#s2>

<sup>69</sup> English version available at [https://www.senat.cz/informace/zakon106/zakony/zak107-eng.php?ke\\_dni=16.12.2020&O=13](https://www.senat.cz/informace/zakon106/zakony/zak107-eng.php?ke_dni=16.12.2020&O=13)

**4.a. What is the type of involvement/the power of the national parliament in the process?**

Chamber of Deputies

**Right to be informed and the right to be consulted**

§ 109a of the Rules of Procedure of the Chamber of Deputies

The Government shall submit draft acts of the European Communities and the European Union to the Chamber via the Committee for European Affairs. The Government shall submit its preliminary opinion on the draft acts specified in the preceding sentence. The Government shall submit legal acts of the European Communities and the European Union to the Chamber at the same time they are submitted to the Council of the European Union. The Government shall also submit other acts and documents of the European Communities and the European Union if it so decides or if requested by the Chamber or its bodies.

§ 109b of the Rules of Procedure of the Chamber of Deputies

(1) Prior to the Council meeting in which the draft acts or other documents pursuant are to be deliberated a member of the Government shall attend the meeting of the Committee for European Affairs if so requested by the Committee and shall provide information on the position the Czech Republic will adopt on the matter being deliberated in the Council. The member of the Government shall further provide information or explanations for draft acts or other documents of the European Committees and the European Union at the Committee meeting if the Government was so demanded by an earlier Committee resolution.

(2) The Government or a competent member thereof shall send a report on the Council meeting to the Committee for European Affairs immediately after the Government has approved or acknowledged a report.

§ 109a of the Rules of Procedure of the Chamber of Deputies

Resolutions by the Chamber or the Chamber committees (mainly the Committee on European Affairs) on the draft acts and other documents of the European Union shall be sent to the Government, which shall take them into account when laying down its opinion for deliberation in the bodies of the European Union.

§ 109c of the Rules of Procedure of the Chamber of Deputies

The Government shall submit to the Committee for European Affairs for deliberation its staff nominations for the European Commissioner, judges of the European Court of Justice and its nominations to the governing bodies of the EIB and the EBRD for the Czech Republic. The staff nomination to European Union bodies shall be deliberated in the Chamber before the Government adopts a final decision about them.

**Parliamentary reservation**

§ 109b of the Rules of Procedure of the Chamber of Deputies

(3) With the exception of acts or other documents of considerable urgency, the Government shall not adopt its final opinion in the Council deliberations until the procedure in the Chamber pursuant to the preceding paragraphs has been completed.

**The agreement of the Chamber of deputies is needed**

§ 109i of Rules of Procedure of the Chamber of Deputies

The consent on behalf of the Czech Republic may not be declared without a prior approval of the Chamber of Deputies,

1. in the European Council when deciding pursuant to Article 31 paragraph (3) of the Treaty on European Union;
2. in the European Council when deciding on the amendment of the provisions of Part Three of the Treaty on the Functioning of the European Union pursuant to Article 48 paragraph (6) of the Treaty on European Union;

3. in the European Council when deciding on the application of the ordinary legislative procedure or on acting by a qualified majority pursuant to Article 48 paragraph (7) of the Treaty on European Union;
4. in the Council when deciding on determination of the aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure pursuant to Article 81 paragraph (3) of the Treaty on the Functioning of the European Union;
5. in the Council or, alternatively in the European Council, when deciding in other cases on the application of the ordinary legislative procedure or on acting by a qualified majority, pursuant to Article 153 paragraph (2), Article 192 paragraph (2), Article 312 paragraph (2) and Article 333 paragraphs (1) and (2) of the Treaty on the Functioning of the European Union;
6. in the Council when deciding on appropriate measures to attain the objectives laid down in the founding treaties of the European Union pursuant to Article 352 of the Treaty on the Functioning of the European Union, save for measures necessary for the functioning of the internal market.

#### § 109l of Rules of Procedure of the Chamber of Deputies

(1) The approval of decisions by the European Council amending Part Three of the Treaty on the Functioning of the European Union pursuant to Section 48 paragraph (6) of the Treaty on European Union requires the consent of the Chamber.

#### Senate

##### **Right to be informed and consulted**

#### § 119a of The Standing Rules of the Senate

(1) The Senate shall consider issues relating to obligations resulting from the membership of the Czech Republic in the European Union; the Senate shall be informed of such issues regularly and in advance by the Government pursuant to Art. 10b (1) of the Constitution. The Senate shall consider, in particular:

- a) the report on the development of the European Union during the preceding year and its further development, which shall be submitted by the Government at least once a year;
- b) the report on incorporating obligations resulting from membership in the European Union into the legal order, particularly on the implementation of legislative acts requiring transposition, which shall be submitted by the Government at least once a year;
- c) preliminary Government information on the agenda of any meeting of the European Council, and subsequent information on the results thereof;
- d) Government information on the commencement and course of negotiations on altering the treaties upon which the European Union is established;
- e) proposals of legislative acts of the EU which shall be submitted by the Government without undue delay after they have been referred by the European Commission or by any other EU body; and
- f) preliminary opinions submitted by the Government on proposals of legislative acts of the EU.

(2) The Senate shall further consider proposals of binding measures of EU bodies, and up-to-date information and opinions of the Government on legislative acts or other EU documents, including information on the stage of their consideration, which are submitted by the Government upon its own motion or upon the request of the Senate or its committee designated to consider legislative acts and binding measures of EU bodies (Designated Committee).

(3) The Senate shall further consider documents referred to the Senate directly by bodies of the European Union and other affairs related to the European Union, if provided for herein.

§ 119g of The Standing Rules of the Senate

(2) The Senate may decide to take the note of the proposal of a legislative act or a draft decision or may express its opinion on the proposal. The President of the Senate shall immediately inform the Government of the result of such consideration.

§ 119i of The Standing Rules of the Senate

(1) The President of the Senate shall send the Senate's resolution whereby the Senate expresses its opinion on a document referred thereto directly by a body of the European Union to this body and to other bodies of the European Union designated in a decision of the Senate.

**Parliamentary reservation**

§ 119d of The Standing Rules of the Senate

(2) The commencement of considering the proposal of a legislative act shall constitute an impediment to participation of a Government member in decision-taking with respect to the act proposed by a European Union body. This shall not apply if the Senate fails to complete its consideration of the proposal of a legislative act within the period that must elapse, in accordance with the law of the European Union, between the proposal of a legislative act being made available to the parliaments of the Member States in the official languages of the European Union and its placement on the provisional agenda of the Council. (based on Article 4 of the Protocol on the role of national Parliaments in the European Union).

**The agreement of the Senate is needed**

§ 119k of The Standing Rules of the Senate

Without the prior approval of the Senate, consent on behalf of the Czech Republic may not be granted

- a) in the European Council when deciding under Article 31 (3) of the Treaty on European Union;
- b) in the European Council when deciding on the amendment of the provisions of Part Three of the Treaty on the Functioning of the European Union under Article 48 (6) of the Treaty on European Union;
- c) in the Council or, as the case may be, the European Council, when deciding in other cases on the application of the ordinary legislative procedure or on acting by a qualified majority under Article 153 (2), Article 192 (2), Article 312 (2) and Article 333 (1) and (2) of the Treaty on the Functioning of the European Union;
- d) in the Council when deciding on appropriate measures to attain the objectives laid down in the founding treaties of the European Union under Article 352 of the Treaty on the Functioning of the European Union, save for measures necessary for the functioning of the internal market.

§ 119m of The Standing Rules of the Senate

Moreover, without the prior approval of the Senate, consent on behalf of the Czech Republic may not be granted

- a) in the European Council when deciding on the application of the ordinary legislative procedure or on acting by a qualified majority under Article 48 (7) of the Treaty on European Union;
- b) in the Council when deciding on determination of the aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure under Article 81 (3) of the Treaty on the Functioning of the European Union.

§ 119o of The Standing Rules of the Senate

The Senate shall consider decisions of the European Council to amend the provisions of Part Three of the Treaty on the Functioning of the European Union under Article 48 (6) of the Treaty on European Union as an international treaty.

According to Art. 10a of the Constitution of the Czech Republic: Ratification of a treaty requires the consent of Parliament.

Based on § 117b 1) of The Standing Rules when considering an international treaty the Senate may propose a motion to consider the compatibility of the international treaty with the

constitutional order and consideration by the Senate of the international treaty is suspended until the first meeting following the award of judgment by the Constitutional Court. Or the Senate may put to the vote its approval of ratification of the international treaty.

**4.b. Does this depend on the nature of the act under consideration?**

Answered above.

**4.c. Does national legislation provide the national parliament with the power to initiate an action for violation of the principle of subsidiarity?**

Yes, it does.

Chamber of deputies

§ 109d – § 109h of the Rules of Procedure of the Chamber of Deputies

The Committee for European Affairs, or a group of at least 41 deputies may propose to the Chamber in writing to adopt a resolution to file an action on the grounds of infringement of the principle of subsidiarity by an act of the European Union (draft action). A draft action must contain the exact wording of the action upon which the Chamber is to resolve.

If the Chamber approves a draft action, it shall authorize a Deputy or, alternatively, other suitable person, to represent it in proceedings before the European Court of Justice. The authorization is not tied to the term of office of the Deputy.

The President of the Chamber shall immediately pass on the resolution of the Chamber that contains the wording of the action to the Government, and for information also to the President of the Senate. The Government shall submit the action to the European Court of Justice without undue delay.

Senate

§ 119p – § 119s of The Standing Rules of the Senate

The Designated Committee or a group of at least 17 Senators may submit a proposal to the Senate that the Senate file an action on the grounds of infringement of the principle of subsidiarity by a legislative act under the law of the European Union (Draft Action). The Draft Action shall contain the wording of the action upon which the Senate is to resolve.

The Draft Action shall be submitted to the President of the Senate who shall send the same to all the Senators and Senators' Groups without delay and place it on the agenda of the next Senate meeting so that it may be considered no later than 10 days prior to the elapse of the period stipulated by the law of the European Union.

If the Senate passes the Draft Action, it shall authorise a Senator and, as the case may be, another suitable person, to represent the Senate in proceedings before the European Court of Justice.

The President of the Senate shall deliver the Senate's resolution passing the Draft Action, along with the wording of the action, to the Government without delay; however, not later than 3 working days prior to the elapse of the period set forth in the law of the European Union; the Government shall forward it to the European Court of Justice so as to meet the set time-limit. The President of the Senate shall further send the resolution and the wording of the action to the President of the Chamber of Deputies and to the Government agent representing the Czech Republic before the European Court of Justice.

The government agent representing the Czech Republic before the European Court of Justice shall provide the persons authorised to represent the Senate with any and all necessary cooperation in respect of the appropriate course of action within the proceedings; nevertheless, their relation to the Government and to its opinion on the subject matter of the proceedings will remain unaffected thereby.

**4.d. How do these or other relevant national provisions relate to the provisions of Protocols 1 and 2 annexed to the founding Treaties of the European Union, which provide for the right of national parliaments to receive several types of documents (including legislative proposals) directly from the Commission and the Court of Auditors and to submit a reasoned opinion if they consider that a legislative proposal infringes the principle of subsidiarity?**

#### Chamber of Deputies

##### § 109a of the Rules of Procedure of the Chamber of Deputies

(1) The Government shall submit draft acts of the European Communities and the European Union to the Chamber via the Committee for European Affairs. The Government shall submit its preliminary opinion on the draft acts specified in the preceding sentence. The Government shall submit legal acts of the European Communities and the European Union to the Chamber at the same time they are submitted to the Council of the European Union (hereinafter "Council"). The Government shall also submit other acts and documents of the European Communities and the European Union if it so decides or if requested by the Chamber or its bodies.

(6) If the resolution of the Chamber or the resolution of a committee contains a timely adopted and reasoned opinion that states that the draft act of the European Union contradicts the principle of subsidiarity, the President of the Chamber shall forward the resolution to the Government, the President of the Senate, the President of the European Parliament, the President of the Council and the President of the European Commission without delay.

#### Senate

##### 119a of The Standing Rules of the Senate

3) The Senate shall further consider documents referred to the Senate directly by bodies of the European Union and other affairs related to the European Union, if provided for herein.

##### 119i of The Standing Rules of the Senate

(1) The President of the Senate shall send the Senate's resolution whereby the Senate expresses its opinion on a document referred thereto directly by a body of the European Union to this body and to other bodies of the European Union designated in a decision of the Senate. As has been mentioned above both the Chamber of Deputies and the Senate may file an action on the grounds of infringement of the principle of subsidiarity by a legislative act under the law of the European Union.

**5. What is the procedure in bicameral parliaments, for example in the case of disagreement between both chambers?**

If either the Chamber of Deputies or the Senate do not give their approval for the Czech Republic to consent to certain acts in the EU institutions, the Czech government is not allowed to consent on behalf of the Czech Republic in EU institutions.<sup>70</sup>

**6. What is the effective implementation of the national and European provisions referred to above?**

#### Senate

Every year the Senate publishes a report on the effects of Senate resolutions on Government positions. From the 2019 report<sup>71</sup> it appears that the Senate has considered numerous

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<sup>70</sup> Sládeček, V. et al., Ústava České republiky. Komentář, 2. vydání, Praha: C. H. Beck, 2016, Čl. 10b bod 17

<sup>71</sup> Available at <https://www.senat.cz/xqw/webdav/pssenat/original/96342/80806>

documents regarding the EU and was able to provide its opinions which were acknowledged by the Government and the EU bodies.

### Chamber of Deputies

From the latest resolutions of the Committee for European Affairs (9 December 2020), it appears that the Chamber of Deputies takes an effective part in the European decision-making processes.

Based on the reports and resolutions it can be concluded that the legal provisions are not a formality but are effective in practice.

**7. *In the absence of a specific legal provision, is the parliament nevertheless involved in the process? If so how?***

There is a specific legal provision.

**8. *Do these provisions and practices apply in the area of the Economic and Monetary Union (in particular for the countries of the eurozone)? Do special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.***

It does not appear from the national law that there is a difference.

**9. *Do these provisions and practices apply in the field of the Area of Freedom, Security and Justice? Do any special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.***

It does not appear from the national law that there is a difference.

**10. *How is interparliamentary co-operation as provided for in Protocol No. 1 implemented?***

The Czech Parliament takes part in the IPEX database for EU Interparliamentary Exchange as well as in interparliamentary conferences, such as the EU Speakers Conference or Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC). As to the COSAC, the Czech delegation consists of members of the Chamber of Deputies and the Senate.

## 18. REPLY FROM SPAIN

### **1. Does national law provide for the involvement of the national parliament in the control of acts and positions taken by the representatives of the executive power within European Union bodies?**

Traditionally, the Spanish Parliament has never been active in holding the government accountable for its actions at the EU level. Some features of the Spanish institutional system helps explain that. First, the Spanish Constitution expressly provides that the government has the competence to direct foreign policy (Article 97 CE). Second, political elites and society in Spain have always been mostly pro-European (Castellà and Kölling, 2015) thus, there is often a wide consensus around the main policy areas with little margin for political conflict. After the entry into force of the Maastricht Treaty, the law 8/1994 of 20 May 1994 provided a legislative framework governing the duty of information of the executive *vis-à-vis* the Spanish Parliament.

More specifically, the law attributed all the competences related to the EU affairs to a permanent mixed committee, the *Comisión mixta para la Unión Europea* ('CMUE'). The law essentially introduced a general obligation for the executive to make accessible to the CMUE every legislative proposal elaborated by the EU institutions. Under the precedent legislative framework, this duty instead was limited to the legislative proposals affecting Spain only. The law was significantly amended to adapt to entry into force of the Lisbon Treaty, and in particular with Protocols 1 and 2 on subsidiarity. However, it has to be emphasised that the instrument of parliamentary controls are only set out by law 8/1994, and there is no obligation to use any of them.

### **2. In the affirmative, what is the legal basis of this involvement? What is its place in the hierarchy of norms (e.g. the Constitution, ordinary legislation, rules of procedures of Parliament?) Please quote the relevant provisions and provide a copy.**

Law 8/1994 provides the legal basis for the involvement of the Spanish Parliament in EU affairs. Its place in the hierarchy of norms is that of ordinary legislation, that in the Spanish legal systems occupies the third tier, after the Constitution and International Treaties.

### **3. In which acts are national parliaments involved in the preparation (i.e. legislative acts of the European Union, the budget)?**

The EU Commission invites all national parliaments to express their opinion on draft legislative acts of the EU under Article 2 of Protocol 1 on the Role of National Parliaments. Apart from that, the Spanish parliament, under national law, is never directly involved in the preparation of the EU acts.

#### **4.a. What is the type of involvement/the power of the national parliament in the process?**

The Spanish Parliament only has a right to be informed by the executive. Further, the concrete exercise of this right is dependent upon its activation by the CMUE, as the obligation for the executive is triggered only when the CMUE makes a request to that sense.

#### **4.b. Does this depend on the nature of the act under consideration?**

No, the Law 8/1994 only provides with a general right of the parliament to be informed about any legislative proposals elaborated at the EU level. Some specific participatory rights are enshrined as regards the AFSJ (see Q9) and the simplified revision procedure under Article 48(7) TEU.

**4.c. Does national legislation provide the national parliament with the power to initiate an action for violation of the principle of subsidiarity?**

The CMUE may ask the government to bring action for annulment before the Court of Justice on grounds of infringement of the subsidiarity principle (Artículo 3(k), Ley 8/1994).

**4.d. How do these or other relevant national provisions relate to the provisions of Protocols 1 and 2 annexed to the founding Treaties of the European Union, which provide for the right of national parliaments to receive several types of documents (including legislative proposals) directly from the Commission and the Court of Auditors and to submit a reasoned opinion if they consider that a legislative proposal infringes the principle of subsidiarity?**

Law 8/1994 regulates expressly how the Parliament shall make use of the powers conferred upon it by Protocols 1 and 2.

Under Article 3(j) is the CMUE, on behalf of the Parliament, which prepares a reasoned opinion when it estimates that there has been a breach of the principle of subsidiarity. In this context, the CMUE may also ask to the government an opinion on the compliance of the draft EU legislative act with the principle of subsidiarity. If requested to do so, the government shall deliver its opinion within two weeks from the request. If the CMUE finds that the adopted act is in breach of the principle of subsidiarity it may ask the executive to launch an action for annulment under Article 263 TFEU. (See Q 5c). Regional Parliaments can also intervene in such process, sending their opinion to the CMUE within six weeks.

**5. What is the procedure in bicameral parliaments, for example in the case of disagreement between both chambers?**

The problem of bicameralism has been circumvented in Spain with the creation of the CMUE, which is a mixed standing committee, composed of an equal number of members from the lower and the higher chamber. The CMUE acts on behalf of both chambers, and albeit some authors have criticised this solution for lacking a sound constitutional basis, (Delgado-Iribarren García-Campero, 2018) it prevents conflicts between the two branches of the parliament.

**6. What is the effective implementation of the national and European provisions referred to above?**

Albeit provided with only informative and rather generic competences, the CMUE is progressively gaining voice and relevance in the domestic discussions on EU affairs, becoming one of the most active standing committee of the Spanish Parliament. Since 1995, the Bureau and the Speakers of the CMUE meets at least twice per month to analyse any documents, in particular legislative proposals, received from the EU institutions. The Bureau has the faculty to start the assessment of the respect of the principle of subsidiarity. To this regard, the Bureau shall appoint a rapporteur to prepare a report to be submitted to the deliberation of the CMUE. Also, the Bureau may ask a member of the executive to appear before it to illustrate the government's position or an aspect of the EU legislative proposal. Besides from that, the Bureau taking into account the calendar of the Council meetings, may oblige the concerned minister to appear before the CMUE before the meeting to illustrate the government's position. Similarly, at the end of each Council presidency, the Minister of foreign affairs or the Secretary of State for the EU shall account to the CMUE on the results achieved during the semester. After each Council summit there is a Plenary session in the Congress where the President of the Government informs on the conclusions, according to the general provision in Article 203 of the Standing Orders of the Congress. Also informative are the competences of the General Commission of the Autonomous Communities in the Senate in

relation with European issues with regional dimension (Art. 56 (p) & (r) of the Standing Orders of the Senate).

In practice, the vast majority of the CMUE activities consist in scrutinizing EU draft legislation for compliance with the principle of subsidiarity. Also, the CMUE generally approves its reasoned opinions and reports consensually without a formal voting procedure. Significantly, neither the Chamber of Deputies nor the Senate ever exercised their faculty under Article 5(2) of Law 8/1994 to transfer the debate to the plenary. Moreover, there is an ongoing practice of alternating one individual rapporteur from the majority and one from the opposition. All in all, the concrete functioning of the CMUE appears to be rather consensual with little room for conflicts between political parties. Some authors however observe that this may be due to the scarce political relevance and technical character of the issues addressed by the CMUE.

In the current legislature (XIV, 2019-), the EU Commission forwarded 29 legislative proposals to the Spanish Parliament for the evaluation of the respect of the principle of subsidiarity under Protocol 2. The CMUE had adopted a report for 19 of them, all these reports positively assessed the respect of the principle of subsidiarity. In the XII legislature - the XIII lasted less than 6 months - 200 legislative proposals were forward to the CMUE by EU institutions, with only 2 receiving a negative assessment of the compliance with the principle of subsidiarity.

**7. *In the absence of a specific legal provision, is the parliament nevertheless involved in the process? If so how?***

No, currently there is no constitutional practice envisaging a participation of the parliament in the EU decision-making process.

**8. *Do these provisions and practices apply in the area of the Economic and Monetary Union (in particular for the countries of the eurozone)? Do special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.***

No specific provision in national law applies to the Economic and Monetary Union.

**9. *Do these provisions and practices apply in the field of the Area of Freedom, Security and Justice? Do any special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.***

Article 3(n) of Law 8/1994 confers on the CMUE the entitlement to carry out the political monitoring of Europol and the evaluation of Eurojust's activities. In 2010, the presidents of both Europol and Eurojust were summoned before the CMUE pursuant to Article 12(c) TEU. That marked the first time the two presidents appeared before a national parliament. Also, in the area of judicial cooperation in civil matters, the CMUE is competent to express the Spanish parliament position under Article 81(3) TFEU, i.e. in case of legislative acts in the field of family law with a transnational dimension.

**10. How is interparliamentary co-operation as provided for in Protocol No. 1 implemented?**

Article 3(g) of the Ley 8/1994, provides that the CMUE shall establish cooperation relationship with the European Parliament and other national parliaments. In practice, members of the CMUE usually attend Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) meetings, organized every six months by the European Affairs Committee of the member state holding the rotating presidency of the Council. Members of the Chamber of Deputies and the Senate also participate in the Joint Parliamentary Meetings organised by the European Parliament and the national parliament of the Member State holding the presidency.

## 19. REPLY FROM SWEDEN

**1. Does national law provide for the involvement of the national parliament in the control of acts and positions taken by the representatives of the executive power within European Union bodies?**

Yes.

**2. In the affirmative, what is the legal basis of this involvement? What is its place in the hierarchy of norms (e.g. the Constitution, ordinary legislation, rules of procedures of Parliament?) Please quote the relevant provisions and provide a copy.**

The Constitution (Instrument of Government) 1974, Chapter 10, Art. 10 provides that "The Government shall keep the Riksdag continuously informed and consult bodies appointed by the Riksdag concerning developments within the framework of European Union cooperation. More detailed rules concerning the obligation to inform and consult are laid down in the Riksdag Act." The Riksdag Act (2014:801), one of the few Swedish cardinal laws, provides for more specific rules. These divide responsibility for monitoring EU affairs between the 15 select (sectoral) committees of the Riksdag (finance, social affairs etc.) and the committee on EU Affairs (hereafter shortened to CEUA). CEUA does not prepare proposals (bills etc.) for decisions by the Riksdag in the same way as the select committees do. Since 2007 the government has been obliged to deliberate on EU affairs with sectoral committees, (below).

The Committee on EU Affairs has the same composition as the parliamentary committees, with 17 members representing all eight parties in the Riksdag. According to the information on the relevant Riksdag webpage, since the 2018 elections, the Committee has consisted of five Social Democrats, four Moderates, three Sweden Democrats, and one member from the Centre Party, Left Party, Christian Democrats, Liberal Party and Green Party.

The Government consults CEUA not only as concerns the final decision to be taken in the Council of Ministers. During negotiation processes, the Government adopts positions on an ongoing basis on various matters in the Council, and all its positions must first be taken up in the CEUA. A record is kept of all deliberations between the government and CEUA. This record is an official document, which is available on request to the public.

It is primarily a body for consultation and information (see, however, below, answer to question 4). The rules dealing with the government's obligations in general as regards EU affairs are set out in Chapter 7 of the Riksdag Act and state as follows:

"Art. 12. The Government shall deliberate with the committees in matters concerning European Union business decided by the committees. If requested by at least five members of a committee, the committee shall decide to hold deliberations with the Government under paragraph one. The committee may reject such a request if deliberation would delay consideration of the matter so as to cause serious detriment. In such a case, the committee shall enter in the record its reasons for rejecting the request.

Committees' obligation to monitor EU business

Art. 13. The committees shall monitor the work of the European Union within their respective subject areas.

Art. 14. The Government shall inform the Committee on EU Affairs of matters which are to be decided by the Council of the European Union. The Government shall also consult the Committee regarding the conduct of negotiations in the Council prior to decisions in the Council.

The Government shall deliberate with the Committee on EU Affairs concerning other matters associated with the work of the European Union, if so requested by the Committee on special grounds.

The Government shall consult the Committee prior to meetings and decisions of the European Council.”

**3. In which acts are national parliaments involved in the preparation (e.g. legislative acts of the European Union, the budget)?**

As can be seen from the above provisions, there is a general duty on the government to inform, and consult with, CEUA in all EU decision-making areas. The Prime Minister consults the Committee on EU Affairs prior to meetings of the European Council.

**4.a. What is the type of involvement/the power of the national parliament in the process?**

In general, the level of involvement can be described as the right to be informed and the right to be consulted. However, it is possible for the EAC to state that it does not wish the government to negotiate so as to obtain position X, but instead to negotiate to obtain position Z. This has happened on occasion (eg meeting of 22 Oct, 2014, regarding In the Swedish position on climate change, prior to the EU summit). While this recommendation, formally, does not bind the government, the position taken by the Swedish Committee on the Constitution, the parliamentary committee which monitors constitutional matters, is that the government should have good reasons if it does not comply with a recommendation of CEUA. Ultimately, the political opposition can use the normal methods of securing accountability of government (ultimately a vote of no confidence).

However, in practice it is difficult to bring a vote of no confidence as regards how the government has handled negotiations within the framework of the EU. Sweden is a small player in the EU. Even a strongly worded statement from CEUA to obtain a particular negotiating outcome does not, of course, mean that the Swedish government will be able to obtain the desired outcome. As it is only a politically binding resolution, it is likely that there will be majority against a government negotiating position in CEUA only where the government is a minority government. Moreover, there are considerable informational asymmetries between parliament on the one hand and the government on the other. The government has control over departments and administrative agencies, and the latter in practice have the expert knowledge necessary. In practice the Riksdag has great difficulty in finding out whether it really was possible to secure better agreements from Swedish perspective.

**4.b. Does this depend on the nature of the act under consideration?**

No

**4.c. Does national legislation provide the national parliament with the power to initiate an action for violation of the principle of subsidiarity?**

No.<sup>72</sup> However, the Riksdag could in theory adopt a resolution (tillkännagivande) to pressurize the government to bring such an action, behind such a resolution being the power of parliament to adopt a vote of no confidence against a minister or the government as a whole.

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<sup>72</sup> This is discussed in a report by the Committee on the Constitution, 2012/13:KU15.

**4.d. How do these or other relevant national provisions relate to the provisions of Protocols 1 and 2 annexed to the founding Treaties of the European Union, which provide for the right of national parliaments to receive several types of documents (including legislative proposals) directly from the Commission and the Court of Auditors and to submit a reasoned opinion if they consider that a legislative proposal infringes the principle of subsidiarity?**

Sweden is a relatively active invoker of the principle of subsidiarity.<sup>73</sup> The parliament has opted for a decentralised system of subsidiarity scrutiny within the Early Warning Mechanism. CEUA is not involved in this scrutiny. Instead, the Swedish Committee on the Constitution is given the task of observing general trends and providing a yearly report on the scrutiny by sectoral committees.<sup>74</sup> As regards access to EU documentation, see the following provisions of the Riksdag Act, chapter 9.

“Art. 20. Green and white papers that are forwarded to the Riksdag by the European Commission shall be considered by the Riksdag. The same applies to other documents from the European Union, other than draft legislative acts, whose consideration in this manner shall be determined by the Speaker, after consultation with the group leaders. The Riksdag shall examine whether draft legislative acts conflict with the principle of subsidiarity. The Riksdag shall approve or reject initiatives from the European Council to decide on an authorisation for the Council to amend the decision-making procedure in a particular area or in a particular case from unanimity to a qualified majority or from a special legislative procedure to the ordinary legislative procedure. In the same manner, the Riksdag shall approve or reject proposals from the European Commission to specify aspects of family law that have cross-border consequences and that can be the subject of legislative acts adopted in accordance with the ordinary legislative procedure.

Information about the EU

Information from the Government about the work of the EU

Art. 21. In accordance with Chapter 10, Article 10 of the Instrument of Government, the Government shall keep the Riksdag continuously informed concerning developments within the framework of European Union cooperation. The Government shall account to the Riksdag concerning its actions in the European Union and shall submit a written communication annually to the Riksdag reporting activities in the European Union. Information from the Government about documents from the EU

Art. 22. The Government shall inform the Riksdag of its position regarding the documents put forward by the institutions of the European Union to the Riksdag and which the Government deems significant.

Information about the work of the European Union from the Union’s institutions

Art. 23. The Riksdag receives written information about work in the European Union from the Union’s institutions in accordance with treaties and the protocols to the treaties.”

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<sup>73</sup> See generally, Anna Jonsson Cornell, The Swedish Riksdag as Scrutiniser of the Principle of Subsidiarity, 12 European Constitutional Law Review, 294–317, 2016. Jonsson Cornell notes that between the entry into force of the Lisbon Treaty and the end of 2014 the Riksdag reviewed a total of 501 proposals and submitted 45 reasoned opinions as a result of scrutiny of the principle of subsidiarity (at p. 296).

<sup>74</sup> Ibid. p. 295.

**5. What is the procedure in bicameral parliaments, for example in the case of disagreement between both chambers?**

Not applicable. The Riksdag is unicameral.

**6. What is the effective implementation of the national and European provisions referred to above?**

Since Sweden became a member of the EC/EU in 1995, the effectiveness of the Swedish parliament's scrutiny of EU matters has been the object of several inquiries,<sup>75</sup> and the subject of academic studies.<sup>76</sup> The decentralized system of consideration of EU matters, whereby scrutiny is shared between the CEUA and the relevant select committees (in agriculture, justice and home affairs etc.) can lead to matters falling between two stools. The parliament has often been insufficiently alert at an early stage of the EU legislative process to exert influence on the government, which in turn is supposed to exert influence on the Commission in making proposals for legislative acts. Swedish politics have also traditionally been characterized as consensus-based, and this has also applied to the conduct of negotiations within the EU. It would be wrong, however, to say that there is never conflict on either individual policies or more strategic issues.<sup>77</sup>

**7. In the absence of a specific legal provision, is the parliament nevertheless involved in the process? If so how?**

Not applicable.

**8. Do these provisions and practices apply in the area of the Economic and Monetary Union (in particular for the countries of the eurozone)? Do special provisions and practices apply in addition to or instead of the general provisions and practices? Please provide a copy of the relevant provisions.**

Sweden is not part of the Eurozone and does not participate fully in such discussions. There is a number of reasons why it is difficult for parliaments to scrutinize fully this area.<sup>78</sup> To the extent that Sweden participates in this area, the parliament has the possibility to make its views felt.<sup>79</sup>

**9. Do these provisions and practices apply in the field of the Area of Freedom, Security and Justice? Yes, see 3. Do any special provisions and practices apply in addition to or instead of the general provisions and practices?**

No.

**10. How is interparliamentary co-operation as provided for in Protocol No. 1 implemented?**

CEUA meets the EU bodies in the national parliaments every six months in the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC).

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<sup>75</sup> The most recent of which was a report from the Administrative office of the Parliament, 2017/18 URF 1.

<sup>76</sup> Probably the leading work is Hans Hegeland, *Nationell EU-parlamentarism : Riksdagens arbete med EU-frågorna*, Santerius, 2006. An article in English by Hegeland, is, *The Swedish Parliament and EU Affairs: From Reluctant Player to Europeanized Actor*, in C. Heffler et al. (eds), *The Palgrave Handbook of National Parliaments and the European Union*, Palgrave Macmillan 2015.

<sup>77</sup> A recent study of the practice of the CEUA indicated that opposition support and criticism are relatively easily balanced, see Christer Karlsson, Thomas Persson, *The Alleged Opposition Deficit in European Union Politics: Myth or Reality?* 56 *JCMS* 888-905 2018

<sup>78</sup> Mette Buskjær Rasmussen, *Accountability challenges in EU economic governance? Parliamentary scrutiny of the European Semester*, 40 *Journal of European Integration*, 341-357 2018.

<sup>79</sup> One of the countries studied by Rasmussen, *ibid.*, is Sweden.