Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Lleoliad:
Ystafell Bwyllgora 2 - y Senedd

Dyddiad:
Dydd Llun, 28 Ebrill 2014

Amser:
14.30

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

I gael rhagor o wybodaeth, cysylltwch a:
Gareth Williams
Clerc y Pwyllgor
029 2089 8008/8019
PwyllgorMCD@cymru.gov.uk

Agenda

1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau

2 Offerynnau nad ydynt yn cynnwys materion i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 na 21.3 (Tudalennau 1 - 2)

CLA(4)-11-14 - Papur 1 - Offerynnau statudol sydd ag adroddiadau clir

Offerynnau'r Weithdrefn Penderfyniad Negyddol

CLA393 - Rheoliadau'r Gwasanaeth Iechyd Gwladol (Contractau Gwasanaethau Deintyddol Cyffredinol) (Cymru) a Chytundebau Gwasanaethau Deintyddol Personol) (Cymru) 2014.
Y weithdrefn negyddol: Fe'i gwnaed ar: 31 Mawrth 2014; Fe'i gosodwyd ar: 1 Ebrill 2014; Yn dod i rym ar: 1 Mai 2014.

CLA394 - Gorchymyn Deddf Archwilio Cyhoeddus (Cymru) (Corff Cyfrifwyr Ewropeaidd Cymeradwy) 2014
Y weithdrefn negyddol: Fe'i gwnaed ar: 1 Ebrill 2014; Fe'u gosodwyd ar: 2 Ebrill 2014; Yn dod i rym ar: 22 Ebrill 2014

CLA395 - Rheoliadau Lles Anifeiliaid Adeg eu Lladd (Cymru) 2014
Y weithdrefn negyddol: Fe'i gwnaed ar: 8 Ebrill 2014; Fe'u gosodwyd ar: 9 Ebrill 2014; Yn dod i rym ar: 20 Mai 2014.

3 Papurau i'w nodi

Gorchymyn Mesur Cynulliad Cenedlaethol Cymru (Taliadau) 2010 (Anghymhwyso o'r Bwrdd Taliadau) 2014 (Tudalennau 3 - 6)
CLA(4)-12-14 - Papur 2 - Gorchymyn Mesur Cynulliad Cenedlaethol Cymru (Taliadau) 2010 (Anghymhwyso o'r Bwrdd Taliadau) 2014

Gohebiaeth yn ymwneud â CLA362 - Rheoliadau Tribiwnlys Prisio Cymru (Ffioedd) (Cymru) (Diwygio) 2013 (Tudalennau 7 - 10)
CLA(4)-12-14 - Papur 3 - Llythyr gan y Gweinidog Tai ac Adfywio

CLA(4)-12-14 - Papur 4 - Llythyr gan y Cadeirydd at y Gweinidog Tai ac Adfywio

Gohebiaeth yn ymwneud â Bil Drafft Cymru (Tudalennau 11 - 15)
CLA(4)-12-14 - Papur 5 - Llythyr gan Ysgrifennydd Gwladol Cymru

CLA(4)-12-14 - Papur 6 - Llythyr gan y Cadeirydd at Ysgrifennydd Gwladol Cymru

Llythyr gan Gadeirydd y Pwyllgor Deisebau (Tudalennau 16 - 30)
CLA(4)-12-14 - Papur 7 - Llythyr gan Gadeirydd y Pwyllgor Deisebau

CLA(4)-12-14 - Papur 7 Atodiad - Llythyr gan Gadeirydd y Pwyllgor Deisebau

CLA389 - Rheoliadau Addysg (Benthyciadau i Fyfyrwyr) (Ad-dalu) (Diwygio) 2014 (Tudalennau 31 - 32)
CLA(4)-12-14 - Papur 8 - Ymateb y Llywodraeth mewn perthynas â CLA389 - Rheoliadau Addysg (Benthyciadau i Fyfyrwyr) (Ad-dalu) (Diwygio) 2014

CLA(4)-12-14 - Papur 9 - Adroddiad y Pwyllgor ar CLA389 - Rheoliadau Addysg (Benthyciadau i Fyfyrwyr) (Ad-dalu) (Diwygio) 2014

Memorandwm Cydsyniad Deddfwriaethol Atodol Y Bil Dadreoleiddio: Diwygiadau mewn perthynas â Deddf Daliadau Amaethyddol 1986, Deddf Bridio Cŵn 1973 a Deddf Bridio a Gwerthu Cŵn (Lles) 1999 (Tudalennau 33 - 36)
CLA(4)-12-14 - Papur 10 - Memorandwm Cydsyniad Deddfwriaethol Atodol Y Bil Dadreoleiddio: Diwygiadau mewn perthynas â Deddf Daliadau Amaethyddol 1986, Deddf Bridio Cŵn 1973 a Deddf Bridio a Gwerthu Cŵn (Lles) 1999

Gohebiaeth oddi wrth Dŷ'r Arglwyddi, Pwyllgor yr Undeb Ewropeaidd (Tudalennau 37 - 115)
CLA(4)-12-14 - Papur 11 - Llythyr oddi wrth yr Arglwydd Boswell, Cadeirydd Pwyllgor yr Undeb Ewropeaidd

CLA(4)-12-14 - Papur 12 - Adroddiad Tŷ'r Arglwyddi ar Rôl Seneddau Cenedlaethol yn yr Undeb Ewropeaidd

5 Tystiolaeth yn ymwneud â'r Ymchwiliad i anghymhwyso person rhag bod yn Aelod o Gynulliad Cenedlaethol Cymru (Tudalennau 116 - 140)

Y Comisiwn Etholiadol *(3pm)*
Kay Jenkins, Pennaeth Swyddfa'r Comisiwn Etholiadol yng Nghymru
CLA(4)-12-14 – Papur 13 – Tystiolaeth Ysgrifenedig y Comisiwn Etholiadol

Y Gymdeithas Diwygio Etholiadol *(3.45pm)*
Stephen Brooks, Cyfarwyddwr Cymdeithas Diwygio Etholiadol Cymru

CLA(4)-12-14 – Dogfen briffio gan y Gwasanaeth Ymchwil

6 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer y canlynol:

(vi) lle mae'r pwyllgor yn cyd-drafod cynnwys, casgliadau neu argymhellion adroddiad y mae'n bwriadu ei gyhoeddi; neu'n ymbaratoi i gael tystiolaeth gan unrhyw berson;

Adroddiad drafft ar y Cynnig Cydsyniad Deddfwriaethol ynghylch Dadreoleiddio
(Tudalennau 141 - 172)
CLA(4)-12-14 – Papur 14 – Adroddiad Drafft ar y Bil Dadreoleddio;
CLA(4)-12-14 – Papur 15 – Atodiad 1, Llythyr gan Cadeirydd, y Bil Dadreoleiddio Drafft;
CLA(4)-12-14 – Papur 16 – Atodiad 2, nodyn cyngor cyfreithiol;
CLA(4)-12-14 – Papur 17 – Memorandwm Cydsyniad deddfwriathol;

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Offerynnau Statudol Gydag Adroddiadau Clir

28 Ebrill 2014

CLA393 - Rheoliadau'r Gwasanaeth Iechyd Gwladol (Contractau Gwasanaethau Deintyddol Cyffredinol a Chytundebau Gwasanaethau Deintyddol Personol) (Cymru) (Diwygio) 2014

Gweithdrefn: Negyddol

Mae'r Rheoliadau hyn, a fydd yn dod i rym o 1 Mai 2014, yn diwygio Rheoliadau'r Gwasanaeth Iechyd Gwladol (Contractau Gwasanaethau Deintyddol Cyffredinol) (Cymru) 2008 a Rheoliadau'r Gwasanaeth Iechyd Gwladol (Cytundebau Gwasanaethau Deintyddol Personol) (Cymru) 2006. Mae'r diwygiadau yn darparu, os cyfeirir claf at gontractwr arbenigol am wasanaethau gorfodol uwch, y bydd yr ad-daliad am unedau o weithgarwch deintyddol yn cael ei rannu rhwng y deintydd ar y 'stryd fawr' a'r contractwr arbenigol. Nid yw ad-daliadau yn cael eu rhannu ar hyn o bryd – mae'r deintydd a'r contractwr arbenigol yn cael ad-daliad am y nifer lawn o unedau o weithgarwch deintyddol.

CLA394 - Gorchymyn Deddf Archwilio Cyhoeddus (Cymru) 2013 (Corff Cyfrifwyr Ewropeaidd Cymeradwy) 2014

Gweithdrefn: Negyddol

Mae'r Gorchymyn hwn yn darparu bod y Sefydliad Siartredig Cyllid Cyhoeddus a Chyfrifyddiaeth ("CIPFA") a Sefydliad Siartredig y Cyfrifwyr Rheoli ("CIMA") yn gyrff cyfrifwyr Ewropeaidd cymeradwy, ac felly maent o fewn y diffiniad o 'gorff cyfrifyddu' at ddibenion adran 19 (9) o Ddeddf Archwilio Cyhoeddus (Cymru) 2013 ("Deddf 2013")

CLA395 - Rheoliadau Lles Anifeiliaid Adeg eu Lladd (Cymru) 2014

Gweithdrefn: Negyddol

Mae'r Rheoliadau yn gwneud darpariaeth yng Nghymru ar gyfer gweinyddu a gorfodi Rheoliad y Cyngor Rhif 1099/2009 ar ddiogelu anifeiliaid adeg eu lladd. Yn ogystal, mae'r Rheoliadau hefyd yn dirymu Rheoliadau Lles Anifeiliaid (Cigydda neu Ladd) 1995 (O.S. 1995/371) a'r offerynnau diwygio cysylltiedig i'r graddau y maent yn gymwys i Gymru.

O F F E R Y N N A U S T A T U D O L
C Y M R U

2014 Rhif 1004 (Cy. 93)

Y GYFRAITH GYFANSODDIADOL

Gorchymyn Mesur Cynulliad Cenedlaethol Cymru (Taliadau) 2010 (Anghymhwyso o'r Bwrdd Taliadau) 2014

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Gorchymyn)

Mae adran 5 o Fesur Cynulliad Cenedlaethol Cymru (Taliadau) 2010 ("y Mesur") yn darparu ar gyfer diwygio Atodlen 1 i'r Mesur sy'n cynnwys rhestr o bersonau sydd wedi eu hanghymhwyso rhag bod yn aelodau o Fwrdd Taliadau Cynulliad Cenedlaethol Cymru ("y Bwrdd").

Mae adran 5(1) o'r Mesur yn galluogi Atodlen 1 i gael ei diwygio (drwy ychwanegu neu ddileu swydd neu berson, neu drwy newid y disgrifiad o swydd neu o berson o'r fath) yn dilyn penderfyniad gan Gynulliad Cenedlaethol Cymru ("y Cynulliad").

Mae is-adran (2) yn rhoi pŵer i Gwnsler Cyffredinol Llywodraeth Cynulliad Cymru ("y Cwnsler Cyffredinol") i roi effaith i benderfyniad y Cynulliad drwy wneud Gorchymyn. Mae is-adran (4) yn darparu bod rhaid i'r Cwnsler Cyffredinol arfer y pŵer hwnnw cyn gynted ag y bo'n rhesymol ymarferol ar ôl cael ei hysbysu'n ysgrifenedig gan y Llywydd bod penderfyniad wedi ei wneud gan y Cynulliad.

Cafodd y Cwnsler Cyffredinol hysbysiad ysgrifenedig oddi wrth y Llywydd ar 3 Ebrill 2014 bod penderfyniad i ddiwygio Atodlen 1 i'r Mesur wedi ei wneud gan y Cynulliad ar 2 Ebrill 2014 (NDM5481).

Mae erthygl 2 o'r Gorchymyn hwn yn rhoi effaith i benderfyniad y Cynulliad drwy ddiwygio'r rhestr o bersonau sydd wedi eu hanghymhwyso rhag bod yn aelodau o'r Bwrdd yn Atodlen 1 i'r Mesur. Bellach, nid yw aelodau o Dŷ'r Arglwyddi na phersonau a oedd yn aelodau o'r naill neu'r llall o'r panelau a apwyntiwyd gan Gomisiwn y Cynulliad i adolygu

cyflogau a lwfansau Aelodau o'r Cynulliad yn unol â phenderfyniadau Comisiwn y Cynulliad ar 4 Gorffennaf 2007 ac 8 Mai 2008 wedi eu hanghymhwyso rhag bod yn aelodau o'r Bwrdd.

O F F E R Y N N A U S T A T U D O L
C Y M R U

2014 Rhif 1004 (Cy. 93)

Y GYFRAITH GYFANSODDIADOL

Gorchymyn Mesur Cynulliad Cenedlaethol Cymru (Taliadau) 2010 (Anghymhwyso o'r Bwrdd Taliadau) 2014

Gwnaed *11 Ebrill 2014*

Yn dod i rym yn unol ag erthygl 1

Mae'r Cwnsler Cyffredinol yn gwneud y Gorchymyn a ganlyn drwy arfer y pwerau a roddwyd gan adran 5(2) a (3) o Fesur Cynulliad Cenedlaethol Cymru (Taliadau) 2010(**1**), yn dilyn hysbysiad ysgrifenedig oddi wrth y Llywydd o dan adran 5(4) o'r Mesur hwnnw fod penderfyniad wedi ei wneud gan Gynulliad Cenedlaethol Cymru(**2**).

Enwi, cychwyn, dehongli a chymhwyso

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Mesur Cynulliad Cenedlaethol Cymru (Taliadau) 2010 (Anghymhwyso o'r Bwrdd Taliadau) 2014.

(2) Daw'r Gorchymyn hwn i rym drannoeth y diwrnod y'i gwneir.

(3) Yn y Gorchymyn hwn—

ystyr "y Mesur" ("*the Measure*") yw Mesur Cynulliad Cenedlaethol Cymru (Taliadau) 2010.

(4) Mae'r Gorchymyn hwn yn gymwys o ran Cymru.

Diwygio Atodlen 1 (Anghymwyso rhag bod yn Aelod o'r Bwrdd)

2. Mae paragraff 1 o Atodlen 1 i'r Mesur wedi ei ddiwygio fel a ganlyn:

(**1**) 2010 mccc 4.
(**2**) NDM5481.

(a) yn is-baragraff (e) hepgorer "Tŷ'r Arglwyddi,";

(b) hepgorer is-baragraff (m).

Theodore Huckle CF

Cwnsler Cyffredinol Llywodraeth Cynulliad Cymru

11 Ebrill 2014

Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref CS/00382/14

David Melding AC
Cadeirydd – Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

LegislativeProgramme.TeamMailbox@cymru.gsi.gov.uk

1 Ebrill 2014

Annwyl David

CLA362 – Rheoliadau Tribiwnlysoedd Prisio Lesddaliadau (Ffioedd) (Cymru) (Diwygio) 2014

Diolch am eich llythyr dyddiedig 13 Mawrth ynghylch yr ystyriaeth a roddwyd gan y Pwyllgor i'r Offeryn Statudol uchod. Mae'n dda gen i glywed bod y Pwyllgor bellach yn fodlon â'r offeryn statudol hwn yn dilyn y pryderon a godwyd am y cyd-destun.

Rydych yn gywir i nodi bod Rheoliadau Lwfans Cyflogaeth a Chymorth (Darpariaethau Canlyniadol) (Rhif 3) 2008 wedi gwneud newidiadau canlyniadol i naw set o reoliadau Cymreig ond bod y newidiadau wedi'u gwneud i'r testun Saesneg yn unig. Mae'r Adran Gwaith a Phensiynau wedi cael ei hysbysu o'r angen i ddiwygio'r ddeddfwriaeth yn y Gymraeg yn ogystal â'r Saesneg. Yn achos offerynau statudol dwyieithog, mae Llywodraeth Cymru wedi gofyn i'r Swyddfa Gymreig godi'r mater hwn gyda'u cydweithwyr yn Llywodraeth y Deyrnas Unedig er mwyn sicrhau bod Adrannau Llywodraeth y Deyrnas Undig yn gofyn i Lywodraeth Cymru ddarparu cyfieithiadau o'r diwygiadau, i'w mewnosod yn offerynau statudol y DU.

Rwy'n cydnabod y byddai'r Pwyllgor wedi disgwyl gweld sylwadau penodol ynghylch rheoliad 2(4)c yn y Memorandwm Esboniadol ac ni allaf ond ymddiheuro am yr amryfusedd hwn; dylem fod wedi cynnwys sylwadau yn y Memorandwm Esboniadol. Rwyf wedi rhoi gwybod i'm swyddogion er mwyn osgoi unrhyw amryfusedd tebyg yn y dyfodol.

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CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.Carl.Sargeant@wales.gsi.gov.uk

Yn sgîl pryderon y Pwyllgor am ddiffyg diwygiadau dwyieithog yn sgîl 'Rheoliadau Lwfans Cyflogaeth a Chymorth (Darpariaethau Canlyniadol) (Rhif 3) 2008', bydd Llywodraeth Cymru'n cynnal gwiriadau pellach i destunau Cymraeg a Saesneg unrhyw setiau eraill o reoliadau dwyieithog a ddiwygiwyd yn Saesneg yn unig gan y Rheoliadau hyn. Gwneir hyn er mwyn sicrhau bod unrhyw ddiwygiadau angenrheidiol wedi'u gwneud, a bod y testunau Cymraeg a Saesneg yn gwbl gyson â'i gilydd.

Hyderaf y bydd yr wybodaeth hon o ddefnydd i chi.

Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Constitutional and Legislative Affairs Committee

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Carl Sargeant AC
Y Gweinidog Tai ac Adfywio
Llywodraeth Cymru
Llawr 5
Tŷ Hywel
Bae Caerdydd

13 Mawrth 2014

Annwyl Weinidog

CLA362 – Rheoliadau Tribiwnlysoedd Prisio Lesddaliadau (Ffioedd) (Cymru) (Diwygio) 2014

Trafododd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yr Offeryn Statudol uchod yn ei gyfarfod ar 3 Mawrth 2014.

Er ein bod yn fodlon ar yr offeryn, fe welwch o'n hadroddiad (sydd ynghlwm) fod gennym bryderon ynghylch ei gyd-destun. Roedd yn ofynnol gwneud newidiadau i'r fersiwn Gymraeg o'r prif reoliadau yn sgîl diwygiadau i'r fersiwn Saesneg gan *Reoliadau Lwfans Cyflogaeth a Chymorth (Darpariaethau Canlyniadol) (Rhif 3) 2008*. Roedd Rheoliadau 2008 i fod i wneud newidiadau canlyniadol i naw set o reoliadau Cymru, ond testun y Saesneg yn unig a newidiwyd. Yn achos y Rheoliadau presennol, mae anghysondeb felly rhwng testun y Gymraeg a thestun y Saesneg ers dros bum mlynedd.

Mae'r Pwyllgor felly yn ceisio sicrwydd gan Lywodraeth Cymru bod camau wedi cael eu cymryd i wneud testun y Gymraeg yn gyson â thestun y Saesneg yn y rheoliadau eraill a ddiwygiwyd yn y Saesneg yn unig gan Reoliadau 2008.

Nodwn fod y Nodyn Esboniadol yn cyfeirio at y mater penodol y cyfeirir ato uchod, ond byddem wedi disgwyl gweld sylwadau ynghylch rheoliad 2(4)(c)

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Tudalen y pecyn 9

yn y Memorandwm Esboniadol, o bosibl o dan yr adran 'Materion o Ddiddordeb Arbennig i'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol'.

Edrychaf ymlaen at eich ymateb i'r pwyntiau a godwyd gennym yn y llythyr hwn.

Yn gywir

David Melding AC
Cadeirydd

Wales Office
Swyddfa Cymru

Office of the Secretary of State for Wales
Gwydyr House
London, SW1A 2NP

Swyddfa Ysgrifennydd Gwladol Cymru
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David Melding AM
Chair
Constitutional & Legislative Affairs Committee
National Assembly for Wales
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Ref: 66SOS14

7 April 2014

Dear David,

I am writing in reply to your letter received on 17 March, which set out your Committee's views on a number of issues pertaining to the draft Wales Bill.

You will be aware that the Wales Bill has now been introduced in the House of Commons and received its Second Reading on 31 March. This provided the opportunity for Members on all sides of the House to debate the Bill's provisions, including a number of the issues you have raised.

Your Committee will be pleased to note that clause 21 of the Bill devolves power to the Assembly to determine its own budgetary procedures. This was recommended by the Silk Commission in its Part I report and by the Welsh Affairs Committee in its pre-legislative scrutiny of the draft Bill. Devolving this power will enable the Assembly to determine the procedure for setting the annual budget and would, for example, allow for an annual Finance Act to replace the current annual budget motion.

Clause 24 of the Bill (clause 21 of the draft Bill) imposes a duty on the Law Commission to provide advice and information to Welsh Ministers. In effect, this will allow Welsh Ministers to refer matters to the Law Commission directly, whereas at present this needs to be done via a UK Government department. We believe this represents the right balance between giving further powers to Welsh Ministers to pursue legislative changes within devolved competence without imposing too onerous a duty on the Law Commission.

It would not be appropriate for Welsh Ministers to be on the same footing as the Lord Chancellor and Scottish Ministers as Wales does not have its own legal system. The Scottish Ministers are responsible for the programme of law reform at the Scottish Law Commission, and the Lord Chancellor is responsible for the programme of law reform at the Law Commission of England and Wales. In the context of those two legal systems, equivalence for Wales (and for Welsh Ministers) in this area would clearly not be appropriate.

I have considered carefully the point you raise in regard to clause 27 (clause 24 of the draft Bill). The clause empowers HM Treasury, by order, to make supplementary, incidental or consequential provision as appears appropriate in connection with bringing into force the provisions in Part 2 of the Bill (relating to Finance). An order made under this section may make modifications both to Acts of Parliament and Acts and Measures of the Assembly (and subordinate legislation), and an order including such provision is subject to the affirmative resolution procedure in the House of Commons.

You expressed concern that any change to an Act or Measure of the Assembly should by endorsed by the Assembly. As you know, the UK Government seeks the consent of the Assembly, via a Legislative Consent Motion, whenever it needs to legislate in areas of devolved legislative competence. The Bill extends the Assembly's legislative competence to include devolved taxes, and the consent of the Assembly would be sought in future if a HM Treasury order made under clause 27 sought to amend an Assembly Act relating to devolved taxes. Given this, I do not believe that we need to make specific provision in the Wales Bill.

Finally, you also call for the Assembly to have legislative competence for its electoral arrangements. The Government does not consider this Bill to be the right vehicle to consider such a change, and believes that it is best considered in the wider context of responding to the Silk Commission's Part II report.

Rt. Hon. / Y Gwir Anrh. David Jones MP / AS
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Constitutional and Legislative Affairs Committee

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Mawrth 2014

Annwyl

Bil Drafft Cymru

Cyfeiriaf at y Bil Drafft Cymru, a gyhoeddwyd gan Lywodraeth y DU ar 18 Rhagfyr 2013.

Rydym wedi ymddiddori'n fawr yn y Bil hwn ar sail ei arwyddocâd cyfansoddiadol.

Yn benodol, rydym wedi gweld yr ohebiaeth rhyngoch chi a'r Llywydd am y Bil drafft. Rydym am gofnodi'r ffaith ein bod yn cymeradwyo'r pwyntiau a godwyd ganddi.

Mae rhai pwyntiau ychwanegol yr ydym am eu gwneud yn seiliedig ar ein hystyriaeth o'r Bil drafft a gwaith ein pwyllgor dros yr ychydig flynyddoedd diwethaf.

Gweithdrefnau cyllidebol

Rydym yn llwyr gefnogi argymhelliad Comisiwn Silk y dylid rhoi rheolaeth i'r Cynulliad dros ei weithdrefnau cyllidebol (argymhelliad 32 yn *Grymuso a Chyfrifoldeb: Pwerau Ariannol i Gryfhau Cymru*), yn unol â'r sefyllfa yn yr

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Alban. Yn ein tyb ni, byddai hyn yn ddull pragmataidd a synhwyrol, gan y byddai'n caniatáu i'r Cynulliad fanteisio ar y pwerau ariannol newydd sy'n cael eu darparu yn y Bil drafft mewn ffordd gydlynol ac effeithlon.

Cymal 21: Gwaith Comisiwn y Gyfraith hyd yma mewn perthynas â Chymru

Yn 2012, cynaliasom ymchwiliad i awdurdodaeth ar wahân i Gymru. Roedd y rhan fwyaf o'r tystion yn gefnogol i'r syniad o gael corff i adolygu cyfraith Cymru ac y dylai ei aelodaeth fod yn hyblyg ac yn manteisio ar arbenigrwydd yn ysgolion y gyfraith ac yn y proffesiwn. Gwnaethom argymell:

> y dylid sefydlu corff i adolygu a chynorthwyo â chydgrynhoi cyfraith Cymru. Gallai corff o'r fath naill ai fod yn rhan o Gomisiwn y Gyfraith presennol ar gyfer Cymru a Lloegr neu'n gorff cwbl newydd.

Nodwn fod cymal 21 o'r Bil drafft yn mewnosod darpariaethau newydd yn *Neddf Comisiynau'r Gyfraith 1965* er mwyn gosod dyletswydd newydd ar Gomisiwn y Gyfraith i ddarparu cyngor a gwybodaeth i Weinidogion Cymru yn uniongyrchol. Mae hyn yn ei gwneud yn glir y bydd gan Weinidogion Cymru y gallu i gyfeirio materion o ran diwygio'r gyfraith at Gomisiwn y Gyfraith. Fodd bynnag, nid yw'r Bil drafft yn gwneud Gweinidogion Cymru yn gyfartal â Gweinidogion Llywodraeth y DU o ran Comisiwn y Gyfraith na Gweinidogion yr Alban o ran Comisiwn Cyfraith yr Alban. Er enghraifft, ni fydd yn ddyletswydd ar Gomisiwn y Gyfraith i ddarparu i Weinidogion Cymru raglen gynhwysfawr o gydgrynhoi a diwygio'r gyfraith statud mewn meysydd datganoledig.

Rydym yn credu y byddai gosod dyletswydd ar Gomisiwn y Gyfraith yn sicrhau bod cyfansoddiad cyfreithiol Cymru yn datblygu mewn ffordd glir, gydlynol a rhesymegol. Byddai dyletswydd o'r fath yn anfon neges glir ynghylch pwysigrwydd diwygio'r gyfraith yng Nghymru, a byddai'n sicrhau y gellid cynllunio'r gwaith hwn a'i wneud mewn ffordd amserol, ac yn unol â'r corff o gyfreithiau Cymreig sy'n datblygu.

Yn ein tyb ni, gellid cyflawni'r newid angenrheidiol drwy ddiwygio adran 6 o Ddeddf 1965 i ymestyn y diffiniad ar gyfer 'y Gweinidog' fel y byddai'n cynnwys Gweinidogion Cymru mewn perthynas â Chomisiwn y Gyfraith. Byddai hyn yn debyg i'r ffordd y mae Gweinidogion yr Alban yn cael eu cynnwys mewn perthynas â Chomisiwn Cyfraith yr Alban. Mae'r trefniant hwn yn caniatáu i Weinidogion yr Alban ofyn am raglenni cynhwysfawr o gydgrynhoi a diwygio'r gyfraith statudol, a chymeradwyo argymhellion a wneir gan Gomisiwn Cyfraith yr Alban.

Yng ngoleuni ein sylwadau, rydym felly yn cefnogi'n gryf argymhellion 32 a 33 yn adroddiad diweddaraf Comisiwn Silk, sef *Grymuso a Chyfrifoldeb: Pwerau Deddfwriaethol i Gryfhau Cymru*.

Cymal 24: Pŵer i wneud darpariaeth atodol, ôl-ddilynol, ac ati

Mae cymal 24 yn destun pryder arbennig inni. Fel y'i drafftiwyd ar hyn o bryd, mae'n caniatáu i Drysorlys Ei Mawrhydi wneud diwygiadau canlyniadol sy'n deillio o Ran 2 o'r Bil drafft a allai ddiwygio Mesur Cynulliad neu Ddeddf Cynulliad. Mae'n ymddangos yn briodol inni y dylai unrhyw newidiadau y mae Senedd y DU yn eu gwneud i Ddeddf Cynulliad neu Fesur Cynulliad, *o unrhyw fath*, gael eu cymeradwyo gan y Cynulliad. Mae hon yn egwyddor gyfansoddiadol arwyddocaol.

Yn ein tyb ni, mae posibiliad y byddai peidio â gorfod cael caniatâd y Cynulliad yn tanseilio'r setliad datganoledig; byddai'n gwbl amhriodol i ddeddfwriaeth a wneir gan y Cynulliad gael ei diwygio gan y Trysorlys gyda chaniatâd Senedd y DU, o bosibl ar ôl trafodaethau rhwng Llywodraeth y DU a Llywodraeth Cymru. Byddai peidio â chynnwys y ddeddfwrfa a wnaeth y ddeddfwriaeth wreiddiol yn gyfansoddiadol anhygoel.

Trefniadau etholiadol

Mae Bil Drafft Cymru yn cynnwys nifer o gynigion mewn perthynas â threfniadau etholiadol. Credwn yn gryf ei bod yn gwbl gyfiawn i'r Cynulliad gael cymhwysedd deddfwriaethol ar gyfer ei drefniadau etholiadol ei hun. Rydym o'r farn felly y dylai'r Cynulliad Cenedlaethol a Llywodraeth Cymru gael yr un pwerau o leiaf â'r rhai a roddwyd i Senedd yr Alban a Llywodraeth yr Alban yn *Neddf yr Alban 2012*.

Eitem 4.4

Y Pwyllgor Deisebau
Petitions Committee

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

David Melding AM
Deputy Presiding Officer
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Tŷ Hywel
Cardiff Bay
CF99 1NA

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

Our ref: P-04-454

April 2014

Dear David

You may recall that Mr Nortridge Perrott submitted a petition in January 2013 about Assembly Members holding two elected positions simultaneously. The petition wording was:

> *The petitioner asks the Welsh Government to bring forward legislation to bar the practice currently exhibited by 7 currently serving Assembly Members to hold TWO elected positions simultaneously, namely holding office as a Councillor within the Welsh Jurisdiction and also holding office as an elected Assembly Member in the National Assembly of Wales.*

I wrote to you in February 2013 asking for the Constitutional and Legislative Affairs (CLA) Committee's views on the petition. At the time CLA Members agreed that it would be inappropriate for the Committee to look at the issue contained in the petition in isolation from other electoral issues.

However, I understand that the Welsh Government has recently asked CLA to review the National Assembly for Wales Disqualification Order in readiness for the next Assembly elections in 2016. In the light of this, the Petitions Committee would be grateful if CLA could consider as part of its review the principle raised in Mr Nortridge Perrott's petition and whether it can be addressed by amending the Disqualification Order.

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

Ffôn / Tel: 029 2089 8242
E-bost / Email: William.powell@wales.gov.uk

In the hope that it may help you in considering this matter, I enclose correspondence we have received as part of our consideration of the petition from:

- the Presiding Officer;
- the then Minister for Local Government and Government Business;
- the Electoral Commission;
- the WLGA; and
- the Electoral Reform Society;

I also enclose previous correspondence from the petitioner, which argues in part that the Disqualification Order offers an opportunity to address his concerns.

I would be grateful if you could let me know the outcome of your review so that I may keep the petitioner informed.

Yours sincerely

William.

William Powell AC / AM
Cadeirydd / Chair

(Please respond to the Committee Clerk at: Stephen.George@wales.gov.uk)

Enc Letter of 26 February 2013 from the Presiding Officer
Letter of 22 May 2013 from the Minister for Local Government and Government Business
Correspondence of 2 June 2013 from the Petitioner
Correspondence of 21 June 2013 from the Petitioner
Letter of 5 July 2013 from the Electoral Commission
Correspondence of 26 September 2013 from the WLGA
Correspondence of 27 September 2013 from the Electoral Reform Society
Correspondence of 6 February 2014 from the Petitioner

Cynulliad Cenedlaethol Cymru

National Assembly for Wales

William Powell AM
Chair, Petitions Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Your ref:
Our ref: PO412/RB/VH

26 February 2013

Dear William

Thank you for the letter from the Petitions Committee regarding the ability of Assembly Members to hold more than one elected office.

Section 16 of The Government of Wales Act 2006 sets out the terms under which someone may not stand as a candidate to the Assembly and a Statutory Instrument (The National Assembly for Wales Disqualification Order) outlining which specific offices preclude candidacy is passed before each Assembly election.

This is not an issue that the Commission has discussed and therefore does not have a view on it.

Rosemary

Rosemary Butler AM, Presiding Officer

Bae Caerdydd
Caerdydd
CF99 1NA

Cardiff Bay
Cardiff
CF99 1NA

Ffôn/Tel: 029 2089 8911
Ebost/Email: private.office@wales.gov.uk

Lesley Griffiths AC / AM
Y Gweinidog Llywodraeth Leol a Busnes y Llywodraeth
Minister for Local Government and Government Business

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

William Powell AM
Chair Petitions Committee
National Assembly for Wales
Cardiff Bay

22 May 2013

Dear Bill,

You wrote to my predecessor and the Council General seeking views on amending legislation to prevent Assembly Members standing for election to a principal council in Wales or for serving councillors to stand for election to the National Assembly for Wales.

I am responding on behalf of the Welsh Government. I understand the reasoning behind the petition. I will consider the matter carefully ahead of the next elections to the National Assembly for Wales. Any proposal to amend the legislation will be subject to full consultation.

Regards,

Lesley Griffiths

Lesley Griffiths AC / AM
Y Gweinidog Llywodraeth Leol a Busnes y Llywodraeth
Minister for Local Government and Government Business

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.lesley.Griffiths@wales.gsi.gov.uk

P-04-454 Call to end Councillor and Assembly Member Dual Role – Correspondence from the Petitioner to the Chair, 02.06.2013

WRITTEN SUBMISSION: Petitions Committee ---18/6/2013.—OPEN DOCUMENT

Deadline 7/6/2013-**Local Government and Government Business**

7.12 P-04-454 Call to end Councillor and Assembly Member Dual Role

For Inclusion ----------Committee Deliberations.-18-06-2013.----------

- ACTION request lead Petitioner;-N PERROTT
- ARGUMENT provision lead petitioner:
- PROCEDURAL request lead petitioner.

ACTION :

The Petition Committee has the following options:

Action on a Petition

23.8 If a petition is admissible, the Presiding Officer must refer that petition to a responsible committee.

23.9 The responsible committee must:

(i) refer the petition to the government, any other committee of the Assembly or any other person or body for them to take such action as they consider appropriate;

(ii) report to the Assembly; or

(iii) take any other action which the committee considers appropriate.

23.10 The responsible committee must notify the petitioner of any action taken under Standing Order 23.9.

ACTION POINTS**

*Petition Committee refer to a RESPONSIBLE committee---it is suggested CLACttee with a view to drafting amending legislation.***to bar the possibility of AM's holding simultaneously membership of a Principal Unitary Authority concurrently with Membership of the National Assembly of Wales.*

Petition Committee report to Assembly that a reference is to be made to the Electoral Commission to seek it's view on the "ending of the dual role" and seeking from the Electoral Commission case examples from other Jurisdictions.[USA,EU jurisdictions].

Op cit-Electoral Commission

Prioritising our regulatory activity

Audit, advice and campaign monitoring

December 2010

(Updated May 2012)

2.27 By definition we will not hold information of this kind about every registered party, and so it cannot be used to create formal profiles. We will log and collate relevant information as we receive it, but will not publish it. **Our Advice and Guidance Team will refer to the information we hold when considering whether it is appropriate to offer advice on our own initiative. This process is underpinned by our horizon scanning activity which gathers media reports about emerging trends and likely areas on which we may need to target in future.** The types of information we will log are set out in Appendix C and can be grouped under three headings:

• public profile

• governance and capacity

• external factors

Petition Comittee in response to Ministerail correspondence from WG to ask for resource to be deployed to assist the drafting of an amending measure to give effect to the proposed change to legislation required in amending the Nat ional Assembly Order.

Under Nat Assembly -STANDING ORDER

24.14 Legislation, which is neither government legislation, committee legislation nor Commission legislation, is referred to as "Member legislation".

Where none of the THREE possible routes to legislative change are forthcoming

The Petition Committee via the Assembly report to Members who would be invited to

-Canvas any views and interest from AM's who would be interested to -Bring forward draft legislation in a Private Assembly Members capacity as Assembly

Member legislation to allow the Drafting, Consultation and Tabling of the proposed legislative change - if any of the available THREE avenues prove not to come to fruition.

PROCEDURAL:

General Principles

11. The law requires that the interests of parties who are affected by a proposed Order are dealt with fairly, justly and openly; that all the evidence is fully considered and that decisions are based only on material considerations to which all the parties have had access. The Assembly's decisions, and hence any Order which is authorised by the Assembly, can be challenged in the courts if these principles are not followed.

The 29-1-13 Petition Committee meeting did 5 things:

1. Contacted the Minister

> I am responding on behalf of the Welsh Government. I understand the reasoning behind the petition. I will consider the matter carefully ahead of the next elections to the National Assembly for Wales. Any proposal to amend the legislation will be subject to full consultation.

2. Wrote to CLAC committee[see e mail -18/2/13-asking for FULL transparency]

3. Wrote to Assembly Commission .

> Section 16 of The Government of Wales Act 2006 sets out the terms under which someone may not stand as a candidate to the Assembly and a Statutory Instrument (The National Assembly for Wales Disqualification Order) outlining which specific offices preclude candidacy is passed before each Assembly election.

4. Wrote to Counsel General---indicating whether there are any legal impediment to change .—no advice or view has been adduced in correspondence.—save for-reference in Minister's letter.-COUNSEL[typo]

> Dear Bill,
>
> You wrote to my predecessor and the Council General seeking views on amending legislation to prevent Assembly Members standing for election to a principal council in Wales or for serving councillors to stand for election to the National Assembly for Wales.

5. Requested a legal briefing- no advice or briefing available.

-**REQUEST**Legal advice is required to be disclosed.to petitioner.**

The CLAC deliberations were held in CAMERA [18-2-13] and details of correspondence from PETITIONS COMMITTEE to CLAC have been redacted.

ACTION POINT-**

The LEAD petitioner requests that all e mail traffic, letters, correspondence and memoranda ,notes of meetings be made available in a BUNDLE to the lead Petitioner in the interests of transparency and due process and General Principles of Law @11 above.

Summary-

- It is a straightforward task to amend the Order.
- It is straightforward requirement to determine the efficacy of the change both in principle and policy terms.
- It is straightforward to open the proposed change to wider debate and consideration.

NORTRIDGE PERROTT

P454-Lead Petitioner/

P-04-454 Call to end Councillor and Assembly Member Dual Role – Correspondence from the petitioner to the Committee, 21.06.2013

Petitions Committee

You asked or the Committee asked for Clarification.

THe BAR would only apply to COUNCILLORS holding PAID elected positions with WALES ,ie receiving a TAXABLE ALLOWANCE/Liable for National Insurance for being a member of a Unitary Authority,whether taken or renounced.

TOWN and Community Councillors are NOT paid positions...

The Mischief to remedy is NOT to HOLD two elected PAID positions within Welsh Jurisdiction simultaneously and where ONE paid elected position is already occupied at the time of Nomination to contest an Assembly seat,then this fact BARS the person seeking Nomination and sitting as an Assembly member. The nomination for an Assembly election by a candidate would BAR a candidate from standing unless the other PAID elected position is first relinquished prior to acceptance of nomination..[akin to Hof Commons Disqualifn Act and Civil Servants-a parallel--all be it Civil servants are not paid elected positions.]

The territorial and electorate extent of a TOWN /Community Councillor does not overlap to the same degree as a Unitary Authority Councillor.

two by products are:

1 More will be encouraged to Stand and fewer will have "two " hats.

2 Legislative competence [Primary] in the Assembly is then not Conflated with local bye law legislative competence.

3 Resources available to a serving AM could not be used to bolster the other election campaign and vice versa.

Hope Clarifies.

Nortrdge Perrott
p454/lead petitioner/

The Electoral Commission
Y Comisiwn Etholiadol

William Powell AM - Chair
Petitions Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

5 July 2013

Dear William,

Thank you for seeking the view of the Electoral Commission on the petition submitted by Nortridge Perrott on multiple mandates.

The Commission, in its response to the UK Government's Green Paper on future electoral arrangements for the National Assembly for Wales, commented on this issue (albeit at that time relating to the UK Parliament and the National Assembly for Wales):

Question 6: Multiple Mandates

1. *Whilst the Commission does not have a specific view on the question of multiple mandates, we would consider that any decision relating to this question should place the interest of the voter or voters first. For example, what would voters expect of their elected representatives and how can an elected representative ensure the best possible level of service for the electorate? Can this be achieved by representing voters at a variety of different levels (for example at the UK Parliament and the National Assembly for Wales) and the experience which this brings about or should the focus be entirely on one legislature?*

2. *The Green Paper does refer to the European Parliament and the restrictions in place in order to qualify for election to this legislature. In order to achieve a consistent approach to this issue it may also be appropriate to look at those members who are both elected councillors (at local authority level) and AMs as this is another clear example of a multiple mandate.**

The Electoral Commission
Companies House
Crown Way
Cardiff CF14 3UZ

Y Comisiwn Etholiadol
Tŷ'r Cwmnïau
Ffordd y Goron
Caerdydd CF14 3UZ

Tel/Ffôn 029 2034 6800
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www.electoralcommission.org.uk
www.comisiwnetholiadol.org.uk

The Electoral Commission
Y Comisiwn Etholiadol

As you may already be aware, the Northern Ireland Executive's Minister for the Environment, Alex Attwood MLA, has also announced his intention to ban "double jobbing" (being a local councillor and an MLA) in Northern Ireland from April 2014.

The Commission would be happy to consider providing a more detailed response to this specific question at a later point dependent on any decision taken by the Petitions Committee and / or by the Minister for Local Government and Government Business.

Yours sincerely,

Rhydian Thomas
Deputy Head – Electoral Commission Wales

02920 346804
rthomas@electoralcommission.org

* The Electoral Commission's response to the UK Government's Green Paper on future electoral arrangements for the National Assembly for Wales (August 2012)

P-04-454 Call to end Councillor and Assembly Member Dual Role – Correspondence from the Welsh Local Government Association to the Clerking team, 26.09.13

Kayleigh thanks for this. It is not so much that we missed it as frankly its not in our purview. This fundamentally is a matter for political parties to sort out and I would not wish to see any state interference in this. There are currently councillors who are AMs and if parties are content with that then so be it. Hope this helps

Cheers Steve

P-04-454 Call to end Councillor and Assembly Member Dual Role – Correspondence from Electoral Reform Society Wales to the Clerking team, 27.09.2013

Dear Kayleigh,

Many thanks for your email regarding the issue under consideration by the Petitions Committee. To confirm for your records, I'm the director of ERS Cymru and the contact for future request for information.

The Electoral Reform Society Cymru does not support the proposal that the Welsh Government should bring forward legislation to bar Assembly members from holding office as a councillor in Wales (so called 'double jobbing').
The Society would expect that any conflict of interest, perceived or otherwise, that may arise from an individual holding office in both a local authority and the National Assembly, should be dealt with under exist arrangements. Ultimately it should be for the voters to decide whether or not they are content for an individual to hold both local and national office. The Society does however support further consideration of the implications of 'double jobbing' for AMs who are also MPs, which we expect to be part of the UK Government's forthcoming Draft Wales Bill.

Best wishes

Stephen Brooks

P-04-454 Call to end Councillor and Assembly Member Dual Role – Correspondence from the Petitioner to the Committee, 06.02.14

MY RESPONSE:

To Chair..

Please maintain an active interest on behalf of the Petitions Committe to ensure the practice of DOUBLE JOBBING does not become a possibility at the NEXT Assembly elections:

1 BY Drafting a possible amendment to the relevant legislation to achieve this end.

2 By considering across the piece ALL possible difficulties in DUAL serving on BOARDS,NDPB's and other ASPB ;so that the difficulties encountered by CANDIDATES at the last Assembly election who had to stand down because of the vagaries and ambiguities of the current ELIGIBILITY criteria to stand as an Assembly candidate are without ambiguity.

3 USE the Electoral Commission and the NI Executive to formulate a clearer ,cleaner and mor acccessible CANDIDATE base for the Assembly..

Consider also the increase to 80 members and HOW the principles of CANDIDATURE eligibility should be translated to an enlarged Assembly.

your sincerely#

N Perrott/
Swansea /Petitioner/

The Education (Student Loans) (Repayment) (Amendment) Regulations 2014.

These composite Regulations amend some of the provisions in the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470).

These composite Regulations will apply to England and Wales and are subject to negative resolution procedure in the National Assembly for Wales and in both House of the UK Parliament. Because the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

Rheoliadau Addysg (Benthyciadau i Fyfyrwyr) (Ad-dalu) (Diwygio) 2014.

Mae'r Rheoliadau cyfansawdd hyn yn diwygio rhai o'r darpariaethau yn Rheoliadau Addysg (Benthyciadau i Fyfyrwyr) (Ad-dalu) 2009 (O.S. 2009/470).

Bydd y Rheoliadau cyfansawdd hyn yn gymwys i Gymru a Lloegr ac maent yn ddarostyngedig i'r weithdrefn penderfyniad negyddol yng Nghynulliad Cenedlaethol Cymru ac yn nau Dŷ Senedd y DU. Gan y bydd y Rheoliadau yn ddarostyngedig i graffu gan Senedd y DU, ystyrir nad yw'n rhesymol ymarferol i'r offeryn hwn gael ei wneud na'i osod yn ddwyieithog.

Adroddiad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

CLA389 - Rheoliadau Addysg (Benthyciadau i Fyfyrwyr) (Ad-dalu) (Diwygio) 2014.

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Addysg (Benthyciadau i Fyfyrwyr) (Ad-dalu) 2009 (Offeryn Statudol 2009/470) ('y Prif Reoliadau'). Y Prif Reoliadau sy'n llywodraethu ad-dalu benthyciadau i fyfyrwyr sy'n dibynnu ar incwm a gafodd eu talu i fyfyrwyr o dan adran 22 o Ddeddf Addysgu ac Addysg Uwch 1998 (p.30). Mae'r newidiadau a wneir gan y Rheoliadau hyn yn ymwneud â darparu gwybodaeth a gwneud ad-daliadau.

Gweithdrefn: **Negyddol**

1. Materion technegol: craffu

Nodwyd y pwyntiau a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn:

1. Gan mai Gorchymyn Cyfansawdd yw hwn, dim ond yn Saesneg y mae wedi'i wneud.

[Rheol Sefydlog 21.2(ix) – nad yw'r offeryn wedi'i wneud yn Gymraeg ac yn Saesneg.]

2. Rhinweddau: craffu

Ni nodwyd unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

3. Ymateb y Llywodraeth

Ni chafwyd ymateb gan y Llywodraeth ar adeg y cyfarfod.

4. Trafodaeth y Pwyllgor

Trafododd y Pwyllgor y rheoliadau yn ei gyfarfod ar 31 Mawrth 2014 a chyflwynodd adroddiad i'r Cynulliad yn unol â'r pwyntiau adrodd technegol o dan adran 1 uchod.

MEMORANDWM CYDSYNIAD DEDDFWRIAETHOL ATODOL

Y BIL DADREOLEIDDIO: DIWYGIADAU MEWN PERTHYNAS Â DEDDF DALIADAU AMAETHYDDOL 1986, DEDDF BRIDIO CŴN 1973 A DEDDF BRIDIO A GWERTHU CŴN (LLES) 1999

1. Gosodir y Memorandwm Cydsyniad Deddfwriaethol hwn o dan Reol Sefydlog ("RhS") 29.2. Mae Rheol Sefydlog 29 yn rhagnodi bod yn rhaid gosod Memorandwm Cydsyniad Deddfwriaethol, ac y ceir cyflwyno Cynnig Cydsyniad Deddfwriaethol, gerbron y Cynulliad Cenedlaethol os yw Bil gan Senedd y DU yn gwneud darpariaeth mewn perthynas â Chymru at ddiben sydd o fewn cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol, neu at ddiben sy'n addasu'r cymhwysedd hwnnw.

2. Cafodd y Bil Dadreoleiddio (y "Bil") ei gyflwyno yn Nhŷ'r Cyffredin ar 23 Ionawr 2014. Mae'r Bil i'w weld yn:

   http://services.parliament.uk/bills/2013-14/deregulation.html

Crynodeb o'r Bil a'i Amcanion Polisi

3. Mae'r Bil yn cael ei noddi gan Swyddfa'r Cabinet. Amcanion Llywodraeth y DU ar gyfer y Bil yw dileu neu leihau beichiau rheoleiddiol diangen sy'n llesteirio neu'n costio arian i fusnesau, unigolion, gwasanaethau cyhoeddus neu'r trethdalwr.

4. Mae'r Bil yn cynnwys mesurau sy'n ymwneud a meysydd cyffredinol a phenodol sy'n gysylltiedig â busnes, cwmnïau ac ansolfedd, defnyddio tir, tai, trafnidiaeth, cyfathrebu, yr amgylchedd, addysg a hyfforddiant, adloniant, awdurdodau cyhoeddus a gweinyddu cyfiawnder. Mae'r Bil yn darparu hefyd ar gyfer gosod dyletswydd ar y rheini sy'n arfer swyddogaethau rheoleiddiol penodedig i ystyried buddioldeb hyrwyddo twf economaidd. Bydd y Bil hefyd yn diddymu deddfwriaeth nad yw bellach o ddefnydd ymarferol.

Darpariaethau yn y Bil y ceisir cydsyniad ar eu cyfer

Deddf Daliadau Amaethyddol 1986; datrys anghydfodau drwy benderfyniad gan drydydd parti

5. Gofynnir i'r Cynulliad ganiatáu'r diwygiad i'r Bil Dadreoleiddio a osodwyd ar 13 Mawrth 2014, ac sy'n diwygio amryfal adrannau o Ddeddf Daliadau Amaethyddol 1986, ynghyd ag amryfal Atodlenni iddi. Mae'r diwygiadau hynny i Ddeddf 1986 yn gwneud darpariaeth sy'n galluogi'r partïon i gytuno bod anghydfodau (ac eithrio'r rheini sy'n ymwneud â rhybudd i ymadael) yn cael eu setlo gan arbenigwr annibynnol yn hytrach na thrwy gymrodeddu.

6. Ar hyn o bryd, mae Deddf Daliadau Amaethyddol 1986 yn darparu tri dull o ddatrys anghydfodau rhwng landlordiaid a thenantiaid:

a. y Tribiwnlys Tir Amaethyddol (mewn perthynas â Chymru);
b. cymrodeddu;
c. y Llysoedd.

7. Cymrodeddu yw'r prif ddull o ddatrys anghydfodau o dan Ddeddf Daliadau Amaethyddol 1986. O dan y Ddeddf honno, nad yw'n darparu ar gyfer dull arall o ddatrys anghydfodau, mae'n rhaid cyfeirio'r rhan fwyaf o anghydfodau, yn enwedig y rheini sy'n ymwneud ag ystyriaethau amaethyddol ymarferol, i'w cymrodeddu. Effaith y diwygiad fydd darparu ar gyfer y partïon dan sylw broses amgen, llai beichus o ddatrys anghydfodau, sydd hefyd yn un gyflymach a chosteffeithiol

8. Mae'r diwygiadau i Ddeddf Daliadau Amaethyddol 1986 yn gymwys o ran Cymru.

9. Nid yw'r diwygiadau i Ddeddf Daliadau Amaethyddol 1986 yn cynnwys pwerau i Weinidogion Cymru wneud is-ddeddfwriaeth.

10. Mae Llywodraeth Cymru o'r farn bod y darpariaethau hyn o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru i'r graddau y maent yn ymwneud ag:

    a. Amaethyddiaeth (o dan baragraff 1 o Ran 1, Atodlen 7 i Ddeddf Llywodraeth Cymru 2006); a

    b. Tai (o dan baragraff 11 o Ran 1, Atodlen 7 i Ddeddf Llywodraeth Cymru 2006).

Deddf Bridio Cŵn 1973 (p.60) a Bridio a Gwerthu Cŵn (Lles) 1998 (p.11)

11. Gofynnir i'r Cynulliad ganiatáu'r diwygiad i'r Bil Dadreoleiddio, a osodwyd ar 18 Mawrth 2014, ac sy'n diddymu:

    a. Is-adran 1(4)(i) o Ddeddf Bridio Cŵn 1973 (ac sy'n gwneud y diwygiadau canlyniadol angenrheidiol);

    b. Is-adrannau 8(1)(e) ac 8(3) o Ddeddf Bridio a Gwerthu Cŵn (Lles) 1999 (ac sy'n gwneud y diwygiadau canlyniadol angenrheidiol).

12. Mae'r bwriad i ddiddymu is-adran 1(4)(i) o Ddeddf Bridio Cŵn 1973 ac is-adrannau 8(1)(e) ac 8(3) o Ddeddf Bridio a Gwerthu Cŵn (Lles) 1999 (ynghyd â'r diwygiadau canlyniadol angenrheidiol) a nodir yn y Bil Dadreoleiddio yn gymwys i Loegr a, chyda chaniatâd y Cynulliad, i Gymru.

13. Ar hyn o bryd, mae adran 1(4)(i) o Ddeddf Bridio Cŵn 1973 yn ei gwneud yn ofynnol i'r awdurdod lleol, wrth benderfynu a ddylid rhoi trwydded i sefydliad bridio cŵn ai peidio, ystyried yr angen i sicrhau bod cofnodion cywir yn cael eu cadw. O dan is-adran 8(1)(e) o Ddeddf Bridio a Gwerthu

Cŵn (Lles) 1991, mae, ar hyn o bryd, yn drosedd i geidwad sefydliad bridio trwyddedig werthu i geidwad siop anifeiliaid anwes drwyddedig neu i sefydliad magu yn yr Alban gi nad yw, pan gaiff ei drosglwyddo, yn gwisgo coler ac arno dag neu fathodyn adnabod. O dan is-adran 8(3) o Ddeddf 1991, mae, ar hyn o bryd, yn drosedd i geidwad siop anifeiliaid anwes drwyddedig werthu ci a oedd, pan gafodd ei drosglwyddo iddo, yn gwisgo coler ac arno dag neu fathodyn adnabod ond nad yw'n gwisgo coler o'r fath wrth gael ei drosglwyddo i'r prynwr.

14. Mae deddfwriaeth newydd (a fydd yn disodli'r ddeddfwriaeth bresennol ar fridio ac adnabod cŵn) yn cael ei datblygu yng Nghymru a Lloegr, a fydd, yn ei hanfod, yn ei gwneud yn ofynnol gosod microsglodyn mewn anifail fel y bo modd ei adnabod. Byddai cadw'r gofynion presennol i gadw cofnodion papur ar adnabod cŵn yn dyblygu gofynion, a byddai hefyd yn faich diangen ar fusnesau bach. Er gwybodaeth, nid yw'r ffaith bod y ddeddfwriaeth uchod ar fridio cŵn yn cael ei diddymu yn dileu'r gofyniad i berson sy'n berchen ar gi sicrhau bod gan y ci hwnnw goler ac arno dag adnabod ac y gellir clymu tennyn wrtho.

15. Er gwybodaeth, mae Rheoliadau Lles Anifeiliaid (Bridio Cŵn) (Cymru) 2014 ar fin cael eu gosod a'u gwneud mewn perthynas â Chymru cyn toriad yr haf, a byddant yn dod i rym 6 mis yn ddiweddarach. Mae'r rheoliadau hynny'n cynnwys dulliau adnabod priodol megis yr angen i osod microsglodyn mewn ci cyn iddo adael mangre bridio a'r angen i gadw cofnodion priodol ar fridio cŵn.

16. Ar y sail honno, bernir nad oes bellach angen y darpariaethau'n ymwneud â bridio cŵn sy'n cael eu diddymu gan y diwygiad yn y Bil Dadreoleiddio ac, o'r herwydd, y dylai'r diddymiadau arfaethedig fod yn gymwys mewn perthynas â Chymru.

17. Yr unig beth y mae'r ddarpariaeth uchod yn y Bil Dadreoleiddio yn ei wneud yw diddymu is-adran 1(4)(i) o Ddeddf Bridio Cŵn 1973 ac is-adrannau 8(1)(e) ac 8(3) o Ddeddf Bridio a Gwerthu Cŵn 1999 (a gwneud y diwygiadau canlyniadol angenrheidiol). Nid yw'r ddarpariaeth hon yn y Bil yn rhoi unrhyw bwerau i Weinidogion Cymru wneud is-ddeddfwriaeth.

18. Mae Llywodraeth Cymru o'r farn (i'r graddau y mae'r darpariaethau hyn yn ymwneud â Chymru) bod y darpariaethau hyn o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru i'r graddau y maent yn ymwneud ag Iechyd a Lles Anifeiliaid o dan baragraff 1 o Ran 1 o Atodlen 7 i Ddeddf Llywodraeth Cymru 2006.

Manteision defnyddio'r Bil hwn yn hytrach na deddfwriaeth y Cynulliad

19. Mae Llywodraeth Cymru o'r farn ei bod yn briodol ymdrin â'r darpariaethau hyn yn y Bil hwn gan Senedd y DU gan mai dyma'r dull deddfwriaethol mwyaf priodol a chymesur o alluogi'r darpariaethau hyn i fod yn gymwys mewn perthynas â Chymru. Mae'r diwygiadau

arfaethedig yn rhai technegol ac annadleuol. Hefyd, mae'r cysylltiadau agos rhwng y systemau gweinyddol perthnasol yng Nghymru a Lloegr yn golygu mai'r ffordd fwyaf effeithiol a phriodol o weithredu yw bwrw ymlaen â darpariaethau'r Bil ar gyfer y ddwy wlad ar yr un pryd yn yr un offeryn deddfwriaethol.

Goblygiadau ariannol

20. Nid oes unrhyw oblygiadau ariannol i Lywodraeth Cymru.

Alun Davies AC
Y Gweinidog Cyfoeth Naturiol a Bwyd
Ebrill 2014

HOUSE OF LORDS
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24 March 2014

David Melding AM
National Assembly for Wales
Cardiff Bay
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Dear David,

In July last year, my Committee in the House of Lords launched an inquiry into the role of national parliaments in the EU. You may be aware that this inquiry has now concluded, and the Committee published its report, entitled *The Role of National Parliaments in the European Union*, today.

I have enclosed a hard copy of the report for your consideration, and the consideration of your committee. Further information about the inquiry is available on our website at www.parliament.uk/hleu.

I would be very pleased to discuss it with you by correspondence, should you wish, and at the next European Chairs – UK (ECUK) meeting.

Yours,
Tim

Lord Boswell
Chairman of the European Union Committee

HOUSE OF LORDS

European Union Committee

9th Report of Session 2013–14

The Role of National Parliaments in the European Union

Ordered to be printed 11 March 2014 and published 24 March 2014

Published by the Authority of the House of Lords

London : The Stationery Office Limited
£14.50

HL Paper 151

The European Union Committee

The Committee considers EU documents in advance of decisions being taken on them in Brussels, in order to influence the Government's position and to hold them to account.

The Government are required to deposit EU documents in Parliament, and to produce within two weeks an Explanatory Memorandum setting out the implications for the UK. The Committee examines these documents, and 'holds under scrutiny' any about which it has concerns, entering into correspondence with the relevant Minister until satisfied. Letters must be answered within two weeks. Under the 'scrutiny reserve resolution', the Government may not agree in the EU Council of Ministers to any proposal still held under scrutiny; reasons must be given for any breach.

The Committee also conducts inquiries and makes reports. The Government are required to respond in writing to a report's recommendations within two months of publication. If the report is for debate, then there is a debate in the House of Lords, which a Minister attends and responds to.

The Committee has six Sub-Committees, which are:
Economic and Financial Affairs (Sub-Committee A)
Internal Market, Infrastructure and Employment (Sub-Committee B)
External Affairs (Sub-Committee C)
Agriculture, Fisheries, Environment and Energy (Sub-Committee D)
Justice, Institutions and Consumer Protection (Sub-Committee E)
Home Affairs, Health and Education (Sub-Committee F)

Our Membership

The Members of the European Union Committee are:

Lord Boswell of Aynho (Chairman)	Lord Hannay of Chiswick	The Earl of Sandwich
Lord Bowness	Lord Harrison	Baroness Scott of Needham Market
Lord Cameron of Dillington	Lord Maclennan of Rogart	Lord Tomlinson
Baroness Corston	Lord Marlesford	Lord Tugendhat
Lord Dear	Baroness O'Cathain	Lord Wilson of Tillyorn
Baroness Eccles of Moulton	Baroness Parminter	
Lord Foulkes of Cumnock	Baroness Quin	

Information about the Committee

For information freely available on the web, our homepage is http://www.parliament.uk/hleu
There you will find many of our publications, along with press notices, details of membership and forthcoming meetings, and other information about the ongoing work of the Committee and its Sub-Committees, each of which has its own homepage.

General Information

General information about the House of Lords and its Sub-Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at http://www.parliament.uk/business/lords/

Select Committee Staff

The current staff of the Committee are Jake Vaughan (Clerk), Luke Hussey (Second Clerk) and Karen Sumner (Committee Assistant).

Contacts for the European Union Committee

Contact details for individual Sub-Committees are given on the website. General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW. General enquiries 020 7219 5791. The Committee's email address is euclords@parliament.uk

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Evidence is published online at http://www.parliament.uk/hleu and available for inspection at the Parliamentary Archives (020 7219 5314)

References in footnotes to the Report are as follows:
Q refers to a question in oral evidence.
Witness names without a question reference refer to written evidence.

SUMMARY

National parliaments can contribute actively to the good functioning of the European Union. This is not only the view of the House of Lords European Union Committee: it is stated clearly in the Treaty on European Union. It has never been more important that national parliaments should play a full and active role, both individually and collectively. However, much more could be achieved, within the existing Treaty structure.

This report is aimed at a wide range of policymakers and others, within the UK and across the EU. We offer it as a contribution to an ongoing debate. We suggest a range of practical options, which could improve the involvement of national parliaments in the formulation and implementation of EU policies.

Treaty change is not necessary to enhance the role of national parliaments in the EU. More than anything else, this is a matter for the will of parliamentarians. Important improvements should be secured through the autonomous action of national parliaments, and through actions collectively agreed between the national parliaments, the Commission, the Council and the European Parliament where relevant.

The effective involvement of national parliaments is fundamental to ensuring that there is accountability, and legitimacy, for the actions of the Union. Our report highlights five areas where national parliaments can and should be more effective in the shaping of EU policies and legislation.

National scrutiny

Effective scrutiny by national parliaments of the activities of their own governments on EU matters is essential.

National scrutiny systems will inevitably vary according to the national context. Whatever system suits the national context, it is vital that national parliaments carefully scrutinise the EU activities of their national governments, and hold them to account. While each national parliament will determine for itself the best means of doing this, we can nonetheless learn from each other. The Conference of Parliamentary Committees for EU Affairs (COSAC) could contribute to strengthening these processes.

Dialogue between national parliaments and the EU institutions

National parliaments should have a greater role in considering EU policies at an early stage, before hard and fast battle lines have been drawn. The European Commission says that it would welcome this 'upstream' or 'pre-legislative' scrutiny of policies. However, the Commission itself must do much more to show that it can be responsive to suggestions and concerns raised by national parliaments, whether at this early stage of policy development, or later on.

As part of this proactive role, groups of like-minded national parliaments, acting together, should be able to make constructive suggestions for EU policy initiatives.

The reasoned opinion procedure

The Lisbon Treaty 2009 gave national parliaments a formal role in the scrutiny of EU legislation, allowing each chamber to issue a reasoned opinion if it considers that a proposal breaches the principle of subsidiarity (under which EU-level action may be taken only if the objective cannot be achieved at national or local level), and triggering a 'Yellow Card' if over one third of national chambers or parliaments issue reasoned opinions. Technical deficiencies have meant that the procedure has not been as effective as hoped. These deficiencies could, and should, be corrected. The key ways to improve the working of the reasoned opinion procedure are:

- *scope:* to extend the scope of the procedure to include the proportionality principle—that is, that the proposal should not exceed what is necessary to achieve the objectives of the EU Treaties;
- *deadline:* to increase the deadline for national chambers to issue a reasoned opinion on a legislative proposal, from 8 weeks to 12 or 16 weeks;
- *effect:* for the Council and Commission to undertake that, if a Yellow Card is issued, the Commission will take seriously its duty of review, and either withdraw or substantially amend the proposal in question.

Inter-parliamentary co-operation

National parliaments and the European Parliament have a vital, and complementary, role to play in the European Union. It is not a 'zero sum' game: greater involvement for one should not be at the expense of the other. There is scope for national parliaments and the European Parliament to engage more effectively with each other, sharing information and debating key policies.

It is a strength of the Union that each national parliament acts independently, reflecting the situation of each Member State and the views of its citizens. However, in order to maximise their effectiveness in shaping European policies and legislation, national parliaments must co-operate. COSAC can encourage this co-operation, particularly with some small practical adjustments to its working methods. Inter-parliamentary co-operation on all matters, including economic and financial matters, should involve all 28 Member States.

Economic and financial governance

The political and economic reforms required in the wake of the eurozone crisis have challenged the EU's democratic framework. The European Parliament has a vital role to play in holding EU institutions to account, but the principle of democratic accountability can only be upheld if there is, in addition, an enhanced role for national parliaments. National parliaments must have more effective purchase on the steps towards enhanced economic surveillance, as encapsulated in the European Semester. Means must be found to ensure that EU institutions are accountable not only to the European Parliament but also to national parliaments.

The Role of National Parliaments in the European Union

CHAPTER 1: INTRODUCTION

1. National parliaments can contribute actively to the good functioning of the European Union. This is not only the view of the House of Lords European Union Committee: it is stated clearly in the Treaty on European Union.[1] It is the starting point for our report.

2. It has never been more important that national parliaments should play a full and active role, both individually and collectively. The challenges posed by the long economic and financial crisis have reduced trust in all political institutions, both national and international, and including the institutions of the EU. National parliaments reflect national political opinion and pressures, and together they reflect the diversity of the citizens and the Member States of the European Union. National parliaments can therefore make a contribution to restoring trust, and can make a contribution to the better working of the EU.

3. As one of the witnesses to our inquiry, Dr Joanne Hunt, Cardiff University, stated: "there is widespread agreement that national parliaments—individually the cornerstone of any constitutional democracy—may be able to provide an effective and convincing way of shoring up the democratic legitimacy gaps which are perceived to exist within the EU order".[2] There is also a widespread feeling that much more could be achieved, within the present Treaty structure.

The current role of national parliaments in the EU

4. Before the Lisbon Treaty 2009, the EU Treaties hardly recognised the role of national parliaments in the governance of the European Union. The Lisbon Treaty made significant changes, including setting out the right of national parliaments to be kept informed by the institutions of the EU; to co-operate with other national parliaments and the European Parliament; to ensure respect for the principle of subsidiarity;[3] and to take part in the evaluation of justice and home affairs policies.[4] Appendix 4 charts the evolution of the role of national parliaments over time, through successive EU treaties.

5. Beyond the formal treaty provisions, the European Commission has also indicated an increased willingness to engage with national parliaments, notably since the launch in 2006 of the 'Barroso initiative', under which the Commission more actively seeks the views of national parliaments.

6. The House of Lords has appointed a Committee to examine European matters, with sub-committees to examine particular policy areas, since 1974. For some national parliaments the Barroso initiative and, in particular, the

1 Article 12, Treaty on European Union.

2 Dr Joanne Hunt.

3 Subsidiarity is defined in Box 1 in Chapter 4.

4 Articles 5 and 12, Treaty on European Union.

changes made by the Lisbon Treaty, have created greater incentives and tools for parliaments to become more engaged in the scrutiny of EU policies, and to share information and expertise.

7. The four key activities of national parliaments in relation to the EU can be summarised as being:

- to scrutinise, influence and hold to account their own governments;
- to engage in dialogue with the EU institutions, notably the European Commission and the European Parliament;
- to conduct a subsidiarity check on EU legislative proposals (the reasoned opinion procedure);
- inter-parliamentary co-operation.

This report examines in turn each of these key activities, in Chapters 2 to 5.

8. This introduction has already referred to the long economic and financial crisis. The crisis has posed particular challenges of democratic accountability for the major policy responses to the crisis which are currently being considered and implemented. Chapter 6, which draws heavily on the recent inquiry conducted by our Sub-Committee on Economic and Financial Affairs on the policy proposals relating to 'Genuine Economic and Monetary Union', concentrates on this aspect of the role of national parliaments.[5]

Conduct of the inquiry

9. The membership of the House of Lords European Union Committee is listed in Appendix 1.

10. We launched our inquiry in July 2013, and received 38 responses to our open request for written evidence. Between October 2013 and January 2014 we heard oral evidence from 28 people and organisations, in London, Brussels, Paris and via videoconferences. The names of those who submitted evidence are listed in Appendix 2 and the evidence received is available online.[6] The original call for evidence is in Appendix 3. We are very grateful to everyone who has contributed evidence, and we hope they find this report of interest.

11. For obvious reasons we have been especially concerned to discuss these matters with colleagues from other parliaments. Committees and Members of 19 other national chambers, and the European Parliament, provided invaluable formal evidence.[7] We were also able to take advantage of the reports and meetings organised by the Conference of Parliamentary Committees for EU Affairs (COSAC).[8] At the COSAC Conference held in Vilnius in October 2013 three of our Members enjoyed a lively discussion with around 100 colleagues on the role of national parliaments in the EU,

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5 House of Lords European Union Committee, *'Genuine Economic and Monetary Union' and the implications for the UK* (8th report, Session 2013–14, HL Paper 134).

6 Evidence Volume available at www.parliament.uk/hleu.

7 In this report, the first time we cite a contribution from another national parliament or chamber we specify from which committee the contribution was made. After that (and in the footnotes), in the interests of readability we simply cite the parliament or chamber. We are aware, however, that there will be a range of views on these matters within each national parliament and chamber, and we do not wish to imply that we think the entire parliament or chamber has reached a firm and conclusive view on these matters.

8 Available at www.cosac.eu.

and we repeat our thanks to our hosts from the Lithuanian Seimas for organising this meeting.[9]

12. We have been greatly struck by the breadth and quality of thought from colleagues in other parliaments, and from many other people with an interest in this subject. Proposals to enhance the role of national parliaments in the EU have already been put forward by other national parliaments, including the Dutch Tweede Kamer[10] and the Danish Folketing,[11] and governments including the UK Government.[12] Considerable work has also gone into the launch of the new inter-parliamentary conferences on foreign and security policy, and on economic and financial governance, which we consider further in Chapter 5. All of this excellent work has greatly assisted our thinking, and has highlighted the level of interest in the subject.

13. Any examination of EU institutions and processes requires the use of a large number of specialist terms and acronyms, and this report is no exception. Appendix 7 contains a glossary of terms and a list of the acronyms used in this report.

Our aim

14. This report is made formally to the House of Lords, but it is also aimed at a wide range of policymakers and others, within the UK and across the EU.

15. **This report is intended as a contribution to an important and ongoing debate. Because of this, in several places we put forward a range of practical options which could improve the involvement of national parliaments in the scrutiny, formulation and implementation of EU policies, for further consideration by national parliaments and others, rather than presenting a definitive blueprint for change. We look forward to continuing this debate with Members of other parliaments, representatives of the EU institutions, and others.**

16. **In the context of our own chamber we consider that this report raises important questions about the effective scrutiny of EU matters, and so we make this report to the House for debate.**

Implementing improvements

17. The focus of this inquiry has been on improvements which could be made in the short term, and several witnesses commented that treaty change should not be a priority for enhancing the role of national parliaments in the EU. The European Affairs Committee of the Hellenic Parliament, for example, commented that "a Treaty revision is not considered necessary for the time

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9 There is a note of this meeting in Appendix 5.

10 Dutch Tweede Kamer (November 2013), *Democratic Legitimacy in the EU and the role of national parliaments: work in progress*.

11 European Affairs Committee, Danish Folketing (January 2014), *Twenty-Three Recommendations to strengthen the role of national parliaments in a changing European governance*.

12 Including in speeches by the Rt. Hon. David Cameron MP, Prime Minister, on 23 January 2013 (known as the 'Bloomberg speech'); and by the Rt. Hon. David Lidington MP, Minister for Europe, on 16 January 2014, entitled '*Where does democratic authority lie in the EU?*'. Transcripts of both speeches are available at www.gov.uk/government/speeches.

being. We should first examine and make best use of the full possibilities and potential of the current treaties".[13]

18. As the EU has developed, the Treaties have tended to catch up with evolving practice. In the longer term the portions of the Treaties addressing the role of national parliaments might be amended accordingly, but there is no pressing need for treaty change to enhance the role of national parliaments. There were some suggestions for more fundamental changes, such as a European Chamber of Parliaments,[14] but this report has focused on what could be achieved within the structure of the existing Treaties.

19. **Treaty change is not necessary to enhance the role of national parliaments in the EU: substantial improvements can, and should, be achieved without treaty change. To a significant degree it is a matter for the will of parliamentarians to insist on securing substantial and lasting changes, and of their governments to give effect to that will. Important improvements could be achieved through the autonomous action of national parliaments, and through actions collectively agreed between the national parliaments, the Commission, the Council and the European Parliament where relevant. This report sets out options for reforms which could be pursued in such agreements.**

20. **Even in these difficult economic circumstances it is important that national parliaments, including that of the UK, ensure that sufficient resources are devoted not only to effective scrutiny but also to other aspects of their involvement with the European institutions and each other. Expenditure on improving EU legislation through scrutiny is seldom wasted.**

[13] Committee on European Affairs, Hellenic Parliament. See also Elisabeth Guigou, Chair of the Foreign Affairs Committee of the French Assemblée Nationale, note of evidence session; René Leegte, Q 60; Carlo Casini MEP, Q 133; Dr Ben Crum & Professor John Erik Fossum.

[14] Professor Stelio Mangiameli. See also Charles Grant, Q 4; Richard Yung, Q 146. See also Claude Bartolone (October 2013), 'What Should be the Position of National Parliaments in the Construction of a European Political Union?', *European Issues* 291, in which the President of the French Assemblée Nationale advocates, in time, a "Congress of Parliaments" for the European Union.

CHAPTER 2: NATIONAL SCRUTINY

Effective national scrutiny

21. **Effective scrutiny by national parliaments of the activities of their own governments in the European Union is essential. It is fundamental to ensuring that there is accountability, and legitimacy, for the actions of the Union. It should be recognised as core business for every parliament.**

22. National parliaments are uniquely well placed to reflect the diversity of the Member States and citizens of the European Union. This wide range of national conditions makes it impossible to generalise about how each national parliament should scrutinise and hold to account its own government. There is no single system that will suit every national parliament and chamber. As Simon Hix, Professor of European and Comparative Politics, London School of Economics, put it, "there are very, very different parliamentary traditions … I think it is right that there should be a lot of discretion for Parliaments to try to work out what are the most appropriate mechanism for scrutiny themselves".[15]

23. **National scrutiny systems will inevitably vary according to the national context. Whatever system suits the national context, it is vital that national parliaments carefully scrutinise the EU activities of their national governments, in order to ensure that the positions of national Ministers are effectively examined, and that the Ministers who constitute the Council are held to account for their decisions.**

24. **While each national parliamentary chamber is unique, we can nonetheless learn from each other. COSAC can be a very good forum for this learning, and we return to this point in Chapter 5. We cite two examples relating to our work in the House of Lords. First, we have taken a cue from the Dutch Tweede Kamer, amongst others, and begun to use the Commission's annual work programmes more explicitly in examining the year ahead and publicly highlighting areas of particular interest.[16] Second, this Committee also intends to follow practice in other parliaments and experiment with holding sessions with the UK Minister for Europe before European Councils, to feed into Government preparations, rather than holding them afterwards to discuss the conclusions reached.**

25. **In addition, we continue to seek to improve our engagement with the Members of the House of Lords who are not currently serving on the EU committees. In this context, we observe that it is important that the whole House continues to scrutinise the EU activities of the UK Government, through debate, questioning and the scrutiny of legislation. As we have said, this is core business, not the preserve of a group of specialists.**

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15 Q 22.

16 In the UK context we note that the Scottish Parliament, Northern Ireland Assembly and National Assembly for Wales also make good use of the annual Commission Work Programmes in identifying proposals and policies of particular interest.

26. Remaining with the UK Parliament, in November 2013 the House of Commons European Scrutiny Committee published a report on *Reforming the Scrutiny System in the House of Commons*.[17] That report included recommendations such as reviewing, with the Government, the categories of document which are subject to formal scrutiny; improving Parliament's access to *limité* documents; and agreeing procedures with the Government for effective and proportionate scrutiny of delegated and implementing acts. We look forward to working with our colleagues in the Commons, and with the UK Government, to introduce these practical changes.

27. For parliamentary scrutiny to be effective, it is essential that governments take a constructive approach, working transparently and engaging in meaningful dialogue with national parliaments and their scrutiny committees. As we say in the preceding paragraph, **we are always willing to consider, with the Government and our colleagues in the Commons, improvements to the scrutiny process. In our day-to-day work scrutinising EU policies and the EU activities of the UK Government, it is essential that the Government consistently provide high quality and timely written information, in the form of explanatory memorandums on EU documents and correspondence, and that Ministers meet committees regularly. A good flow of information by government officials, including the UK Representation in Brussels (UKRep), is also crucial. The UK Government usually does this well and the current Minister for Europe, the Rt. Hon. David Lidington MP, has been an effective advocate for national parliamentary scrutiny. However, there are unacceptable variations in performance including in the quality of explanatory memorandums, particularly between departments, and we urge the Government to continue to focus on consistently supporting and engaging effectively with national parliamentary scrutiny of EU matters.**

Different systems

28. A distinction is sometimes made between scrutiny systems which are based on the examination of documents, and systems which are based on the direct examination (and perhaps mandating) of Ministers before and after Council meetings.[18] **In our view, effective EU scrutiny systems are most likely to include elements of both examination of documents and direct discussions with Ministers (and other interested parties). Scrutiny of documents enables parliaments to engage early on with Commission consultations, and to propose precise changes to legislative proposals. Contact with Ministers allows direct exchanges of views, and allows Members to influence or control the government's position, or to challenge the government to explain and defend their view.**

29. Some of our witnesses identified the problem that detailed European scrutiny work can be the preserve of a small group of Members who specialise in European affairs, and that other Members can find it difficult to engage in detailed consideration of EU matters. These witnesses argued that EU scrutiny work should be conducted by the relevant sectoral committees of the

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[17] House of Commons European Scrutiny Committee, *Reforming the Scrutiny System in the House of Commons* (24th Report, Session 2013–14 , HC 109).

[18] For example, UK Government.

national parliament (so that, for example, EU transport policy would be scrutinised by the committee responsible for national transport policy).[19]

30. Dominic Hannigan TD, Chairman of the Joint Committee on European Affairs, Irish Houses of the Oireachtas, suggested that the mainstreaming of EU scrutiny in the Oireachtas had been effective, but "may have gone a bit too far" and that there needed to be effective feedback from the sectoral committees to the European Affairs Committee.[20] Andrzej Gałażewski, Vice-Chairman, EU Affairs Committee of the Polish Sejm, noted that their sectoral committees were now more involved in scrutiny work, and that they sometimes held joint meetings between the European affairs committee and one of the sectoral committees.[21] The House of Lords' set-up is probably unusual, with a central EU Committee which appoints six subject-specialist sub-committees, but it does show one way in which policy expertise and familiarity with the workings of the EU can be combined. The Committee considers that **it is important to involve a wide range of Members, and committees where possible, in the examination of European policies. Such policy expertise needs to be combined effectively with knowledge and understanding of EU policymaking processes and EU institutions.**

Practicalities of scrutiny work

Access to information

31. National parliaments now receive legislative proposals, and other documents such as consultation papers, direct from the Commission. The Commission and other EU institutions make available a huge amount of information on their web pages. The national parliaments, together with the European Parliament, have a website, IPEX, "for the mutual exchange of information … concerning issues related to the European Union",[22] which is considered further in Chapter 5. Gediminas Kirkilas, Chair of the EU Affairs Committee of the Lithuanian Seimas, expressed a commonly held view that "the challenge is not the access to the EU information, but rather the processing its ever increasing amount".[23] With certain specific exceptions, such as, perhaps, during trilogue negotiations (considered in Chapter 3), national parliaments now have reasonable access to information.

Capacity

32. Even when it is considered as core business, no chamber has a limitless capacity to engage with EU affairs. There are many competing demands on the time of Members of national parliaments, and European scrutiny will only ever be one element of the work of each national chamber. Eva Kjer Hansen, Chair of the European Affairs Committee of the Danish Folketing,

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19 For example, Commissioner Maroš Šefčovič, Q 97; Dr Anna-Lena Högenauer & Professor Christine Neuhold.

20 Q 69.

21 Q 52.

22 IPEX is the "Inter-Parliamentary EU information eXchange". Quote from www.ipex.eu/IPEXL-WEB/about/aboutIpexl.do.

23 Gediminas Kirkilas, Seimas of Lithuania. See also Italian Camera dei Deputati; Professor Stelio Mangiameli; National Council of Slovenia; Davor Jancic.

commented that "voters are not much interested in European affairs. So in an election campaign, no-one cares about the work that you are doing at European level".[24]

Prioritisation and resources

33. Having said this, certain techniques and supporting factors should help to improve the amount and quality of engagement by Members of national parliaments. In particular, **it is often helpful if there is effective prioritisation, so that each national chamber and its committees concentrate on the policies which matter the most to it.** There are many different ways in which national chambers can prioritise their consideration of EU policies and proposals. In the House of Lords the Chairman of the EU Committee conducts a weekly sift of all EU documents to identify which of them require further detailed scrutiny by one of the subject-specialist Sub-Committees. Others, such as the Dutch Tweede Kamer, use the Commission's Annual Work Programmes to identify the key measures for examination over the coming year, whilst also retaining flexibility to respond to emerging proposals.

34. **Even when parliaments do prioritise consideration of the most important policies, it must be recognised that effective scrutiny is resource-intensive, in terms of Member time and staff time.**

35. A vital supporting factor is that Members of national parliaments must be able to see a return on their work. In other words, just as it is vital for Members of national parliaments to engage with European policy debates, **the contributions by national parliaments must have, and must be seen to have, an influence on EU policy development and formulation. It is important that the Commission, Council and European Parliament make effective use of dialogue with national parliaments, and make clear where national parliaments have had an effect on the policymaking process.** Chapters 3 and 4 consider this in more detail.

[24] Q 38. See also Dr Gavin Barrett; Dr Julie Smith.

CHAPTER 3: DIALOGUE WITH THE EUROPEAN COMMISSION

Engagement between national parliaments and the Commission

36. The European Commission has acknowledged for some time that it needs to engage with national parliaments. In 2006, towards the start of José Manuel Barroso's first term as its President, the Commission announced that "national parliaments must be more closely involved with the development and execution of European policy", arguing that "the increased involvement of national parliaments can help make European policies more attuned to diverse circumstances and more effectively implemented". The Commission launched what soon became known as the Barroso initiative, under which it transmitted all new proposals and consultation papers directly to national parliaments, and invited them to respond to them, "so as to improve the process of policy formulation".[25]

37. The Committee welcomes the Commission's commitment to engaging with national parliaments. Vice-President Maroš Šefčovič, the Commissioner for inter-institutional relations and administration, has been a strong advocate of working with national parliaments, and in January 2014 Members of the Committee held a useful meeting with him on the subject in Brussels.[26] The attendance of Commissioners at COSAC and other inter-parliamentary meetings has also been very welcome, demonstrating a commitment to direct engagement with parliamentarians.

38. The aspiration for national parliaments to engage effectively with the Commission is well described in the Contribution agreed by the June 2013 COSAC Conference in Dublin:

> "COSAC considers that national parliaments should be more effectively involved in the legislative process of the European Union not just as the guardians of the subsidiarity principle *but also as active contributors to that process*. This goes beyond the adoption of reasoned opinions on draft legislative acts which may block those acts and would involve a more positive, considered and holistic view under which Parliaments could invite the Commission to develop legislative proposals which they believe to be necessary or to review and adapt existing proposals for specific stated reasons."[27] [italics added]

39. There is clear evidence of the desire of national parliaments to engage in political dialogue with the Commission. From the start of 2010 until the end of 2013 national parliaments submitted around 2000 written contributions under the Barroso initiative.[28] Appendix 6 provides further detail about the numbers of written contributions by national chambers and parliaments over this period, together with information about the numbers of reasoned opinions issued.

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25 COM(2006) 211: A Citizen's Agenda: Delivering Results for Europe, page 9.

26 QQ 89–99.

27 Contribution of the XLIX COSAC, Dublin, 23–25 June 2013.

28 Annual Reports from the Commission on Relations between the Commission and National Parliaments for 2010 (COM(2011) 345 final); 2011 (COM(2012) 375 final); and 2012 (COM(2013) 565 final); and, for 2013, information provided by the European Commission Registry. Chapter 4 will detail that the number of reasoned opinions submitted in the same period was around 260. See paragraphs 48–51.

40. **In this chapter we make suggestions for possible improvements, which national parliaments may wish to take up in discussion with national governments and with the Commission. In summary these possible improvements, which are considered in greater detail below, are:**

- **the increased early involvement of national parliaments in the development of EU legislative proposals and other policies in advance of the Commission making formal communications and proposals for legislation;**
- **that the Commission should make clear when and how national parliaments have influenced the development of policies, by:**
  - **identifying national parliament contributions in summary reports on consultation exercises and in subsequent communications on the policy, including how the policy has been shaped or modified in response,**
  - **responding promptly to national parliament contributions under the general political dialogue, usually within three months,**
  - **using its annual report on relations with national parliaments to identify the impacts of national parliament engagement;**
- **that the new Commission should make a commitment that Commissioners and senior officials will meet committees of national parliaments as a core part of their duties;**
- **that a procedure should be developed to allow a group of national parliaments to make constructive policy or legislative suggestions (a 'Green Card').**

Early engagement with policy proposals

41. Several of our witnesses argued that national parliaments should be more active in considering EU policies at an early stage: this is sometimes described as 'upstream' engagement and sometimes as 'pre-legislative scrutiny'.[29] The April 2012 COSAC Conference in Copenhagen concluded that "the opportunity (under the political dialogue) for national parliaments to feed views into the pre-legislative phase of the EU proposals is particularly important".[30]

42. Vice-President Šefčovič stated that "the Commission strongly supports this dialogue and in particular encourages the early involvement of national Parliaments by their submission of contributions to public consultations on possible new or modified legislation".[31] Mr Šefčovič accepted that "the national parliaments are not very aware of this", and that as part of the Commission's increased flow of information direct to national parliaments,

[29] For example, Czech Senát; Italian Camera dei Deputati; Dr Adam Cygan, Q 18; Dr Richard Corbett, Q 85; Andrew Duff MEP, Q 107; Miguel Angel Martínez Martínez MEP, Q 127.

[30] Contribution of the XLVII COSAC, Copenhagen, 22–24 April 2012.

[31] Vice-President Maroš Šefčovič.

"we have added … alerts for when and what kind of public consultations will take place".[32]

43. **The Committee supports effective early engagement by national parliaments in the development of EU legislative proposals and other policies. In this way, drawing on their diverse experience and expertise, national parliaments can make a distinctive contribution to the development of policy at an early stage, before considerable time and political capital has been invested in a particular idea, and before firm proposals have been drawn up which the Commission may then feel obliged to defend.**

44. The House of Lords has a good track record of early engagement. To take one example, in late 2012 and early 2013 the Committee conducted an inquiry into the early operation of the European External Action Service, and published a report which contributed to the review of the EEAS by the EU institutions.[33]

45. During our inquiry we came across some examples of the effect of national parliament engagement on developing EU policies. For example, Vice-President Šefčovič noted that a number of national parliaments had helped to improve the European Citizens' Initiative;[34] Dominic Hannigan TD told us that the Irish Oireachtas was examining how social indicators could be integrated into the European Semester;[35] and Andrzej Gałażewski said that national parliament and European Parliament engagement with the Commission on data protection legislation may lead to a decrease in the number of provisions left to delegated acts.[36] Firm evidence of the impact of national parliaments on policy and legislation is often lacking, however, and there is a clear view amongst Members of national parliaments that the Commission is sometimes going through the motions. Eero Heinäluoma, Speaker, and Miapetra Kumpula-Natri, Chair of the Grand Committee, Finnish Eduskunta, said that "we see no evidence that the inputs of national parliaments have actually affected outcomes at the EU level".[37] Averof Neofytou, Chairman of the Committee on Foreign and European Affairs, House of Representatives of Cyprus, argued that "the Commission has to change its culture … to consider the opinions of national parliaments as an opportunity for further political debate on issues, rather than creating an atmosphere in which they do not like to see, and reject, different views on issues".[38]

46. Mr Šefčovič told us that the Commission had invested in a new IT system to improve their management of national parliament contributions and replies to them, and that "I now believe that we are in a position" to achieve "no more than three months for a response".[39]

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32 Q 94.

33 House of Lords European Union Committee, *The European External Action Service* (11th Report, Session 2012–13, HL Paper 147).

34 Q 91.

35 Q 73.

36 Q 53.

37 Finnish Eduskunta. See also Eva Kjer Hansen, Danish Folketing, Q 49; Saeima of Latvia.

38 Q 47.

39 Q 89.

47. The Commission's report for 2012 on relations between the Commission and national parliaments identifies hundreds of interactions in the form of written opinions, visits, and conferences, but provides no information about the impact of this activity on any of the Commission's policies or proposals. Without evidence of impact or influence, the incentives for national parliaments to devote appropriate resources to engaging at this early stage will remain weak, and the EU will continue to be deprived of the improvements to legislation and policies that will accrue from the application of the distinctive experience and expertise of Members of national parliaments.

48. **The Commission must engage fully with the views put forward by national parliaments early on in the policymaking process, and must be seen to engage fully with them by making clear when and how national parliaments have had a significant influence on the early development of policies. We note that if the Commission does not engage constructively and deal with concerns raised by national parliaments under the informal political dialogue, it becomes more likely that national parliaments will be forced to use the reasoned opinion procedure to ensure that their views are addressed in a more formal way. Put another way, the more that the Commission engages positively with the concerns of national parliaments as expressed in the political dialogue, the less likely it is that parliaments will feel compelled to issue reasoned opinions.**

49. **When national parliaments engage upstream, and make contributions to consultations, their views should be identified and specifically addressed in a discrete section of the Commission's summary report on the consultation, including where appropriate how the proposal has been modified in response. National parliament contributions and the responses to them should also be identified in subsequent documentation relating to the proposal including impact assessments and communications accompanying legislative proposals. This will show that the views of national parliaments have been given appropriate consideration; and help national parliaments to continue to pursue key points.**

50. **When national parliaments make contributions to the general political dialogue (not in response to specific consultation exercises), these contributions should receive a response within three months, clearly addressing the points made and, where appropriate, explaining how their views have been taken into account.**

51. **The Commission should use its annual reports on relations with national parliaments to identify policy impacts of engagement by national parliaments, as well as simply outlining the number of interactions with the Commission.**

Direct contact with Commissioners and officials

52. A proper dialogue is of course about much more than national parliaments making contributions to the early development of policies. It must involve a mutual exchange of information and views. One good way to achieve this is for Commissioners and senior Commission officials to meet Members of national parliaments. Sometimes, when major political issues are at stake, it will be most appropriate for Members of national parliaments to meet a

Commissioner. On other occasions, when the technical details of a policy are to be discussed, a senior official may be more appropriate. Sonia Piedrafita, Centre for European Policy Studies, argued that "it would be very helpful if each member of the College of Commissioners presented the work programme and participated in a question-and-answer session in a national parliament on an annual basis".[40]

53. By mixing videoconferences with face-to-face meetings; combining such meetings with Commissioners' other commitments in Member States; and holding some meetings in Brussels, the burden on Commissioners and senior staff can be managed.

54. At present there are many examples of good engagement by Commissioners and their officials, but in our experience certain Commissioners seem to feel at liberty to 'pick and choose' the subjects on which they will engage, and with whom. **The Commission which will be appointed in 2014 should make a commitment that its Commissioners and senior officials will be willing to meet committees of national parliaments as a core part of their duties, subject of course to practical limitations and without imposing an impossible burden. This must be a clear and firm commitment which binds the whole College: it is too important to be left to the whim of individual Commissioners.**

Making proposals: a Green Card?

55. The next chapter examines in detail the reasoned opinion procedure. This is a negative procedure which gives national parliaments a right, under certain strict conditions, to indicate their view that a legislative proposal should not be proceeded with.

56. Several of our witnesses suggested that there should also be scope for a group of national parliaments working together to make a constructive suggestion for an initiative. For example Simon Sutour, Chair of the European Affairs Committee of the French Sénat, and Danielle Auroi, Chair of the EU Affairs Committee of the French Assemblée Nationale, supported the idea in general terms.[41] René Leegte, Rapporteur on democratic legitimacy for the European Affairs Committee of the Dutch Tweede Kamer, proposed "to allow a certain number of national parliaments to advise the European Commission to table legislative proposals they believe to be necessary".[42] The Danish Folketing suggested that this might encompass the right for national parliaments to suggest the review of existing legislation.[43] Dr Richard Corbett, Cabinet Member of the President of the European Council with responsibility for relations with national parliaments, said that he thought that it "would carry a certain weight if a proposal for legislation, or indeed a proposal to repeal legislation, came from a national parliament".[44]

57. There were mixed views about this proposal, with colleagues in the European Parliament raising concerns in particular about intruding on the

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40 Sonia Piedrafita. See also Charles Grant, Q 11; Gediminas Kirkilas; Eva Kjer Hansen, Danish Folketing, Q 41; Minister Thierry Repentin, Q 141; Finnish Eduskunta.

41 Q 144, and note of evidence session with Chairs and Members of the Foreign Affairs and EU Affairs Committees, French Assemblée Nationale.

42 Q 59.

43 European Affairs Committee, Danish Folketing (January 2014), *op. cit.*

44 Q 82.

Commission's 'right of initiative'.[45] Ashley Fox MEP was "very sceptical" about giving national parliaments an explicit role in putting forward suggestions for initiatives, arguing that in his view there was already too much European legislation.[46]

58. **In principle, we agree that there should be a way for a group of like-minded national parliaments to make constructive suggestions for EU policy initiatives, which may include reviewing existing legislation, complementing the existing 'Yellow Card' with a 'Green Card'. We note the concerns raised about intruding on the Commission's formal right of initiative, and we would envisage a 'Green Card' as recognising a right for a number of national parliaments working together to make constructive policy or legislative suggestions, including for the review or repeal of existing legislation, not creating a (legally more problematic) formal right for national parliaments to initiate legislation.**

59. **A 'Green Card' agreement would need to include an undertaking by the Commission that it would consider such suggestions carefully, and either bring forward appropriate legislative or other proposals (or consult on them), or explain why it had decided not to take the requested action.**

[45] Under the EU Treaties, the Commission has a general right of initiative which empowers it to make proposals on the matters contained in the Treaties and under certain limited conditions other EU institutions may also initiate proposals. Sources: Andrew Duff MEP, Q 106; Miguel Angel Martínez Martínez MEP and Carlo Casini MEP, Q 129.

[46] Q 118.

CHAPTER 4: THE REASONED OPINION PROCEDURE

Overview

60. The Lisbon Treaty 2009 gave national parliaments a formal role in the scrutiny of EU legislative proposals, notably through the reasoned opinion procedure. This procedure is explained in Box 1.

BOX 1

The Reasoned Opinion Procedure

- Sometimes known as the 'Yellow Card' procedure, though there is no mention of coloured cards in the EU Treaties.
- Draft legislative acts are transmitted by the Commission to national parliaments.
- Within eight weeks, each national parliament, or chamber, may issue a "reasoned opinion" "stating why it considers that the draft in question does not comply with the principle of subsidiarity" (Article 6, Protocol 2).
- Definition of subsidiarity principle: "the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level" (Treaty on European Union (TEU) Article 5).
- A reasoned opinion from one of the 15 unicameral Parliaments counts as two votes; a reasoned opinion from a chamber in one of the 13 bicameral Parliaments counts as a single vote. There are 56 votes available in total.
- If reasoned opinions are submitted comprising more than one third of the total votes (a **Yellow Card**), the Commission must review the proposal and "may decide to maintain, amend or withdraw" it. "Reasons must be given for this decision" (Article 7(2), Protocol 2). For legislative proposals concerning police co-operation or criminal justice, the threshold is one quarter of votes, not one third.
- If reasoned opinions comprising over half of the total votes are submitted (an **Orange Card**), the Commission must review the proposal and, if it nonetheless wishes to proceed, justify why it considers that the proposal complies with the principle of subsidiarity (Article 7(3), Protocol 2). If the Commission does proceed, a majority vote in the European Parliament, or a vote of 55% of the Member States in the European Council, will block the proposal.
- These procedures do not apply in areas where the Union has exclusive competence (customs union; competition rules necessary for the internal market; monetary policy; conservation of marine resources under the Common Fisheries Policy; common commercial policy).
- The procedures do apply to any legislative initiatives from institutions other than the Commission: groups of Member States, the European Parliament, the European Central Bank and the European Investment Bank.
- The Protocol also provides that a national parliament may bring a case before the EU Court of Justice, arguing that an adopted legislative act does not

comply with the principle of subsidiarity. This is known as the **Red Card** procedure.

Source: Articles 5 and 12, TEU; Protocols 1 and 2 to the EU Treaties

From the coming into force of the Lisbon Treaty in December 2009 to the end of February 2014, two Yellow Cards had been triggered (see Box 3), no Orange Cards had been triggered, and no Red Cards had been issued.

BOX 2

What is the difference between a Reasoned Opinion and a Yellow Card?

A **reasoned opinion** is issued by a national parliament or chamber if it thinks that a draft EU law does not comply with the principle of subsidiarity (it thinks that the matter could better be addressed by Member States individually, not the EU collectively).

A **Yellow Card** is triggered if enough parliaments or chambers issue reasoned opinions on the draft law. A Yellow Card forces the European Commission to conduct a review.

61. Miroslav Krejča, Chairman of the Committee on European Affairs, Czech Senát, described the reasoned opinion procedure as "a stimulating factor that could enhance" the involvement of national parliaments in EU affairs.[47] In other words, the procedure is important as it encourages national parliaments to take an active interest in EU matters, beyond the narrow terms of the procedure itself. This is illustrated by the fact that in 2009, the year before the procedure came into effect, national parliaments sent around 250 written opinions to the Commission on EU policy matters: by 2012 this had risen to 663 written opinions (including 70 reasoned opinions).[48] The European Union Policies Committee of the Italian Camera dei Deputati considered that the new powers conferred on national parliaments "have promoted a dramatic increase in the EU-related activities of most assemblies".[49]

62. Since the Lisbon Treaty came into force at the end of 2009, until the end of 2013, the Commission introduced around 454 draft legislative acts which were eligible for the reasoned opinion procedure.[50] In each case the Commission was required to explain why it considered that the proposal was consistent with the principle of subsidiarity—and in most cases there has been little serious doubt.

63. The 2012 Annual Report of the European Commission Impact Assessment Board (a quality control body which examines and issues opinions on all Commission impact assessments) noted that the proportion of occasions on which it raised concerns about the handling of subsidiarity decreased from 43% in 2010 to 33% in 2011. The Board remained concerned that

47 Czech Senát.

48 Annual Reports from the Commission on Relations between the Commission and National Parliaments for 2009 (COM(2010) 291 final); and 2012 (COM(2013) 565 final).

49 Italian Camera dei Deputati.

50 European Parliament Directorate for Relations with National Parliaments (8 January 2014), *State of Play on reasoned opinions and contributions submitted by national Parliaments under Protocol 2 of the Lisbon Treaty*.

misgivings were still expressed in a "significant number of opinions" and recommended that all services "pay particular attention to the justification of proposals on subsidiarity grounds, particularly in view of the new subsidiarity control mechanisms introduced by the Lisbon Treaty".[51] This suggests that Dr Ben Crum, Vrije Universiteit Amsterdam, and Professor John Erik Fossum, University of Oslo, are correct in their view that the Commission is internalising the principle of subsidiarity, but also underlines the importance of national parliaments remaining vigilant in assessing the compliance of new legislative proposals with that principle.[52]

TABLE 1

Number of Reasoned Opinions issued 2010–2013

Year	Reasoned Opinions	Yellow Cards
2010	34	0
2011	64	0
2012	70	1
2013	92	1
TOTAL	**260**	**2**

Sources: see Appendix 6

64. Even taking into account that Commission proposals are subject in advance to an internal subsidiarity check, the number of reasoned opinions issued by national parliaments, around 260 over four years, is very low (see Table 1).[53] The number of Yellow Cards triggered, two, is remarkably low. In the first case the Commission decided to withdraw the proposal concerned, but asserted that this was not because of the Yellow Card; and in the second case it decided to maintain the proposal unchanged. Box 3 provides more details.

BOX 3

Yellow Cards

Right to Strike ('Monti II') proposal[54]

In an attempt to address concerns that, in the single market, economic freedoms would prevail over fundamental freedoms such as the right to strike, the Commission proposed to clarify the relationship between those freedoms. It set out provisions on resolution mechanisms in the case of disputes in circumstances with a cross border character. Several national parliaments were unconvinced either that the proposal was justified or that it would help to clarify the

51 European Commission Impact Assessment Board Report for 2012.

52 Dr Ben Crum & Professor John Erik Fossum.

53 Appendix 6 sets out the numbers of reasoned opinions issued by each national parliament or chamber, together with information about the total number of written opinions (whether reasoned opinions or opinions submitted under the political dialogue).

54 COM(2012) 130 final: Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services.

relationship between the freedoms. Reasoned opinions amounting to 19 votes were issued, triggering in May 2012 the first Yellow Card.[55] The Commission withdrew the Monti II proposal—but asserted that it was being withdrawn because of political disagreement in the Council, and not because of the Yellow Card played by national parliaments.

European Public Prosecutor's Office (EPPO) proposal[56]

The Commission's proposal would establish an EU level body with the exclusive power to investigate and prosecute criminal offences affecting the financial interests of the Union and closely related offences. Many national parliaments considered that the Commission had failed to demonstrate the desirability of the proposed EU level action and that it would fail to achieve its objectives as it would have damaging effects on existing Member State systems. Reasoned opinions amounting to 18 votes were issued, triggering in October 2013 the second Yellow Card.[57] The Commission quickly decided to maintain the EPPO proposal, and its fate now lies in the hands of the Council and the European Parliament.

65. Some of our witnesses argued that the procedure is not working as intended. The Saeima of Latvia argued that "subsidiarity checks have not added real power to national parliaments".[58]

66. A January 2014 report by the European Parliament, prepared by the Legal Affairs Committee, welcomed "the closer participation of national parliaments in the framework of the European legislative process". The report went on to note "with concern that some reasoned opinions from national parliaments highlight the fact that, in a number of the Commission's legislative proposals, the justification of subsidiarity is insufficient or non-existent"; and to highlight "the need for the European institutions to make it possible for national parliaments to scrutinise legislative proposals by ensuring that the Commission provides detailed and comprehensive grounds for its legislative decisions on subsidiarity and proportionality in accordance with Article 5 of Protocol No 2 to the Treaty on the Functioning of the European Union".[59]

67. **The reasoned opinion procedure can, and must, be made more effective. It is an important way in which national parliaments can contribute to the making of EU legislation; and can thereby enhance the quality and legitimacy of that legislation.**

68. In the rest of this chapter we set out key problems with the current operation of the reasoned opinion procedure, and suggest a range of ways in which these problems could be addressed.

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55 This took place before Croatia formally acceded to the EU on 1 July 2013, so the threshold for triggering a Yellow Card in this case was one third of 54: 18 votes.

56 COM(2013) 534 final: Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office.

57 This is a proposal relating to Justice and Home Affairs, so the required threshold was one quarter of 56: 14 votes.

58 Saeima of Latvia. See also Ashley Fox MEP, Q 115; Richard Corbett, Q 80.

59 European Parliament Legal Affairs Committee (28 January 2014), *Report on EU Regulatory Fitness and Subsidiarity and Proportionality—19th report on Better Lawmaking covering the year 2011* (2013/2077(INI)).

69. **National parliaments working together may wish to consider which particular changes they would like to see made to the operation of the reasoned opinion procedure.**

70. **The key elements of the procedure, including its scope, the deadlines, and the effect of a Yellow Card being issued, are set out in the EU Treaties and could only formally be changed through a revision to the Treaties. However, it would be possible for the Member States acting together in the Council, in co-operation with the European Commission, to agree a package of improvements. The parliaments, Council and Commission could undertake to operate the reasoned opinion procedure consistently with the agreed changes.**

71. **These are some of the options for inclusion in an inter-institutional agreement to improve the operation of the reasoned opinion procedure:**

- ***scope*: including the proportionality principle within the procedure, and a check that an appropriate legal base is being used;**
- ***deadline*: extending the time period for reasoned opinions to be submitted, from 8 weeks, to 12 or 16 weeks;**
- ***Commission engagement*: improving the quality of the Commission's explanatory memorandums on subsidiarity and its engagement with reasoned opinions;**
- ***effect*: establishing that if a Yellow Card is triggered the Commission will either withdraw or substantially amend the proposal;**
- ***threshold*: considering whether the threshold for triggering a Yellow Card should be lowered;**
- ***timing*: considering whether the reasoned opinion procedure might somehow remain open, or be re-engaged, later in the legislative procedure.**

The rest of this chapter examines each of these options.

Scope

72. Many people have noted that there is no clear, detailed and widely accepted definition of what constitutes a breach of the subsidiarity principle. Some of our witnesses argued that there should be such a definition or commonly agreed understanding. Professor Asteris Pliakos, Professor of European Union Law at the Athens University of Economics and Business, suggested that national parliaments, the Commission, the European Parliament and the Committee of the Regions should agree "a commonly accepted definition".[60] A majority of the Members of national parliaments who commented shared the view of the EU Affairs Committee of the Estonian Riigikogu that "there should be enough freedom to interpret and understand the subsidiarity element at national level".[61]

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60 Professor Asteris Pliakos. See also Professor Stelio Mangiameli; Oskar Josef Gstrein & Darren Harvey.

61 Estonian Riigikogu. See also Edmund Wittbrodt, Polish Senat; Italian Camera dei Deputati. See also Charles Grant, Q 14.

73. It is inevitable that the assessment undertaken by national parliaments may include a 'political' as well as a strictly 'legalistic' element, and the assessment will be informed by the particular outlook of the national parliament in question. Indeed, the purpose of the procedure is, in part, to ensure respect for the diversity of the Union.

74. **While there may be a useful role for COSAC in sharing practical experience in how to conduct subsidiarity assessments and how to prepare an effective reasoned opinion, we do not think that it would be sensible to attempt a more precise definition of the subsidiarity principle than the definition that is already set out in the EU Treaties.**

75. Witnesses including the French Sénat suggested that the reasoned opinion procedure should be extended to cover proportionality as well as subsidiarity.[62] The principle of proportionality is defined under Article 5 of the Treaty on European Union as requiring that "the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties". As set out in Box 1, subsidiarity is defined in that Article as requiring that "in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level". In other words, subsidiarity requires that things be done at the lowest sensible tier of government, while proportionality requires that, where the Union takes action, that action must be proportionate to the achievement of the relevant Treaty objective.

76. The Swedish Riksdag has argued that proportionality and subsidiarity are often inter-linked, and indeed the section of the EU Treaties setting out the detail of the reasoned opinion procedure is already entitled the Protocol on the application of the principles of subsidiarity *and proportionality* (italics added).[63]

77. The two concepts are clearly closely related, and explicitly extending the procedure to include proportionality would avoid sterile disputes about whether a particular concern about a proposal fell under one heading or the other. It would make it more clear that, as well as examining the objectives of the proposed action, national parliaments should be examining the precise content and form of that action.

78. EU legislative proposals must specify under which article of the EU Treaties they are being introduced (their 'legal base'), and the French Sénat argued that the reasoned opinion procedure should encompass consideration of whether the legal base for the proposal adequately supports the action proposed by the Commission.[64] This seems to the Committee a logical modest extension to the reasoned opinion procedure, which would allow national parliaments to confirm that each legislative proposal has an appropriate basis under the EU Treaties. Without such a basis, action should not be taken at EU level.

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62 French Sénat. See also Minister for Europe, Q 156; Sonia Piedrafita; Charles Grant, Q 7; René Leegte, Q 59.

63 Swedish Riksdag.

64 French Sénat.

79. **Witnesses have made a strong case that the reasoned opinion procedure should be extended to include the principle of proportionality. There is also a strong case that the procedure should encompass whether the proposal is brought forward under an appropriate legal base. We support both of these suggestions.**

Deadline

80. A large number of witnesses argued that the current maximum time period of eight weeks for national parliaments to assess legislative proposals, and prepare and submit reasoned opinions, is too short.[65]

81. In the Committee's experience, eight weeks is usually just about sufficient for an individual chamber to assess a legislative proposal, and issue a reasoned opinion if it wishes. However, this proves challenging for complex proposals, or at certain times of year. For example, the period for the subsidiarity check for the European Public Prosecutor's Office proposal began on 2 September 2013. During the parliamentary recess our Justice and Institutions Sub-Committee carefully considered the proposal and, as is usual, further information and assessment provided by the UK Government. The Sub-Committee then referred the proposal to the main EU Committee, which recommended that the House should issue a reasoned opinion. It was only possible to debate the proposed reasoned opinion on 28 October 2013, the day that the formal eight week period expired. It is also vital that devolved and regional parliaments and assemblies, which have an important role in the reasoned opinion procedure, have sufficient time to comment if they wish.

82. Moreover, eight weeks may well be insufficient to allow national parliaments to share information with each other. Effective communication was crucial in the issuing of the first Yellow Card with certain national parliaments, notably the Danish Folketing, active in spreading awareness of the implications of the Monti II proposal. Even with a conveniently timed COSAC conference in Copenhagen halfway through the eight week period the timings proved tight, with five chambers only passing their reasoned opinions in the final week before the deadline.[66] The Committee on the Constitution of the Swedish Riksdag has commented that a longer period would make it "easier for more parliaments to examine a greater number of proposals and would facilitate inter-parliamentary co-operation"[67] and Dominic Hannigan TD, Chairman of the Irish Oireachtas Joint Committee on European Affairs and a recent former chairman of COSAC, confirmed the importance of effective information exchange between national parliaments.[68] The eight week deadline also makes it highly unlikely that national parliaments will have time to obtain further information from the Commission.

83. There seems to be no significant drawback to a modest extension to the eight week time-limit. Legislative proposals are often preceded by consultation

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65 For example: Edmund Wittbrodt, Polish Senat; Minister for Europe, Q 156; Charles Grant, Q 2; Averof Neofytou, Parliament of Cyprus, Q 49; Eva Kjer Hansen, Danish Folketing, Q 49; René Leegte, Dutch Tweede Kamer, Q 59. See also European Parliament Legal Affairs Committee (28 January 2014), *op. cit.*, paragraph 27.

66 Cooper, I. (May 2013) *A Yellow Card for the Striker: How National Parliaments Defeated EU Strikes Regulation*, available at http://euce.org/eusa/2013/papers/12g_cooper.pdf.

67 Swedish Riksdag.

68 Q 71.

documents, can be many years in the gestation, and after publication usually follow a slow path through the EU legislative process. An extra four or eight weeks near the start of that process seems a small price to pay for better law at the end.

84. **We consider that the time limit within which national parliaments can issue a reasoned opinion should be extended, to 12 or 16 weeks.**

85. Under Article 4 of the Protocol on the role of national parliaments in the European Union, legislative proposals cannot be placed on the agenda of the Council within eight weeks of their transmission to national parliaments. This time period must obviously be extended to match any extension of the time period within which national parliaments can issue reasoned opinions.

Commission engagement

86. The Protocol to the EU Treaties on the application of the principles of subsidiarity and proportionality makes it clear that it is the responsibility of the Commission to provide "a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality", adding that "the reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators" (Article 5). We note that it is not up to national parliaments to prove beyond doubt that a proposal does not meet the subsidiarity principle: the onus is on the Commission to explain why it does. **It is the responsibility of the Commission to provide a clear explanation of why it considers that a proposal complies with the principles of subsidiarity and proportionality. In the absence of a comprehensive and convincing assessment by the Commission, it is appropriate for a national parliament to come to the conclusion that it has not been proven that a proposal complies with the subsidiarity principle.**

87. Whether or not a Yellow Card is triggered, the Commission replies to reasoned opinions in writing. Several national parliaments complained about the inadequacy of replies to reasoned opinions by the Commission. Edmund Wittbrodt, Chairman of the European Union Affairs Committee, Polish Senat, stated:

> "The European Commission does not take into account national parliaments' opinions or even neglects them. The Commission's answers are often delayed and sent when negotiations are already advanced, are very general and do not address any specific issues. In principle, the Commission upholds its position, repeating arguments from its original proposal".[69]

At its October 2013 conference in Vilnius, COSAC called for "better quality and more timely responses to reasoned opinions".[70]

88. **Every reasoned opinion merits a reasoned response. When a reasoned opinion is issued by a national parliament, whether or not a Yellow Card is triggered, that opinion should be seriously considered by the**

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69 Edmund Wittbrodt, Polish Senat. See also Italian Camera dei Deputati; René Leegte, Dutch Tweede Kamer, Q 59; Sonia Piedrafita; Davor Jancic.

70 COSAC contribution, Vilnius October 2013, paragraph 4.5.

Commission, and a response should be prepared which addresses the concerns raised in that reasoned opinion, in a timely manner.

89. Since COSAC called, in October 2013, for better consideration of reasoned opinions, the Commission has briskly dismissed the Yellow Card on the EPPO proposal. The threshold for the Yellow Card was reached in late October, but only a few days later a Commission official was reported as saying that "the Commission is confident that the next steps towards a strong European Public Prosecutor's Office will be taken in 2014 under the Greek and Italian [EU] presidency".[71] In November 2013 the Commission formally decided to maintain the proposal unchanged.[72] The speed with which Commission officials appear to have briefed that the proposal would be maintained, and with which the Commission as a whole decided to maintain the proposal, do not suggest that the Yellow Card prompted a serious review of the complex, important and far-reaching proposal to establish a European Public Prosecutor's Office. What it suggests, in this case, is a Commission going through the motions to satisfy its treaty obligations.

90. In its response to the Yellow Card against the EPPO proposal,[73] the Commission distinguished certain arguments that it decided were not based on subsidiarity. **The Committee does not consider it appropriate for the Commission to assume the sole responsibility for deciding what arguments do, or do not, come within the ambit of the subsidiarity principle. There should be dialogue between national parliaments and the Commission, to determine appropriate guidelines for the Commission to respond to reasoned opinions, whether or not a Yellow Card has been issued.**

91. In the longer term, the existence of an effective reasoned opinion procedure will help to stimulate dialogue between the Commission and national parliaments. As Dr Julie Smith observed, "if national parliaments make clear that they are not going to accept certain things, particularly if they are likely to breach subsidiarity, then we might expect gradually the Commission to be seeking to talk to national parliaments … ahead of time, in the way that they will talk with the permanent representations [of the Member States] and the European Parliament, and get a sense of what might be acceptable".[74]

Effect

92. Some have argued that a Yellow Card should be treated as being a 'Red Card'[75] and having the effect of blocking a proposal.[76] The UK Government have advocated such a 'Red Card'. The Minister for Europe argued, in a

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71 Reported in www.euractiv.com (30 October 2013) "Commission to press ahead with European Prosecutor's Office, without France and Britain".

72 Minutes of the 2067th meeting of the Commission, 27 November 2013.

73 COM(2013) 851: Communication from the Commission on the review of the proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office with regard to the principle of subsidiarity, in accordance with Protocol No 2 (27 November 2013).

74 Q 32.

75 The proposal for a new kind of 'Red Card' to allow national parliaments to block legislative proposals must be distinguished from the *existing* 'Red Card' which is already in the EU Treaties and which allows a national parliament to bring a case before the Court of Justice, arguing that existing legislation breaches the subsidiarity principle. See Box 1.

76 For example, Dutch Foreign Minister Frans Timmermans, "Monnet's Europe needs reform to fit the 21st century", *Financial Times*, 14 November 2013; Charles Grant, Q 18; Mats Persson, Q 15.

December 2013 article relating to the EPPO proposal, that the Commission ought to treat every Yellow Card as though it were a 'Red Card'.[77]

93. This interest is perhaps unsurprising given the Commission's response to the Yellow Card on the EPPO proposal. As the EU Treaties recognise, national parliaments play a key part in "the good functioning of the Union" (Article 12, TEU). They are uniquely well placed to understand, and to represent, the views of the citizens of the Member States of the Union. Therefore, if a large number of national chambers have concerns about a legislative proposal which are serious enough for them to issue a reasoned opinion, triggering a Yellow Card, this deserves to be taken seriously.

94. As we have already observed in this Chapter, the reasoned opinion procedure currently places the Commission in a difficult position. A Yellow Card invites it to review a proposal which it will already have decided is consistent, from the Commission point of view, with the principle of subsidiarity. Moving the focus of the procedure to what should be altered as a result of the concerns expressed by a large number of national parliaments, and away from whether the concerns are consistent with the Commission's own interpretation of subsidiarity in relation to the proposal, should make the procedure more equitable.

95. **The Committee considers that the Commission should make an undertaking that, when a Yellow Card is issued, it will either drop the proposal in question, or substantially amend it in order to meet the concerns expressed.**

Threshold

96. The UK Government suggested that the threshold for triggering a Yellow Card should be lowered from the present one-third of available votes. This would presumably increase the number of Yellow Cards triggered, but an extension of the time period and the scope (to include proportionality and legal base) might also have the same effect, while ensuring that they are still only triggered through the involvement of a substantial number of chambers / parliaments. Nonetheless, **the suggestion that the threshold for triggering a Yellow Card should be reviewed deserves further consideration**.

Timing

97. The UK Government suggested exploring whether Yellow Cards might be issued "at any point during the legislative process and indeed whether they could be exercised in relation to existing legislation". The Dutch Tweede Kamer has similarly proposed that a "late card" procedure might be added to the existing Yellow and Orange Cards.[78]

98. There would be obvious benefits in allowing national parliaments to remain engaged, or to re-engage, with proposals which can undergo significant changes during the legislative process and which can take several years to come to legislative agreement, during which time the context for the proposal can have changed dramatically. It would be a challenge to create a

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[77] *David Lidington MP: It's time for national parliaments to give the EU Commission the red card*, available at http://www.conservativehome.com/platform/2013/12/from-dlidington-its-time-for-national-parliaments-to-give-the-eu-commission-the-red-card.html.

[78] Dutch Tweede Kamer (November 2013), *op. cit.*

mechanism which worked effectively from the point of view of national parliaments, and which did not make the already complex EU legislative process more unwieldy. **The suggestion that the reasoned opinion procedure might remain open, or be re-engaged at some later point, deserves further consideration.**

Another aspect of the legislative procedure: first reading deals

99. The Commission usually initiates legislative proposals, which are then put to the co-legislators—the Council and the European Parliament—for agreement. In recent years there has been an increase in early agreements, or 'first reading deals', between the co-legislators, based on negotiations in informal 'trilogues' also involving the Commission. These negotiations are something of a 'black box' for those not directly involved in them. Witnesses argued that the speed with which the deals are sometimes concluded "puts pressure on the ability of national parliaments to perform scrutiny in a timely fashion".[79] In 2009 this Committee noted that the use of informal trilogues "makes it harder for national parliaments to conduct effective scrutiny of EU legislation".[80]

100. As part of the re-evaluation of the reasoned opinion procedure, consideration should be given to improving the transparency of the later stages of the legislative procedure. The EU legislative procedure is already complicated, and we do not wish to add unnecessary additional layers. However, national parliaments have an important role to play and if that role is confined to the initial Commission proposal it is possible that they will be denied the opportunity to examine important changes brought forward during the negotiations between the Council and the European Parliament.

101. **It is vital that national parliaments should have a recognised opportunity for their voices to be heard during the later stages of legislative negotiations, particularly when those negotiations result in major changes to draft legislation. We suggest that the Council consider making a commitment that, if a legislative proposal is significantly altered during its consideration by the co-legislators, the Council will allow sufficient time, and no less than 12 weeks, for each national parliament to scrutinise the new or significantly altered elements of the proposal. This would be a logical development of the role of national parliaments in EU policymaking and without such a commitment there will remain a fundamental gap in the legislative process.**

102. Overall, appropriate engagement by national parliaments in the development of EU legislation will result in better scrutinised, and better, laws. As we have set out in the preceding two chapters, the EU legislative process should encourage national parliaments to make an early contribution to the development of policies. Through the reasoned opinion procedure, national parliaments should have an effective formal role when legislative proposals are introduced. National parliaments should be kept informed, particularly by their own governments, as negotiations progress. National parliaments should become involved again at the later stages if there have been major changes to a proposal.

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79 Davor Jancic; see also French Sénat; Eva Kjer Hansen, Danish Folketing, Q 41; Andrew Duff, Q 113.

80 House of Lords European Union Committee, *Codecision and national parliamentary scrutiny* (17th Report, Session 2008–09, HL Paper 125), Summary.

CHAPTER 5: INTER-PARLIAMENTARY CO-OPERATION

Co-operation with the European Parliament

103. It is no secret that there have on occasion been tensions between the European Parliament and national parliaments. Dr Crum and Professor Fossum explained that "tensions are discernible in the relationship between national parliaments and the European Parliament, as the latter tends to be more open to supranational solutions and less concerned about subsidiarity".[81] On the other hand, Professor Hix said that he did not accept "the idea that there is the European Parliament on one side and national parliaments on the other side, and there is some sort of battle between the two … Both are parliamentary institutions".[82]

104. There are instances of successful co-operation. A July 2013 draft joint report by three European Parliament Committees stated "that the greater role played by national parliaments in the activities of the European Union … has had a positive impact on the development and functioning of the area of freedom, security and justice", in part "because the subsidiarity principle is now more likely to be complied with", and in part "because the broader and closer involvement of the peoples of Europe in the democratic process has made a significant contribution to lawmaking and European policy-making".[83] Vice-President Miguel Angel Martínez Martínez MEP welcomed the improving relations between the European Parliament and national parliaments, particularly at COSAC, and noted that the Spanish Cortes had recently been effective in conveying its concerns and views during the recent reforms of the common agricultural and fisheries policies.[84] There were, however, mixed views about the effectiveness of national parliament engagement, with Andrew Duff MEP suggesting that the opinions of national parliaments were taken into account by EP Committees, and Ashley Fox MEP arguing that national parliaments were not very influential.[85]

105. After the coming into force of the Lisbon Treaty, the European Parliament produced a set of recommendations which still guide the European Parliament's inter-parliamentary co-operation.[86] As the 2014 European elections approach, the Parliament's Constitutional Affairs (AFCO) Committee has been reflecting on post-Lisbon relations between the European Parliament and national parliaments. At the time this report was finalised in March 2014 the Chair of AFCO, Carlo Casini MEP, was preparing a report on this subject. We look forward with interest to the outcome of AFCO's work on this topic, and to a continuing dialogue with AFCO and the other European Parliament committees.

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81 Dr Ben Crum & Professor John Erik Fossum. See also Andrew Duff MEP, Q 101.

82 Q 23.

83 European Parliament, Committee on Legal Affairs, Committee on Civil Liberties, Justice and Home Affairs, Committee on Constitutional Affairs (July 2013), *Draft report on the mid-term review of the Stockholm Programme* (2013/2024(INI)), paragraph 7.

84 Q 132.

85 QQ 104 and 117 respectively.

86 European Parliament steering group on national parliaments (2010), *Recommendations to the Conference of Presidents*.

106. The House of Lords has a strong track record of engaging with the European Parliament, with Members regularly visiting Brussels to discuss key policies with MEPs, and participating in biannual meetings with UK MEPs and members of the European Scrutiny Committee of the Commons.[87]

107. There are areas where the European Parliament is in a good position to conduct scrutiny; areas where the national parliaments are in the best position; and areas where both must be involved. As this Chapter indicates, there are policy areas which have been under-examined, by either the European Parliament or the national parliaments. It is important that such 'accountability gaps' are identified and closed, in the interests of UK and European citizens, and to promote transparency.

108. **National parliaments and the European Parliament have a vital, and complementary, role to play in the European Union. It is not a 'zero sum' game: greater involvement for one should not be at the expense of the other.**

109. **There is scope for national parliaments and the European Parliament to engage more effectively with each other, sharing information and debating key policies. Several witnesses to our inquiry made useful suggestions as to how this might be done:**

- **there could be more direct contact between committees of national parliaments and committees of the European Parliament;**[88]
- **when national parliaments or their committees have a close interest in a particular legislative proposal, they should be encouraged to contact the relevant rapporteur and shadow rapporteur on the responsible committee of the European Parliament;**[89]
- **national parliaments and the European Parliament could reach agreement that EP rapporteurs could provide informal briefings to Members of national parliaments on the progress of trilogue negotiations;**
- **videoconferencing could be used to facilitate discussions between committees;**[90]
- **a brief overview of comments by national parliaments might be included in reports prepared by European Parliament Committees.**[91]

110. **Where it is practical and mutually useful, national parliaments and the European Parliament should enhance their co-operation and**

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87 Further details are provided in the reports of this Committee, available on www.parliament.uk/hleu; and in European Parliament, *Report on Interparliamentary relations between the European Parliament and national Parliaments under the Treaty of Lisbon, 2012*, Annex III.

88 Andrzej Gałażewski, Polish Sejm, Q 56.

89 Professor Simon Hix, Q 25.

90 Miguel Angel Martínez Martínez, Q 128.

91 The Italian Camera dei Deputati noted that in 2011 the then Speaker of the Italian Chamber, Mr Giancarlo Fini, proposed that "a brief overview of the remarks and observations made by national parliaments—pertaining to the substantive aspects of draft legislation and documents, and not only to those pertaining to breaches of the subsidiarity principle—should be included in the reports that the Committees of the European Parliament prepare for consideration in the Plenary".

sharing of information, perhaps on the basis of discussions on these ideas and others at the Conference of Parliamentary Committees for EU Affairs (COSAC).

Forms of inter-parliamentary co-operation

111. In 2008 the Conference of Speakers of EU Parliaments agreed a set of guidelines for inter-parliamentary co-operation in the European Union. As this Chapter explains, the framework of conferences has changed significantly since 2008, but the guidelines remain helpful in identifying the main objectives of inter-parliamentary co-operation in the European Union as being:

(a) "To promote the exchange of information and best practices" between parliaments "with a view to reinforcing parliamentary control, influence and scrutiny at all levels";

(b) "To ensure effective exercise of parliamentary competences in EU matters in particular in the area of monitoring the principles of subsidiarity and proportionality";

(c) "To promote cooperation with parliaments from third countries".[92]

112. There is a large and growing number of forums in which Members of different EU parliaments can meet and discuss aspects of the EU and EU policies. The main forums are listed in Box 4, though there are other regular and ad hoc conferences and meetings.

BOX 4

Key forms of inter-parliamentary co-operation

- *Conference of Speakers of EU Parliaments*

  Composed of Speakers of the national parliaments of the EU Member States and the President of the European Parliament. Meets annually. Its role is "to oversee the coordination of inter-parliamentary EU activities".

- *Conference of Parliamentary Committees for EU Affairs (COSAC)*

  Involves Members of EU committees of national parliaments and Members of the European Parliament. Established in 1989, since 2009 it has a Treaty base, in Article 10 of Protocol 1 to the EU Treaties. According to Article 10, COSAC is intended to "promote the exchange of information and best practice between national Parliaments and the European Parliament".

  Plenary meetings take place biannually, with a Chairpersons meeting prior to each plenary. Meetings usually take place in the country holding the rotating Presidency of the Council, and are chaired by the Presidency Parliament. At plenary meetings each parliament is represented by up to six Members. COSAC can agree conclusions and a contribution, which are non-binding on parliaments. It also produces Biannual Reports on issues relevant to national parliaments and the European Parliament.

  The Presidential 'Troika' (comprising Members of the current, previous, and next Presidency countries, along with the European Parliament) puts

[92] Conference of Speakers of the European Union Parliaments (June 2008), *Guidelines for inter-parliamentary cooperation in the European Union*.

forward subjects for discussion and considers draft contributions. The COSAC secretariat is composed predominantly of officials from the Troika Parliaments, and a Permanent Member.[93]

- *Conference for Common Foreign and Security Policy and Common Security and Defence Policy*

  Established by the Conference of EU Speakers. Replaced meetings of the European Security and Defence Assembly, and meetings of chairs of Foreign Affairs and Defence committees. Met first in September 2012, and now meets biannually. Each national parliament is represented by up to six Members; the European Parliament by up to 16. Provides a framework for the exchange of information, and debates CFSP / CSDP policies. It may adopt non-binding conclusions.

- *Conference on Economic and Financial Governance*

  Also established by the Conference of EU Speakers, and foreseen in the 2012 Treaty on Stability Coordination and Governance. Replaced meetings of chairs of Economic Affairs committees. First held in October 2013 and intended to be biannual, with meetings rotating between the parliament of the country holding the Presidency of the Council, and the European Parliament. The composition and size of each delegation is, at present, left to each parliament. Gives parliaments an opportunity to consider their role in ensuring democratic accountability and legitimacy in the EU in the context of a more integrated financial, fiscal and economic policy framework. The arrangements for the conference will be reviewed by the 2015 EU Speakers' Conference.

- *Joint Meetings on topics of common interest, involving the Presidency Parliament and the European Parliament*
- *Inter-parliamentary meetings held by the European Parliament*
- *Meetings of chairs of various sectoral committees, under the aegis of the Parliamentary dimension of the presidency*

113. We heard a range of views on the framework of inter-parliamentary co-operation. Gediminas Kirkilas, Lithuanian Seimas, said that there is "no need for new mechanisms", and that the priority should be to use the existing mechanisms effectively.[94] The Italian Camera dei Deputati agreed, also arguing that each conference should have a clearly limited agenda; and that duplication of topics between conferences should be avoided.[95] The Slovenian Državni Svet noted that "at the meetings participants do not have enough time to really debate. There is always a time limit around 2 minutes per speaker".[96]

114. **It is vital that Members of the parliaments of the European Union establish the habit of co-operation on European matters. Communication between Members of national parliaments, and**

93 *Rules of Procedure of the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union*, as published in the Official Journal of the European Union, 4 August 2011.

94 Gediminas Kirkilas, Seimas of Lithuania.

95 Italian Camera dei Deputati.

96 National Council of Slovenia.

between Members of national parliaments and the European Parliament, is essential, to share information, to debate policies, and to reach common understandings. However, it must be recognised that parliamentarians have a limited amount of time, and conferences must offer clear 'added value' in order for Members to be able to prioritise participation at them. In the view of this Committee, the number of inter-parliamentary conferences must be kept within reasonable limits and where it is appropriate we should be willing to rationalise the conference framework. We must ensure that conferences have clear and well managed agendas; that they have clear intended outcomes; and above all that they encourage wide participation and lively debate as opposed to long set-piece speeches.

COSAC

115. COSAC is a valuable forum for national parliaments, and the European Parliament, to share experiences on how to scrutinise EU laws and other policies effectively; and to make representations to the European Commission about appropriate engagement between Parliaments and the Commission. COSAC is, and must remain, at the heart of inter-parliamentary co-operation. There was some feeling amongst witnesses that it is not yet achieving its full potential, and that there may be scope to improve its procedures.

116. Andrzej Gałażewski, Polish Sejm, considered that COSAC's agendas should be more focused.[97] Eva Kjer Hansen, Danish Folketing, suggested that the chair of COSAC should be appointed for 2–3 years, to provide greater continuity, rather than following the rotating Presidency.[98] Ad hoc working groups (working remotely, rather than creating further meetings) might prepare discussion papers, or convene after a COSAC debate to take forward any conclusions. The plenary session of the conference might include a topical debate, with Commission involvement. COSAC could consider whether the President of the European Council should be invited to attend COSAC once per year, to listen to the concerns of Members of national parliaments.

117. René Leegte, Dutch Tweede Kamer, has proposed the creation of a "standing group of political representatives of EU affairs committees of national parliaments", to "exchange information on a political level in the event of a potential yellow card", to be "political ambassadors" for the Yellow Card procedure, and to discuss new ideas to improve inter-parliamentary co-operation.[99]

118. There was a sense that unrealistically high expectations should not be invested in COSAC. The Finnish Eduskunta cautioned that COSAC was a useful forum to share information, but that "COSAC cannot and should not claim to represent the views of national parliaments in general", and the Estonian Riigikogu argued that "COSAC works well, there is no need to change it".[100]

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97 Q 55.

98 Q 37.

99 René Leegte to Ioannis Tragakis, Chair of the Committee on European Affairs, Hellenic Parliament, 23 January 2014.

100 Finnish Eduskunta; Estonian Riigikogu.

119. It would be for COSAC as a whole to consider whether it wished to alter any of its procedures or practices. The organisation of each COSAC conference is, of course, for the Presidency Parliament and the Presidential Troika. **Ideas which might be considered for changes to COSAC's procedures include:**

- **a reduction in the number and length of general reports from the Presidency and the Commission, allowing plenty of scope for contributions from delegates;**
- **agendas which feature well focused and specific topics for debate, perhaps including a topical debate;**
- **appointing a longer-term chair of COSAC (following the example of the European Council);**
- **ad hoc working groups (working remotely) to prepare discussion papers, or to take forward agreed conclusions;**
- **a standing group of representatives of EU affairs committees;**
- **the President of the European Council attending COSAC once per year.**

120. **The issue of resources for COSAC may also need to be considered and the small COSAC secretariat increased, particularly if its procedures are to be changed in some way, as suggested in the previous paragraph.**

121. **COSAC can disseminate good practices and procedures that might be useful for other parliaments. COSAC's biannual reports and informal presentations by Members of national parliaments are two existing ways in which this dissemination of good practice can be achieved. COSAC might wish to consider whether an informal panel of experienced Members of COSAC from a range of different Member States and scrutiny systems might be willing to offer advice to national parliaments on their scrutiny of EU matters. The staff of European affairs committees of national parliaments can also share practical experience and information about their procedures, to help them support effective European scrutiny work by their committees.**

Inter-parliamentary conference on CFSP/CSDP

122. The recently established Inter-parliamentary Conference on Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP) set a good example in avoiding the proliferation of international conferences. The conference replaced existing conferences, including the now defunct European Security and Defence Assembly, rather than being created in addition to them.

123. In the light of the experience of our Members at these early CFSP/CSDP conferences we suggest that, to ensure the conferences are of maximum value, agenda items are suitably focused, and break-out sessions or working groups could be useful to allow smaller groups of parliamentarians to interact with each other on an informal basis.

Inter-parliamentary conference on economic and financial governance

124. The Inter-parliamentary conference on economic and financial governance only began to meet in October 2013 and is still evolving, so it would be unwise to draw any immediate conclusions about it. There is, however, one important point of principle. There has been some discussion about whether the increasing integration of the euro area states should be accompanied by the creation of parliamentary structures which are restricted to the parliaments, or parliamentarians, of the euro area states.

125. The Committee considers that, while these suggestions are understandable, this fragmentation must be avoided for two reasons. First and most importantly, what happens in the euro area is of vital importance to the Member States outside the area. It is essential that the opportunities for debate and discussion about major matters of economic and financial policy between parliamentarians of all Member States are increased, not reduced. Second, there are many policy areas where certain Member States are highly engaged, and others are less involved or altogether absent. Foreign policy and the Schengen area are two obvious examples. A 'variable geometry' of inter-parliamentary co-operation would be impossible to achieve; and would inhibit valuable debate. **Inter-parliamentary co-operation on all matters, including on economic and financial matters, must continue to involve all 28 Member States.**

126. This point is considered further in Chapter 6, on EU economic and financial governance.

Parliamentary scrutiny of Europol

127. Article 53 of the draft new Europol Regulation proposes a role for national parliaments, along with the European Parliament, in parliamentary scrutiny of the European Police Office (Europol).[101] We supported this provision in our Report *The UK opt-in to the Europol Regulation*.[102] When procedures for the joint scrutiny of Europol's activities by the European Parliament and national parliaments were first set out by the Commission in a 2010 Communication,[103] we wrote to the President of the European Parliament to support the establishment of such an arrangement.[104]

128. The Civil Liberties, Justice and Home Affairs (LIBE) Committee of the European Parliament has proposed amending the draft Regulation to establish a Joint Parliamentary Scrutiny Group, comprising Members of that Committee and representative members of relevant national parliament committees. Our Sub-Committee on Home Affairs, Health and Education has made representations, both in writing and through attendance at a joint meeting between the LIBE Committee and Chairpersons of EU Justice and Home Affairs Committees, for 'light touch' parliamentary scrutiny of Europol, preferably building on the current arrangements for joint working

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[101] COM(2013) 173: Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA (18 April 2013).

[102] House of Lords European Union Committee, *The UK opt-in to the Europol Regulation* (2nd Report, Session 2013–14, HL Paper 16).

[103] COM(2010) 776: Commission Communication on the procedures for the scrutiny of Europol's activities by the European Parliament, together with national parliaments (17 December 2010).

[104] Letter available on our website: www.parliament.uk/hleuf

between the two groups.[105] Various other national parliaments have written expressing similar views.[106] This potential formal scrutiny role is both a positive example of the increasing role of national parliaments working at EU level (with the European Parliament), and national parliaments being involved in the shaping of EU legislation.

Parliamentary scrutiny of Eurojust

129. As required by the Lisbon Treaty, the proposed Regulation reforming Eurojust brought forward by the Commission in July 2013 includes provisions governing parliamentary oversight of Eurojust's work.[107] The proposal obliges Eurojust to transmit its annual report to the European Parliament and national parliaments, and obliges the President of Eurojust to appear before the European Parliament at their request.

130. In October 2013 we published a report which acknowledged the validity of the Government's concerns with the proposed Eurojust Regulation but, in light of the important work undertaken by the agency on behalf of the Member States, argued strongly that the Government should opt-in to its negotiation.[108] On 21 October the Government told the Committee that they did not intend to opt in. The Government have promised to review their position once an agreed text emerges.

131. We understand that discussion of the Eurojust proposal in the Council has been overshadowed by the associated proposed Regulation to establish a European Public Prosecutor's Office.[109] As a consequence the negotiation of the Eurojust Regulation has been slow and national and European Parliamentary scrutiny remains at the early stages. However, at an Inter-Parliamentary meeting in June 2013 the Chairman of our Justice, Institutions and Consumer Protection Sub-Committee, Baroness Corston, expressed the concern that Parliamentary oversight should not extend to Eurojust's "operational" matters.[110]

Informal 'clusters of interest' conferences

132. As national parliaments increasingly engage with key EU policies, it is likely that there will be informal conferences to discuss major policy issues.

133. It may be appropriate for an expanded COSAC secretariat to give a measure of logistical support to these informal conferences, subject to some simple baselines set down by COSAC.

134. One important principle might be that (unless the meeting is for a specific geographical grouping) invitations should be extended to all parliaments

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[105] Namely, Joint Committee Meetings or Meetings of Chairpersons of Committees on Justice and Home Affairs.

[106] Including the relevant Committees in the Irish Oireachtas, French Assemblée Nationale and Lithuanian Seimas.

[107] COM(2013) 535 final: Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust), at Article 55.

[108] House of Lords European Union Committee, *The Eurojust Regulation: Should the UK Opt-In?* (4th Report, Session 2013–14, HL Paper 66).

[109] COM(2013) 534 final: Regulation on the establishment of the European Public Prosecutor's Office.

[110] European Parliament Inter-Parliamentary meeting considering the Stockholm Programme: the State of Play regarding Police and Judicial Cooperation in Civil and Criminal Matters, 20 June 2013.

equally. In 2013, the Danish Folketing organised a valuable meeting in Copenhagen to discuss the free movement of workers. Although not all national parliaments decided to send a Member to the meeting, the invitation was extended to all national parliaments.

Direct contact between parliamentarians

135. **It is important that Members of national parliaments forge their own contacts with Members of other parliaments, including of course the European Parliament.** Political parties can be valuable channels by which contacts can be made and common understandings can be developed. In the view of the Committee, there remains value in face-to-face meetings to establish strong working relationships. **Particularly once good working relationships have been established, teleconferencing, videoconferencing and electronic communications should be used to full advantage, for quick exchanges of information and opinion.**

Network of representatives of national parliaments

136. The great majority of national parliaments now appoint staff to represent the national parliament at EU level. This is a fairly new and developing network. When the House of Lords first appointed a representative in 2005 only a minority of other chambers had a similar post. Now, in 2014, all except one of the national parliaments is represented in some way. Although the remits of these national parliamentary officials differ significantly, there are some common features. These staff are usually based in Brussels. They keep national chambers informed about developments in the EU institutions, including negotiations on legislative proposals; help to ensure that the views of their parliaments are communicated effectively to the EU institutions; facilitate visits for Members of their parliaments to Brussels and support delegations at interparliamentary conferences such as COSAC; and share information between national parliaments. The House of Lords representative is also invaluable in liaising with UKRep, the UK Government's representation in Brussels.

137. Several witnesses commented on the utility of this informal network.[111] To take one specific example, Dr Ian Cooper, University of Oslo, noted that the network had supported consideration by national parliaments of the right to strike ('Monti II') proposal which, as explained in Chapter 4, led in 2012 to the issuing of the first Yellow Card:

> "The National Parliament Representatives in Brussels played an indispensable role by sharing with one another real-time information about the state of play regarding the scrutiny of Monti II in their respective parliaments. Only with this network of representatives in place was it possible to compile an accurate and up-to-date picture of the likelihood of a reasoned opinion from each chamber, and thus a rough "vote count" as the process unfolded and thus the knowledge that a yellow card was within reach. The representatives shared this information with their home parliaments".[112]

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[111] For example, Finnish Eduskunta; Hellenic Parliament; Italian Camera dei Deputati; Polish Senat; Dr Anna-Lena Hogenauer & Professor Christine Neuhold; Dr Ben Crum & Professor John Erik Fossum.

[112] Dr Ian Cooper.

As Dr Cooper expresses, the informal network of national parliamentary officials, most of them co-located in Brussels, provides significant added value.

138. The UK Government suggested that "Parliament might consider the scale of its current representation in Brussels",[113] citing the large representation from the German Parliament, but without indicating how the necessary additional resources would be found.[114] The informal network of national parliamentary representatives plays an essential role in keeping national parliaments informed about activity at EU level; communicating the views of national parliaments to the EU institutions; and sharing information between parliaments. The size of the UK representation is in line with the great majority of national chambers and parliaments, most of whom are represented by one or two staff. However we note that the UK will next take the Presidency in the second half of 2017, and in the lead up to and during the Presidency there may well be a need for a modest increase in staffing in order to support the Parliamentary dimension of the UK Presidency.

IPEX (Inter-Parliamentary EU Information Exchange website)

139. IPEX is the website for EU Parliaments to exchange information.[115] It is a valuable source of information about the EU work of national parliaments, including the state-of-play of their EU scrutiny work, as well as the texts of their reasoned opinions and political dialogue contributions, as highlighted by many of our witnesses.[116]

140. However, other witnesses did identify current problems with IPEX. Dr Ian Cooper highlighted a lack of up-to-date information, which meant that IPEX could not be used as a "conduit of information" during a Yellow Card procedure.[117] This problem was also highlighted by Katarzyna Granat of the European University Institute, Italy, and several others.[118] Morten Messerschmidt MEP, a Vice-Chair of the European Parliament's Constitutional Affairs Committee (AFCO), has also expressed concern about a lack of translations, which can render parliamentary documents inaccessible even when they are uploaded promptly.[119]

141. **It is important that the IPEX platform is easy to use, and that national parliaments upload information consistently and promptly. We note the potential burden that translating all parliamentary documents uploaded onto IPEX might place on national parliaments, and we suggest that the IPEX Board consider whether a technological solution, such as automated translations, might be implemented in the future.**

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113 The Rt. Hon. David Lidington MP, Minister for Europe.

114 The delegation from the German Parliament consists of seven officials from the Bundestag, one from the Bundesrat, and a number of political group staff sent by the parties.

115 Available at www.ipex.eu.

116 Estonian Riigikogu; Dr Patricia Conlan; Heleen Jalvingh; Gediminas Kirkilas.

117 Dr Ian Cooper.

118 Katarzyna Granat. See also Dr Anna-Lena Hogenauer & Professor Christine Neuhold; Italian Camera dei Deputati; Edmund Wittbrodt, Polish Senat.

119 AFCO Committee meeting, 10 February 2014. See also Italian Camera dei Deputati; Asteris Pliakos; and the UK Government.

CHAPTER 6: ECONOMIC AND FINANCIAL GOVERNANCE

'Genuine Economic and Monetary Union'

142. Growing tensions regarding the democratic legitimacy of the EU are particularly apparent in relation to economic and financial affairs. The drive towards greater integration in the wake of the eurozone crisis has placed the EU's democratic processes under immense strain.

143. The EU institutions acknowledged as much in their 2012 proposals for 'Genuine Economic and Monetary Union', their vision for a strong and sustainable single currency.[120] The proposals have four pillars:

- an integrated financial framework;
- an integrated budgetary framework;
- an integrated economic policy framework;
- democratic legitimacy and accountability.

144. On 14 February 2014, we published our report into 'Genuine Economic and Monetary Union' and the implications for the UK.[121] This report considered the first three of these pillars. The fourth pillar, described as "ensuring the necessary democratic legitimacy and accountability of decision-making within the EMU, based on the joint exercise of sovereignty for common policies and solidarity", is of direct relevance to this inquiry.

145. The Commission's 2012 'Blueprint for a Deep and Genuine Economic and Monetary Union'[122] emphasised that any work on democratic legitimacy as a cornerstone of Genuine Economic and Monetary Union needed to be based on two basic principles:

- that in 'multilevel' governance systems, accountability should be at the level where the executive decision is taken, whilst taking due account of the level where the decision has an impact;
- that in developing EMU as in European integration generally, the level of democratic legitimacy always needs to remain commensurate with the degree of transfer of sovereignty from Member States to the European level. This holds true for new powers on budgetary surveillance and economic policy as much as for new EU rules on solidarity between Member States. Briefly put, further financial mutualisation requires commensurate political integration.

146. The Commission argued that the first principle meant that it is the European Parliament that primarily needs to ensure democratic accountability for any decisions taken at EU level, in particular by the Commission. A strengthened

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120 Van Rompuy, H., President of the European Council (5 December 2012), *Towards a Genuine Economic and Monetary Union*. The report was prepared by President Van Rompuy in close collaboration with the Presidents of the European Commission, the Eurogroup and the European Central Bank, colloquially known as the 'Four Presidents'.

121 House of Lords European Union Committee, *'Genuine Economic and Monetary Union' and the implications for the UK* (8th report, Session 2013–14, HL Paper 134). This inquiry was undertaken by the Sub-Committee on Economic and Financial Affairs.

122 COM(2012) 777 final: A Blueprint for a Deep and Genuine Economic and Monetary Union: Launching a European Debate.

role for EU institutions would therefore have to be accompanied by a strengthened role for the European Parliament.

147. As with the other pillars of 'Genuine Economic and Monetary Union', the Commission made a distinction between short-term and long-term steps. In the short term, it foresaw enhanced involvement of the European Parliament in the European Semester,[123] for instance through parliamentary debates before the European Council discusses the Commission's Annual Growth Survey and before the adoption by the Council of the country-specific recommendations (CSRs). The Commission and the Council could be present at inter-parliamentary meetings to be held between representatives of the European Parliament and of national parliaments during the European Semester. Members of the Commission could also attend debates within national parliaments on the EU's CSRs. The Blueprint suggested that the European Parliament could set up a special committee on euro matters. It also cited the proposed nomination by political parties of candidates for the office of Commission President, as is taking place in the context of the May 2014 European Parliament elections.

148. Under the heading of "issues for discussion in the case of treaty amendment", the Commission also set out a number of longer-term proposals. These far-reaching proposals included a new power to require a revision of a national budget in line with European commitments, by legislative act agreed by co-decision; granting special decision-making powers to a European Parliament 'euro committee'; strengthening the Eurogroup[124] to make it responsible for decisions concerning the euro area and its Member States; strengthening the scrutiny role of the European Parliament in relation to the European Central Bank and the European Stability Mechanism; and, in the event of a full fiscal and economic union with a substantial central budget, giving the European Parliament reinforced powers to co-legislate on autonomous taxation and provide the necessary democratic scrutiny for all decisions taken by the EU's executive.

149. The Commission acknowledged that the role of national parliaments would always remain crucial, partly in ensuring legitimacy of Member States' actions in the Council, but especially in terms of the conduct of national budgetary and economic policies, even if these were more closely coordinated by the EU. The Commission also stressed that co-operation between the European Parliament and national parliaments was valuable in providing for mutual understanding and common ownership for EMU in a 'multilevel' governance system. However, inter-parliamentary co-operation

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123 The European Semester is the EU-level framework for co-ordinating and assessing Member States' structural reforms and fiscal policy, and for monitoring and addressing macroeconomic imbalances. It begins with the publication of the Annual Growth Survey, in which the Commission sets out the key economic policy priorities for the year to come. EU leaders consider the report in March and agree on a common direction for fiscal and structural policies as well as financial sector issues. In April, Member States report to the Commission on the specific policies they are implementing and intend to adopt in order to boost growth and jobs, prevent or correct macroeconomic imbalances, and the concrete measures they plan to ensure compliance with the EU's fiscal rules. The Commission then assesses the plans of the Member States and makes a series of country-specific recommendations to each of them. These policy recommendations are discussed between Member States' Ministers in June, endorsed by EU leaders in July, and incorporated by governments into their national budgets and other reform plans during the National Semester. See http://ec.europa.eu/economy_finance/economic_governance/the_european_semester/index_en.htm.

124 The Eurogroup is an informal body that brings together the finance ministers of countries whose currency is the euro.

did not ensure democratic legitimacy for EU decisions. That, according to the Commission, would require a parliamentary assembly representatively composed in which votes can be taken. It emphasised that the European Parliament, and only the European Parliament, is that assembly for the EU and hence for the euro.

A democratic deficit?

150. Several of the witnesses to our 'Genuine Economic and Monetary Union' inquiry warned of a growing democratic deficit in the wake of the financial crisis,[125] and suggested that this deficit manifested itself in two specific ways.

151. The first was a lack of democratic consent for the so-called 'austerity agenda' being implemented across much of the EU periphery, and a lack of support in creditor states such as Germany for some of the solutions put forward, such as debt mutualisation. The political instability seen in many Member States in recent years is a testament to such tensions. Nigel Farage MEP, leader of the UK Independence Party (UKIP), questioned whether democracy could survive the policy of internal devaluation being imposed on the likes of Spain and Greece.[126] Professor Otmar Issing, Centre for Financial Studies, Goethe University, warned that any steps towards debt mutualisation without commensurate democratic legitimacy risked undermining the principle of "no taxation without representation".[127]

152. Such tensions were particularly apparent in the context of new tools for EU economic surveillance, notably the European Semester. Sharon Bowles MEP, Chair of the European Parliament Economic and Monetary Affairs (ECON) Committee, acknowledged that the European Semester was a sensitive issue, noting that the Commission often examined national budgets before national parliaments, leading to a sense of disempowerment.[128]

153. Dr Daniela Schwarzer, Senior Associate, German Institute for International and Security Affairs (SWP), warned that the current economic surveillance framework was too technocratic, lacked legitimacy, and made "a very left policy impossible for a member state". She concluded that "the attempt to depoliticise economic policymaking is not compatible with the way national democracies should work".[129]

154. The second problem was the asymmetry between the growing power of supranational institutions such as the ECB, the Commission, the Eurogroup and the 'Troika'[130], and their lack of democratic accountability. Nigel Farage MEP argued that the roles of eurozone national parliaments in deciding and approving national budgets were being eroded by Genuine Economic and

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125 Evidence to the Genuine Economic and Monetary Union inquiry. See Professor Rosa Lastra; Elisa Ferreira MEP, Q 159. All references to written and oral evidence in Chapter 6 of this report are to the evidence collected for the Genuine Economic and Monetary Union inquiry. This evidence is available at the webpage of the Sub-Committee on Economic and Financial Affairs, www.parliament.uk/hleua.

126 Nigel Farage MEP.

127 Q 299.

128 Q 210.

129 Q 240.

130 In this context the 'Troika' comprises the Commission, ECB and IMF. Collectively they have been responsible for negotiations with indebted Member States on policies that are needed to put their economies back on the path of sustainable economic growth and job creation. Note that a very different 'Troika' is cited in relation to COSAC in Chapter 5 of this report (Box 4 and paragraph 119).

Monetary Union, "with control being drawn to EU institutions which are further removed from the citizen and have accordingly less democratic legitimacy".[131]

155. Professor Willem Buiter, Chief Economist, Citigroup, told us that he had "a major problem with the growing role of institutions such as the European Commission and the European Central Bank, which basically are run by unelected technocrats without political legitimacy", adding that "there has been, and there promises to be in the next few years, a major increase in the power of these institutions without any commensurate increase in their accountability to the electorate".[132] The European Parliament's ECON Committee has been engaged in a major piece of work examining the role of the 'Troika', noting that many citizens of the EU sense a lack of accountability and transparency in its working methods.[133]

156. Our witnesses were sceptical as to whether the 'Genuine Economic and Monetary Union' proposals, at least those envisaged in the short-term, could provide a solution. Katinka Barysch, Deputy Director, Centre for European Reform, cautioned against the idea that the EU's democratic deficit could be closed through a "quick institutional fix" to what is a "very, very deep political problem". She did not think that "the people in Europe will start loving Europe again if the European Parliament has a debate on the Commission's annual growth survey ahead of the European semester".[134]

Providing democratic consent: the role of national parliaments

157. Several of our witnesses stressed that the role of national parliaments needed to be enhanced if democratic legitimacy was to be restored. Sir Nigel Wicks cited the Commission Blueprint's acknowledgement of the role of national parliaments, but said that "when you read the rest of the document you see that it forgets that statement. It is a centralising document … I am not criticising the European Parliament, which in many ways is a very effective scrutiniser of legislation. … But this issue of consent comes from national parliaments rather than the European Parliament".[135]

158. Mats Persson, Director, Open Europe, agreed that "national parliaments simply have to be involved to a much greater extent … prior to decisions being made". This would prevent a repeat of the "ridiculous situation" in recent years, "where EU leaders agree to something during a panic-stricken weekend and then they spend months, or even years … to try to figure out what they actually agreed, because their national parliaments have uncomfortable questions".[136]

159. In a speech to the Vilnius COSAC in October 2013 Eva Kjer Hansen, Danish Folketing, stated that, while "both the European Parliament and national parliaments must play a leading role", it was essential for national

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131 Nigel Farage MEP.

132 Q 57.

133 See www.europarl.europa.eu/committees/en/econ/subject-files.html?id=20140114CDT77303#menuzone

134 Q 15.

135 Q 186

136 Q 15.

parliaments to be fully involved in the EU's democratic framework for economic governance.[137]

160. On the other hand, Graham Bishop argued that "the starting point has to be the European Parliament … we have a parliament that works. … It needs to work better and be seen by the citizens, the voters, as more relevant." He said that the only practical way in which the ECB could be accountable was for the ECB President to go to Brussels and appear before the ECON Committee. The idea that he could go around 28 different countries was not realistic. National Parliaments had a key role to play, but in terms of holding their own executive to account.[138]

161. Sharon Bowles MEP stressed that the European Parliament was seeking to keep national Parliaments as involved as possible in the evolving system of economic governance. On the Blueprint's proposal for a European Parliament euro committee, Mrs Bowles said that it was not easy to detach "eurozone only" issues from broader EU concerns. In addition, she pointed out that many non-eurozone Member States possessed considerable expertise.[139] Syed Kamall MEP predicted that there would be an attempt to appoint such a Committee in the new parliamentary term. He was concerned that this would set an unhelpful precedent.[140] Of course, any such move would have significant consequences for non-eurozone Member States such as the UK.

162. In early February 2014 it was reported that the European Parliament was considering options for enhancing euro area governance after the 2014 elections, including increasing the resources available to the ECON Committee, or forming a Sub-Committee to scrutinise EMU matters. For the Sub-Committee option, it was reported that it would be left to the political groups whether or not to restrict membership to MEPs from euro area Member States.[141]

Conclusions

163. **The political and economic reforms required in the wake of the eurozone crisis have challenged the EU's democratic framework. The Commission asserts that "accountability should be ensured at that level where the respective executive decision is taken, whilst taking due account of the level where the decision has an impact".[142] Given the dramatic consequences of the crisis on the lives of ordinary citizens across the EU, this is over-simplistic and unrealistic.**

164. **An asymmetry has developed between the growing powers of key institutions such as the Commission, the ECB, the Eurogroup and the 'Troika', and the ability of citizens to hold them to account for their actions. As political tensions across the EU testify, a serious**

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137 Speech by Eva Kjer Hansen, COSAC Conference held in Vilnius, 29 October 2013. Transcript available from www.cosac.eu.

138 Q 33. See also Roger Helmer, Q 210.

139 Q 210.

140 Q 212.

141 www.euractiv.com (5 February 2014), "UK Conservatives balk at plans for Eurozone parliament".

142 COM(2012) 777 final: A Blueprint for a Deep and Genuine Economic and Monetary Union: Launching a European Debate.

democratic deficit now exists. The European Parliament has a vital role to play in holding EU institutions to account.

165. **The proposal for a euro area Sub-Committee of the European Parliament would have significant negative consequences. First, it could undermine the unified structure of the European Parliament. Second, it risks losing the perspective and expertise of parliamentarians from outside the eurozone. Third, it risks exacerbating divisions between eurozone and non-eurozone Member States, with the concomitant danger that those in one group propose policies that are not in the interests of those in the other. This is of particular concern for the UK.**

166. **While the European Parliament does have a key role to play, the principle of democratic accountability can only be upheld if national parliaments also have an enhanced role. We are therefore extremely concerned at how little emphasis is placed on the role of national parliaments in the EU institutions' proposals for 'Genuine Economic and Monetary Union'.**

167. **While we welcome moves towards greater inter-parliamentary co-operation between the European Parliament and national parliaments, they are not enough. National parliaments must have more effective purchase on the steps towards enhanced economic surveillance, as encapsulated in the European Semester. This is an essential element of the key role of national parliaments in scrutinising the economic and financial policies of their national governments. Means must be found to ensure that EU institutions are accountable not only to the European Parliament but also to national parliaments, in particular when such significant decisions about their future are being taken. Further steps towards greater eurozone integration are likely to follow in the years to come. Unless steps are taken to strengthen national parliaments' role in oversight of such developments, the democratic foundations of the EU could be undermined.**

CHAPTER 7: SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Chapter 1: Introduction

168. This report is intended as a contribution to an important and ongoing debate. Because of this, in several places we put forward a range of practical options which could improve the involvement of national parliaments in the scrutiny, formulation and implementation of EU policies, for further consideration by national parliaments and others, rather than presenting a definitive blueprint for change. We look forward to continuing this debate with Members of other parliaments, representatives of the EU institutions, and others. (Paragraph 15)

169. In the context of our own chamber we consider that this report raises important questions about the effective scrutiny of EU matters, and so we make this report to the House for debate. (Paragraph 16)

170. Treaty change is not necessary to enhance the role of national parliaments in the EU: substantial improvements can, and should, be achieved without treaty change. To a significant degree it is a matter for the will of parliamentarians to insist on securing substantial and lasting changes, and of their governments to give effect to that will. Important improvements could be achieved through the autonomous action of national parliaments, and through actions collectively agreed between the national parliaments, the Commission, the Council and the European Parliament where relevant. This report sets out options for reforms which could be pursued in such agreements. (Paragraph 19)

171. Even in these difficult economic circumstances it is important that national parliaments, including that of the UK, ensure that sufficient resources are devoted not only to effective scrutiny but also to other aspects of their involvement with the European institutions and each other. Expenditure on improving EU legislation through scrutiny is seldom wasted. (Paragraph 20)

Chapter 2: National scrutiny

Effective national scrutiny

172. Effective scrutiny by national parliaments of the activities of their own governments in the European Union is essential. It is fundamental to ensuring that there is accountability, and legitimacy, for the actions of the Union. It should be recognised as core business for every parliament. (Paragraph 21)

173. National scrutiny systems will inevitably vary according to the national context. Whatever system suits the national context, it is vital that national parliaments carefully scrutinise the EU activities of their national governments, in order to ensure that the positions of national Ministers are effectively examined, and that the Ministers who constitute the Council are held to account for their decisions. (Paragraph 23)

174. While each national parliamentary chamber is unique, we can nonetheless learn from each other. COSAC can be a very good forum for this learning. We cite two examples relating to our work in the House of Lords. First, we

have taken a cue from the Dutch Tweede Kamer, amongst others, and begun to use the Commission's annual work programmes more explicitly in examining the year ahead and publicly highlighting areas of particular interest. Second, this Committee also intends to follow practice in other parliaments and experiment with holding sessions with the UK Minister for Europe before European Councils, to feed into Government preparations, rather than holding them afterwards to discuss the conclusions reached. (Paragraph 24)

175. In addition, we continue to seek to improve our engagement with the Members of the House of Lords who are not currently serving on the EU committees. In this context, we observe that it is important that the whole House continues to scrutinise the EU activities of the UK Government, through debate, questioning and the scrutiny of legislation. As we have said, this is core business, not the preserve of a group of specialists. (Paragraph 25)

176. We are always willing to consider, with the Government and our colleagues in the Commons, improvements to the scrutiny process. In our day-to-day work scrutinising EU policies and the EU activities of the UK Government, it is essential that the Government consistently provide high quality and timely written information, in the form of explanatory memorandums on EU documents and correspondence, and that Ministers meet committees regularly. A good flow of information by government officials, including the UK Representation in Brussels (UKRep), is also crucial. The UK Government usually does this well and the current Minister for Europe, the Rt. Hon. David Lidington MP, has been an effective advocate for national parliamentary scrutiny. However, there are unacceptable variations in performance including in the quality of explanatory memorandums, particularly between departments, and we urge the Government to continue to focus on consistently supporting and engaging effectively with national parliamentary scrutiny of EU matters. (Paragraph 27)

Different systems

177. In our view, effective EU scrutiny systems are most likely to include elements of both examination of documents and direct discussions with Ministers (and other interested parties). Scrutiny of documents enables parliaments to engage early on with Commission consultations, and to propose precise changes to legislative proposals. Contact with Ministers allows direct exchanges of views, and allows Members to influence or control the government's position, or to challenge the government to explain and defend their view. (Paragraph 28)

178. It is important to involve a wide range of Members, and committees where possible, in the examination of European policies. Such policy expertise needs to be combined effectively with knowledge and understanding of EU policymaking processes and EU institutions. (Paragraph 30)

Practicalities of scrutiny work

179. It is often helpful if there is effective prioritisation, so that each national chamber and its committees concentrate on the policies which matter the most to it. (Paragraph 33)

180. Even when parliaments do prioritise consideration of the most important policies, it must be recognised that effective scrutiny is resource-intensive, in terms of Member time and staff time. (Paragraph 34)

181. Contributions by national parliaments must have, and must be seen to have, an influence on EU policy development and formulation. It is important that the Commission, Council and European Parliament make effective use of dialogue with national parliaments, and make clear where national parliaments have had an effect on the policymaking process. (Paragraph 35)

Chapter 3: Dialogue with the European Commission

Engagement between national parliaments and the Commission

182. In this chapter we make suggestions for possible improvements, which national parliaments may wish to take up in discussion with national governments and with the Commission. In summary these possible improvements, which are considered in greater detail below, are:

- the increased early involvement of national parliaments in the development of EU legislative proposals and other policies in advance of the Commission making formal communications and proposals for legislation;
- that the Commission should make clear when and how national parliaments have influenced the development of policies, by:
    - identifying national parliament contributions in summary reports on consultation exercises and in subsequent communications on the policy, including how the policy has been shaped or modified in response,
    - responding promptly to national parliament contributions under the general political dialogue, usually within three months,
    - using its annual report on relations with national parliaments to identify the impacts of national parliament engagement;
- that the new Commission should make a commitment that Commissioners and senior officials will meet committees of national parliaments as a core part of their duties;
- that a procedure should be developed to allow a group of national parliaments to make constructive policy or legislative suggestions (a 'Green Card'). (Paragraph 40)

Early engagement with policy proposals

183. The Committee supports effective early engagement by national parliaments in the development of EU legislative proposals and other policies. In this way, drawing on their diverse experience and expertise, national parliaments can make a distinctive contribution to the development of policy at an early stage, before considerable time and political capital has been invested in a particular idea, and before firm proposals have been drawn up which the Commission may then feel obliged to defend. (Paragraph 43)

184. The Commission must engage fully with the views put forward by national parliaments early on in the policymaking process, and must be seen to

engage fully with them by making clear when and how national parliaments have had a significant influence on the early development of policies. We note that if the Commission does not engage constructively and deal with concerns raised by national parliaments under the informal political dialogue, it becomes more likely that national parliaments will be forced to use the reasoned opinion procedure to ensure that their views are addressed in a more formal way. Put another way, the more that the Commission engages positively with the concerns of national parliaments as expressed in the political dialogue, the less likely it is that parliaments will feel compelled to issue reasoned opinions. (Paragraph 48)

185. When national parliaments engage upstream, and make contributions to consultations, their views should be identified and specifically addressed in a discrete section of the Commission's summary report on the consultation, including where appropriate how the proposal has been modified in response. National parliament contributions and the responses to them should also be identified in subsequent documentation relating to the proposal including impact assessments and communications accompanying legislative proposals. This will show that the views of national parliaments have been given appropriate consideration; and help national parliaments to continue to pursue key points. (Paragraph 49)

186. When national parliaments make contributions to the general political dialogue (not in response to specific consultation exercises), these contributions should receive a response within three months, clearly addressing the points made and, where appropriate, explaining how their views have been taken into account. (Paragraph 50)

187. The Commission should use its annual reports on relations with national parliaments to identify policy impacts of engagement by national parliaments, as well as simply outlining the number of interactions with the Commission. (Paragraph 51)

Direct contact with Commissioners and officials

188. The Commission which will be appointed in 2014 should make a commitment that its Commissioners and senior officials will be willing to meet committees of national parliaments as a core part of their duties, subject of course to practical limitations and without imposing an impossible burden. This must be a clear and firm commitment which binds the whole College: it is too important to be left to the whim of individual Commissioners. (Paragraph 54)

Making proposals: a Green Card?

189. In principle, we agree that there should be a way for a group of like-minded national parliaments to make constructive suggestions for EU policy initiatives, which may include reviewing existing legislation, complementing the existing 'Yellow Card' with a 'Green Card'. We note the concerns raised about intruding on the Commission's formal right of initiative, and we would envisage a 'Green Card' as recognising a right for a number of national parliaments working together to make constructive policy or legislative suggestions, including for the review or repeal of existing legislation, not creating a (legally more problematic) formal right for national parliaments to initiate legislation. (Paragraph 58)

190. A 'Green Card' agreement would need to include an undertaking by the Commission that it would consider such suggestions carefully, and either bring forward appropriate legislative or other proposals (or consult on them), or explain why it had decided not to take the requested action. (Paragraph 59)

Chapter 4: The Reasoned Opinion procedure

Overview

191. The reasoned opinion procedure can, and must, be made more effective. It is an important way in which national parliaments can contribute to the making of EU legislation; and can thereby enhance the quality and legitimacy of that legislation. (Paragraph 67)

192. National parliaments working together may wish to consider which particular changes they would like to see made to the operation of the reasoned opinion procedure. (Paragraph 69)

193. The key elements of the procedure, including its scope, the deadlines, and the effect of a Yellow Card being issued, are set out in the EU Treaties and could only formally be changed through a revision to the Treaties. However, it would be possible for the Member States acting together in the Council, in co-operation with the European Commission, to agree a package of improvements. The parliaments, Council and Commission could undertake to operate the reasoned opinion procedure consistently with the agreed changes. (Paragraph 70)

194. These are some of the options for inclusion in an inter-institutional agreement to improve the operation of the reasoned opinion procedure:

- *scope*: including the proportionality principle within the procedure, and a check that an appropriate legal base is being used;
- *deadline*: extending the time period for reasoned opinions to be submitted, from 8 weeks, to 12 or 16 weeks;
- *Commission engagement*: improving the quality of the Commission's explanatory memorandums on subsidiarity and its engagement with reasoned opinions;
- *effect*: establishing that if a Yellow Card is triggered the Commission will either withdraw or substantially amend the proposal;
- *threshold*: considering whether the threshold for triggering a Yellow Card should be lowered;
- *timing*: considering whether the reasoned opinion procedure might somehow remain open, or be re-engaged, later in the legislative procedure. (Paragraph 71)

Scope

195. While there may be a useful role for COSAC in sharing practical experience in how to conduct subsidiarity assessments and how to prepare an effective reasoned opinion, we do not think that it would be sensible to attempt a more precise definition of the subsidiarity principle than the definition that is already set out in the EU Treaties. (Paragraph 74)

196. Witnesses have made a strong case that the reasoned opinion procedure should be extended to include the principle of proportionality. There is also a strong case that the procedure should encompass whether the proposal is brought forward under an appropriate legal base. We support both of these suggestions. (Paragraph 79)

Deadline

197. We consider that the time limit within which national parliaments can issue a reasoned opinion should be extended, to 12 or 16 weeks. (Paragraph 84)

Commission engagement

198. It is the responsibility of the Commission to provide a clear explanation of why it considers that a proposal complies with the principles of subsidiarity and proportionality. In the absence of a comprehensive and convincing assessment by the Commission, it is appropriate for a national parliament to come to the conclusion that it has not been proven that a proposal complies with the subsidiarity principle. (Paragraph 86)

199. Every reasoned opinion merits a reasoned response. When a reasoned opinion is issued by a national parliament, whether or not a Yellow Card is triggered, that opinion should be seriously considered by the Commission, and a response should be prepared which addresses the concerns raised in that reasoned opinion, in a timely manner. (Paragraph 88)

200. The Committee does not consider it appropriate for the Commission to assume the sole responsibility for deciding what arguments do, or do not, come within the ambit of the subsidiarity principle. There should be dialogue between national parliaments and the Commission, to determine appropriate guidelines for the Commission to respond to reasoned opinions, whether or not a Yellow Card has been issued. (Paragraph 90)

Effect

201. The Committee considers that the Commission should make an undertaking that, when a Yellow Card is issued, it will either drop the proposal in question, or substantially amend it in order to meet the concerns expressed. (Paragraph 95)

Threshold

202. The suggestion that the threshold for triggering a Yellow Card should be reviewed deserves further consideration. (Paragraph 96)

Timing

203. The suggestion that the reasoned opinion procedure might remain open, or be re-engaged at some later point, deserves further consideration. (Paragraph 98)

Another aspect of the legislative procedure: first reading deals

204. It is vital that national parliaments should have a recognised opportunity for their voices to be heard during the later stages of legislative negotiations, particularly when those negotiations result in major changes to draft legislation. We suggest that the Council consider making a commitment that, if a legislative proposal is significantly altered during its consideration by the

co-legislators, the Council will allow sufficient time, and no less than 12 weeks, for each national parliament to scrutinise the new or significantly altered elements of the proposal. This would be a logical development of the role of national parliaments in EU policymaking and without such a commitment there will remain a fundamental gap in the legislative process. (Paragraph 101)

Chapter 5: Inter-parliamentary co-operation

Co-operation with the European Parliament

205. National parliaments and the European Parliament have a vital, and complementary, role to play in the European Union. It is not a 'zero sum' game: greater involvement for one should not be at the expense of the other. (Paragraph 108)

206. There is scope for national parliaments and the European Parliament to engage more effectively with each other, sharing information and debating key policies. Several witnesses to our inquiry made useful suggestions as to how this might be done:

- there could be more direct contact between committees of national parliaments and committees of the European Parliament;
- when national parliaments or their committees have a close interest in a particular legislative proposal, they should be encouraged to contact the relevant rapporteur and shadow rapporteur on the responsible committee of the European Parliament;
- national parliaments and the European Parliament could reach agreement that EP rapporteurs could provide informal briefings to Members of national parliaments on the progress of trilogue negotiations;
- videoconferencing could be used to facilitate discussions between committees;
- a brief overview of comments by national parliaments might be included in reports prepared by European Parliament Committees. (Paragraph 109)

207. Where it is practical and mutually useful, national parliaments and the European Parliament should enhance their co-operation and sharing of information, perhaps on the basis of discussions on these ideas and others at the Conference of Parliamentary Committees for EU Affairs (COSAC). (Paragraph 110)

Forms of inter-parliamentary co-operation

208. It is vital that Members of the parliaments of the European Union establish the habit of co-operation on European matters. Communication between Members of national parliaments, and between Members of national parliaments and the European Parliament, is essential, to share information, to debate policies, and to reach common understandings. However, it must be recognised that parliamentarians have a limited amount of time, and conferences must offer clear 'added value' in order for Members to be able to prioritise participation at them. In the view of this Committee, the number of

inter-parliamentary conferences must be kept within reasonable limits and where it is appropriate we should be willing to rationalise the conference framework. We must ensure that conferences have clear and well managed agendas; that they have clear intended outcomes; and above all that they encourage wide participation and lively debate as opposed to long set-piece speeches. (Paragraph 114)

COSAC

209. Ideas which might be considered for changes to COSAC's procedures include:

- a reduction in the number and length of general reports from the Presidency and the Commission, allowing plenty of scope for contributions from delegates;
- agendas which feature well focused and specific topics for debate, perhaps including a topical debate;
- appointing a longer-term chair of COSAC (following the example of the European Council);
- ad hoc working groups (working remotely) to prepare discussion papers, or to take forward agreed conclusions;
- a standing group of representatives of EU affairs committees;
- the President of the European Council attending COSAC once per year. (Paragraph 119)

210. The issue of resources for COSAC may also need to be considered and the small COSAC secretariat increased, particularly if its procedures are to be changed in some way, as suggested in the previous paragraph. (Paragraph 120)

211. COSAC can disseminate good practices and procedures that might be useful for other parliaments. COSAC's biannual reports and informal presentations by Members of national parliaments are two existing ways in which this dissemination of good practice can be achieved. COSAC might wish to consider whether an informal panel of experienced Members of COSAC from a range of different Member States and scrutiny systems might be willing to offer advice to national parliaments on their scrutiny of EU matters. The staff of European affairs committees of national parliaments can also share practical experience and information about their procedures, to help them support effective European scrutiny work by their committees. (Paragraph 121)

Inter-parliamentary conference on economic and financial governance

212. Inter-parliamentary co-operation on all matters, including on economic and financial matters, must continue to involve all 28 Member States. (Paragraph 125)

Direct contact between parliamentarians

213. It is important that Members of national parliaments forge their own contacts with Members of other parliaments, including of course the European Parliament. Particularly once good working relationships have

been established, teleconferencing, videoconferencing and electronic communications should be used to full advantage, for quick exchanges of information and opinion. (Paragraph 135)

IPEX (Inter-parliamentary EU Information Exchange website)

214. It is important that the IPEX platform is easy to use, and that national parliaments upload information consistently and promptly. We note the potential burden that translating all parliamentary documents uploaded onto IPEX might place on national parliaments, and we suggest that the IPEX Board consider whether a technological solution, such as automated translations, might be implemented in the future. (Paragraph 141)

Chapter 6: Economic and financial governance

215. The political and economic reforms required in the wake of the eurozone crisis have challenged the EU's democratic framework. The Commission asserts that "accountability should be ensured at that level where the respective executive decision is taken, whilst taking due account of the level where the decision has an impact". Given the dramatic consequences of the crisis on the lives of ordinary citizens across the EU, this is over-simplistic and unrealistic. (Paragraph 163)

216. An asymmetry has developed between the growing powers of key institutions such as the Commission, the ECB, the Eurogroup and the 'Troika', and the ability of citizens to hold them to account for their actions. As political tensions across the EU testify, a serious democratic deficit now exists. The European Parliament has a vital role to play in holding EU institutions to account. (Paragraph 164)

217. The proposal for a euro area Sub-Committee of the European Parliament would have significant negative consequences. First, it could undermine the unified structure of the European Parliament. Second, it risks losing the perspective and expertise of parliamentarians from outside the eurozone. Third, it risks exacerbating divisions between eurozone and non-eurozone Member States, with the concomitant danger that those in one group propose policies that are not in the interests of those in the other. This is of particular concern for the UK. (Paragraph 165)

218. While the European Parliament does have a key role to play, the principle of democratic accountability can only be upheld if national parliaments also have an enhanced role. We are therefore extremely concerned at how little emphasis is placed on the role of national parliaments in the EU institutions' proposals for 'Genuine Economic and Monetary Union'. (Paragraph 166)

219. While we welcome moves towards greater inter-parliamentary co-operation between the European Parliament and national parliaments, they are not enough. National parliaments must have more effective purchase on the steps towards enhanced economic surveillance, as encapsulated in the European Semester. This is an essential element of the key role of national parliaments in scrutinising the economic and financial policies of their national governments. Means must be found to ensure that EU institutions are accountable not only to the European Parliament but also to national parliaments, in particular when such significant decisions about their future are being taken. Further steps towards greater eurozone integration are likely to follow in the years to come. Unless steps are taken to strengthen national

parliaments' role in oversight of such developments, the democratic foundations of the EU could be undermined. (Paragraph 167)

APPENDIX 1: LIST OF MEMBERS AND DECLARATION OF INTERESTS

The Members of the Committee who conducted this inquiry were:

Lord Boswell of Aynho (Chairman)
Lord Bowness
Lord Cameron of Dillington
Lord Carter of Coles†
Baroness Corston
Lord Dear
Baroness Eccles of Moulton
Lord Foulkes of Cumnock
Lord Hannay of Chiswick
Lord Harrison
Lord Maclennan of Rogart
Lord Marlesford
Baroness O'Cathain
Baroness Parminter
Baroness Quin†
The Earl of Sandwich
Baroness Scott of Needham Market
Lord Tomlinson
Lord Tugendhat
Baroness Young of Hornsey*
Lord Wilson of Tillyorn*

† Lord Carter of Coles left the Committee in December 2013 and Baroness Quin joined the Committee.

* Baroness Young of Hornsey left the Committee in October 2013 and Lord Wilson of Tillyorn joined the Committee.

Declaration of Interests

Lord Boswell of Aynho (Chairman)
Salaried Officer of the House of Lords (details in Register)
Income is received as a Partner (with wife) from land and family farming business trading as EN & TE Boswell at Lower Aynho grounds, Banbury, with separate rentals from cottages and grazing

Lord Bowness
None relevant

Lord Cameron of Dillington
Farmer in receipt of the single farm payment

Baroness Corston
None relevant

Lord Dear
None relevant

Baroness Eccles of Moulton
None relevant

Lord Foulkes of Cumnock
None relevant

Lord Hannay of Chiswick
Member, Advisory Board, Centre for European Reform
Member, British Influence's Forum for the Future of Europe

Lord Harrison
None relevant

Lord Maclennan of Rogart
None relevant

Lord Marlesford
Farmer in receipt of monies from the Common Agricultural Policy

Baroness O'Cathain
None relevant

Baroness Parminter
None relevant

Baroness Quin
Vice-President of the European Movement (unpaid, honorary position)

The Earl of Sandwich
None relevant

Baroness Scott of Needham Market
None relevant

Lord Tomlinson
None relevant

Lord Tugendhat
None relevant

Lord Wilson of Tillyorn
None relevant

A full list of registered interests of Members of the House of Lords can be found at http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at http://www.parliament.uk/hleu and available for inspection at the Parliamentary Archives (020 7219 5314).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with * gave both oral evidence and written evidence. Those marked with ** gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

**	QQ 1–16	Charles Grant, Director, Centre for European Reform
**		Mats Persson, Director, Open Europe
*	QQ 18–33	Professor Adam Cygan, University of Leicester
**		Professor Simon Hix, London School of Economics and Political Science
*		Dr Julie Smith, Senior Lecturer, University of Cambridge
**	QQ 34–50	Eva Kjer Hansen, Chair, European Affairs Committee, Folketing, Denmark
**		Averof Neofytou, Chairman, Committee on Foreign and European Affairs, House of Representatives, Cyprus
**	QQ 51–58	Andrzej Gałażewski, Vice Chairman of European Union Affairs Committee, Sejm, Poland
**	QQ 59–75	René Leegte, Deputy Chair of the European Affairs Committee, Tweede Kamer de Staten-General (The Dutch House of Representatives), The Netherlands
**	QQ 68–75	Dominic Hannigan TD, Chairman, Committee on European Union Affairs, Houses of the Oireachtas (Irish Parliament), Ireland
*	QQ 76–88	Dr Richard Corbett, Member of the Cabinet of the President, European Council
*	QQ 89–99	Maroš Šefčovič, Vice-President of the European Commission
**	QQ 100–114	Andrew Duff MEP
**	QQ 115–124	Ashley Fox MEP
**	QQ 125–136	Miguel Angel Martínez Martínez MEP, Vice-President, European Parliament
**		Carlo Casini MEP, Chair of the Constitutional Affairs Committee, European Parliament
**	QQ 137–141	Thierry Repentin, Minister for European Affairs, French Government

*	QQ 142–146	Simon Sutour, President of the European Affairs Committee, André Gattolin, Richard Yung, Éric Bocquet, Catherine Tasca, Joëlle Garriaud-Maylam, and Collette Mélot, Members of the European Affairs Committee, French Sénat, France
*	QQ 147–157	Rt. Hon. David Lidington MP, Minister of State for Europe at the Foreign and Commonwealth Office

Alphabetical list of all witnesses

Dr Gavin Barrett, University College Dublin

Professor Dr iur Hermann-Josef Blanke, University of Erfurt, Germany

Mladen Cherveniakov, Chairman of the Committee on European Affairs and Oversight of the European Funds, National Assembly of Bulgaria

** Carlo Casini MEP, Chair of the Constitutional Affairs Committee, European Parliament (QQ 125–136)

Sonia Piedrafita, Centre for European Policy Studies (CEPS)

** Charles Grant, Director, Centre for European Reform (QQ 1–17)

Dr iur Patricia Conlan, Member, Institute for the Study of Knowledge in Society, University of Limerick, Ireland

Dr Ian Cooper, University of Oslo

* Dr Richard Corbett, Member of the Cabinet of the President, European Council (QQ 76–88)

Ben Crum, Vrije Universiteit Amsterdam and John Erik Fossum, University of Oslo

* Professor Adam Cygan, University of Leicester

** Averof Neofytou, Chairman, Committee on Foreign and European Affairs, House of Representatives, Cyprus (QQ 34–50)

Miroslav Krejča, Chairman of the Committee on European Affairs, The Senáte, Parliament of Czech Republic

** Eva Kjer Hansen, Chair, European Affairs Committee, Folketing, Denmark (QQ 34–50)

** Andrew Duff MEP (QQ 100–114)

Arto Aas, Chair, European Union Affairs Committee, Riigikogu, Estonia

Eduskunta, Parliament of Finland

Foreign Affairs Committee and European Affairs Committee Chairs and Members, Assemblée Nationale of France

* Simon Sutour, President of the European Affairs Committee, André Gattolin, Richard Yung, Éric Bocquet, Catherine Tasca, Joëlle Garriaud-Maylam and Collette Mélot, Members of the European Affairs Committee, Sénat, France (QQ 142–146)

** Ashley Fox MEP (QQ 115–124)

Katarzyna Granat, European University Institute (EUI), Italy

Professor Norbert Lammert, President of the Bundestag, Germany

Committee on European Affairs, Hellenic Parliament, Greece

Oskar Josef Gstrein and Darren Harvey

Claudia Hefftler, University of Cologne, Valentin Kreilinger, Jacques Delors Institute, Olivier Rozenberg, Centre d'études européennes, Sciences Po (Paris), and Wolfgang Wessels, University of Cologne

** Professor Simon Hix, London School of Economics and Political Science (QQ 18–33)

Dr Anna-Lena Högenauer, Maastricht University and Professor Christine Neuhold, on behalf of the OPAL research team Maastricht University

Julian M. Hörner, London School of Economics and Political Science

Dr Ariella Huff, University of Cambridge

Dr Joanne Hunt, Cardiff University

** Dominic Hannigan TD, Chairman, Committee on European Union Affairs, Houses of the Oireachtas (Irish Parliament), Ireland (QQ 68–75)

Camera dei Deputati, Italy

Heleen Jalvingh, UCL, School for Public Policy

Davor Jancic, London School of Economics and Political Science

Valentin Kreilinger, Jacques Delors Institute and Olivier Rozenberg, Centre d'études européennes, Sciences Po (Paris)

Saeima, Latvia

* The Rt. Hon. David Lidington MP, Minister for Europe, Foreign and Commonwealth Office (QQ 147–157)

Gediminas Kirkilas, Chair of the EU Affairs Committee, Seimas, Lithuania

Professor Stelio Mangiameli, University of Teramo

** Miguel Angel Martínez Martínez MEP, Vice-President, European Parliament (QQ 125–136)

** René Leegte, Deputy Chair of the European Affairs Committee, Tweede Kamer de Staten-General (The Dutch House of Representatives), The Netherlands (QQ 59–75)

** Mats Persson, Director, Open Europe (QQ 1–17)

Dr Eleni Panagiotarea

Asteris Pliakos

** Mr Andrzej Gałażewski, Vice Chairman of European Union Affairs Committee, Sejm, Poland (QQ 51–58)

Mr Edmund Wittbrodt, Chairman of the European Affairs Committee, Senat, Poland

** Thierry Repentin, Minister for European Affairs, French Government (QQ 137–141)

* Maroš Šefčovič, Vice President of the European Commission (QQ 89–99)

National Council of Slovenia

* Dr Julie Smith, Senior Lecturer, Cambridge University (QQ 18–33)

Thomas Larue, Committee Secretary, Committee on the Constitution, Riksdag, Sweden

APPENDIX 3: CALL FOR EVIDENCE

The House of Lords European Union Committee, under the Chairmanship of Lord Boswell, is conducting an inquiry into the current and possible future role of national parliaments in the EU framework. The Committee seeks evidence from anyone with an interest.

Background

The 2009 Lisbon Treaty sets out a formal role for national parliaments in the scrutiny of EU legislative proposals in relation to the concepts of subsidiarity and proportionality. Furthermore, national parliaments engage in the general development and scrutiny of EU legislation and policies, and hold their governments to account in various ways for their actions at EU level. These individual and interparliamentary efforts are aimed to enable national parliaments to "contribute actively to the good functioning of the Union".[143]

Over the past few years there has been a great deal of interest in the role of national parliaments in the EU, not least in the context of proposals for closer economic and monetary union. It has also been suggested that there is a "democratic deficit" in the EU that national parliaments could help to fill. This inquiry seeks to explore these issues further.

Written evidence is sought by **27 September 2013**. Public hearings will be held in the Autumn. The Committee aims to report, with recommendations, in 2014. The report will receive a response from the Government, and may be debated in the House.

The Committee seeks evidence on any aspect of this topic, and particularly on the following questions:

National parliaments in the EU framework

(1) Why should national parliaments have a role in the EU framework? What role should national parliaments play in a) shaping, and b) scrutinising, EU decision making? In answering this question you may wish to consider:

  (a) Is there widespread agreement on what this role should be?

  (b) Do national parliaments have access to sufficient information and the requisite influence at an EU level to play the role that you suggest? Whose responsibility is it to ensure that they have the information they need?

Formal role of national parliaments

(2) How is the formal role of national parliaments under the Treaties working in practice? In answering this question you may wish to consider:

  (a) What impact have the Maastricht, Amsterdam and Lisbon Treaties had on interactions between national parliaments and EU institutions?

[143] Article 12, Treaty on European Union.

(b) What is your assessment of the existing yellow and orange card procedures? Are national parliaments making good use of these?

(c) Is there a well-developed, common understanding of subsidiarity. If not, is there a need to develop one?

(d) How effectively is proportionality scrutinised by national parliaments?

(e) Should national parliaments have a greater, or different, role in the development and scrutiny of EU legislation?

Dialogue and scrutiny of EU policies

(3) What is your assessment of the level and quality of engagement between EU institutions and national parliaments, and between national parliaments? We invite you to offer specific examples. In answering this question you may wish to consider:

(a) What assessment do you make of the adequacy of the level of dialogue between the Commission and national parliaments regarding legislative proposals? What influence, if any, do national parliament opinions have on the legislative process?

(b) How effective is engagement between national parliaments and the European Parliament? Could it be improved?

(c) What effect are procedural trends, such as increased agreement on legislation at first reading, having on the ability of national parliaments to scrutinise EU decision making?

(d) What should be the role of COSAC (the Conference of Parliamentary Committees for Union Affairs)? Does it require any changes to make it more effective?

(e) What is your assessment of other mechanisms (such as Joint Parliamentary Meetings, Joint Committee Meetings and IPEX) for co-operation between national parliaments and EU institutions; and should any other mechanisms be established?

Capacity of national parliaments

(4) How effective are national parliaments at engaging with European affairs? In answering this question you may wish to consider:

(a) Are national parliamentarians sufficiently engaged with detailed European issues? Are national parliaments as effective at political dialogue with EU institutions as they are at holding their own governments to account?

(b) Can you give specific examples of Member States that are good at building co-operation and co-ordination between national parliaments? What do they do well? Should other countries learn lessons from this good practice?

(c) Is there political will, and resource, for increased interparliamentary co-operation?

(d) What role does the network of national parliament representatives in Brussels play? Should the network be further developed?

Other possible changes

(5) In what other ways should the role of national parliaments in the European Union be changed or enhanced? Which of these suggestions would require treaty change and which would not? In answering these questions you may wish to consider whether there are any specific policy areas (such as financial and economic policy) which are particularly relevant.

Issued on 22 July 2013

APPENDIX 4: EVOLUTION OF THE ROLE OF NATIONAL PARLIAMENTS

1. Recognition of the role of national parliaments in the European Union has evolved slowly in the treaties of the European Union, beginning with the Maastricht Treaty in 1992. It was only recently, with the Lisbon Treaty in 2009, that national parliaments were given specific functions affecting the governance of the European Union.

2. At the time of signature of the Maastricht Treaty (also known as the Treaty on European Union, TEU, in force since November 1993), the Member States made a declaration on the role of national parliaments. The declaration stated that "it is important to encourage greater involvement of national Parliaments in the activities of the European Union". It committed the Member States to ensuring that Commission proposals would be received by national parliaments with sufficient time to conduct scrutiny, and looked forward to an increase in contact between national parliaments and the European Parliament and for members of national parliaments to meet regularly to discuss issues of shared interest.

3. Also accompanying the Maastricht Treaty was a declaration on a Conference of Parliaments which required the President of the European Council and the President of the Commission to report on the state of the Union to each meeting of the Conference of Parliaments.

4. With the Amsterdam Treaty (which came in to force in May 1999) a protocol on the role of national parliaments was added to the EU Treaties. This imposed an obligation on the Commission to provide consultation documents and proposals for legislation to national parliaments and gave national parliaments a six week period within which to review proposals, before they were put on the agenda for discussion at Council meetings.

5. The second element of the protocol referred to the Conference of Parliamentary Committees for EU Affairs (COSAC), enabling it to make any contribution it thought fit for the attention of the EU Institutions and to examine any legislative proposal in the area of freedom, security and justice that may have direct bearing on the rights and freedoms of individuals and report its findings to the EU institutions. It enabled COSAC to make contributions to legislative activities being undertaken by the EU institutions based on the application of the subsidiarity principle, fundamental rights and in the area of freedom, security and justice.

6. The Lisbon Treaty (in force since December 2009) recognised the contribution of national parliaments to the good functioning of the European Union and gave them specific functions in the governance of the Union. The Treaty confirmed their right to information, and provided for their role in monitoring the application of the principle of subsidiarity and in evaluating EU policies in the area of freedom, security and justice policy. National parliaments were also given a role in the process for amending the Treaties and in the enlargement process.

7. National parliaments can now uphold the principle of subsidiarity, under Protocol 1 to the TEU, by submitting a reasoned opinion to the EU institution which instigated the proposal, if they believe that the proposal breaches the principle. If a third or more Member States' chambers submit a reasoned opinion (a threshold which falls to a quarter of chambers for

legislation in the field of co-operation in criminal matters) the proposal must be reviewed, and a decision taken if the proposal will be maintained, amended or withdrawn. This has become known as the 'reasoned opinion' or 'Yellow Card' procedure.

8. If over half of legislative chambers submit reasoned opinions on a proposal and the proposal is maintained by the Commission, either the Council (on a vote of 55% of Member States) or the European Parliament (by majority vote) can force it to be withdrawn.

APPENDIX 5: NOTE OF INFORMAL SESSION, VILNIUS COSAC, OCTOBER 2013

Members participating: Lord Boswell of Aynho (Chairman), Baroness Corston, and Lord Hannay of Chiswick.

In attendance: Jake Vaughan (Clerk to the Committee) and Dominique Gracia (House of Lords Representative to the EU).

In the margins of the L COSAC Plenary meeting, hosted by the Lithuanian Seimas, on 27–29 October, an informal 'round-table' was held. The session was open to all delegates attending the L COSAC. The aim of the 'round-table' was for delegates to exchange views about and share experiences of the role national parliaments play in shaping and scrutinising EU decision-making.

Mr Petras Auštrevičius, Deputy Speaker of the Lithuanian Seimas and Deputy Chair of the Committee on European Affairs, opened the meeting.

Lord Boswell of Aynho gave a short summary of the House of Lords EU Committee's inquiry to-date, thanking those around the table who had submitted written contributions and inviting anyone with an interest to consider doing so. He informed the delegates that all the contributions and evidence taken would be made available online. He said that his Committee was seeking to contribute to the ongoing debate about democratic legitimacy, not to conclude it.

Mr René Leegte, Vice-Chair of the EU Affairs Committee of the Dutch Tweede Kamer, welcomed this second informal session in the margins of COSAC, following the first one held in Dublin in June 2013. He raised the question of what meaning the yellow card mechanism had for the European Parliament (EP), and what influence the mechanism had over the EP's work. How were Reasoned Opinions (ROs) taken into account?

Mr Miguel Angel Martínez Martínez, Vice-President of the EP, said that, in his view, interparliamentary cooperation was not currently working as well as it could. There had been unnecessary and unproductive tensions, and practically no progress in establishing complementary mechanisms. He pointed to the role of national parliaments (NPs) in controlling and holding to account their own national governments in their activity as members of the European Council. As an example, he raised a section of the COSAC Contribution that welcomed the political-level agreement on the multiannual financial framework (MFF). He asked why there was no recognition there that the Council was responsible for delays in taking forward this agreement, and pointed out that the EP had no mechanism to ask NPs to scrutinise national governments for such actions. In his view, the current role of NPs in controlling national governments and scrutinising their actions in Council was extremely limited and insufficient, and he lamented that the EP had failed in setting out a routine mechanism for learning about what NPs were doing nationally to scrutinise governments' EU-level actions.

Ms Eva Kjer Hansen, Chair of the European Affairs Committee of the Danish Folketing, said that the yellow card mechanism clearly worked, as it had been triggered that very day (regarding the European Public Prosecutor's Office proposal).[144] This was a good sign, showing that NPs were using the mechanisms

[144] COM(2013) 534: *Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office*. The Reasoned Opinions issued can be viewed at http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20130534.do.

available, which was an important first step. She recalled a lengthy discussion with Vice-President Maroš Šefčovič regarding the right to ask inquiries of the Commission, and whilst NPs do have this right, they make little to no use of it. It was important that NPs used all the tools at their disposal, and also that they reflected on how they wanted these tools to develop in the future.

Mr Christopher Fearne, Chairman of the Standing Committee on Foreign and European Affairs in the Maltese House of Representatives, remarked that NPs were of primary importance to citizens. In his view, there were a number of issues to address regarding EU power structures and decision-making, and interparliamentary groups should be leading the way. Unless parliaments were proactive, the vacuum would be filled by some other structure. He also remarked on the usefulness of the 'cluster' meeting held in Copenhagen, Denmark, on the free movement of workers.[145]

Lord Boswell of Aynho asked whether a small group of parliaments could collaborate in preparing a study on a specific policy area of shared interest. For example, in the COSAC plenary, Mr Herman De Croo had suggested a topic for a future COSAC debate; could parliaments prepare a joint paper to be tabled before COSAC in order to inform that work? **Mr Herman De Croo**, Member of the House of Representatives of Belgium, welcomed this suggestion.

Mr Paulo Mota Pinto, Chairman of the European Affairs Committee in the Assembly of the Republic of Portugal, called for greater distinctions between the mechanisms available for influence. Controlling governments was one mechanism, but there were many others. He called for more detailed responses to ROs. He agreed with Ms Kjer Hansen that NPs were not yet using all possible mechanisms to their full extent, highlighting the importance of a steady and prompt flow of information between parliaments, for example, regarding ROs.

Ms Tineke Strik, Chair of the Standing Committee for European Affairs in the Dutch Eerste Kamer, agreed that information sharing was crucial, referring to the Dutch Parliament's efforts to gain access to the Council's extranet database.[146] When negotiating with the Dutch government, responses to a COSAC questionnaire[147] indicating the types of information received by other NPs, was influential. She pointed to the need for NPs to be discriminating in the way they prioritise the information they already received, in order to make best use of it. She also remarked on the possible difficulties for NPs in taking a line contrary to their national government, given that many national governments have parliamentary majorities. However, there was scope for NPs to cooperate along party lines, politicising scrutiny of national governments. Ms Strik also commented on the dialogue between the NPs and the European Commission, asking Vice-President Šefčovič for his view on the importance or relevance of Commission responses to opinions, given that once proposals are published they are on the negotiating table and primarily in the hands of the co-legislators.

Mr De Croo commented on the relative power of institutions and how this could be measured. Whilst this was difficult, the number of lobbyists surrounding the EP indicated that there was a lot of power there. He remarked that, for NPs, there was

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[145] This meeting on free movement and national welfare systems was held in Copenhagen on 21 October 2013.

[146] This database, run by the Council of the European Union, contains papers relating to Council meetings, including limité documents.

[147] This questionnaire fed into the 17th Bi-annual Report, available at http://www.cosac.eu/documents/bi-annual-reports-of-cosac/.

an element of hypocrisy in claiming to have power and control, even when it may not be strictly true, in order to encourage citizens to vote in national elections.

Vice-President Šefčovič, Commissioner for Inter-Institutional Relations and Administration, responded to some of the points that had been raised. He noted that the Commission often receives conflicting contributions from different parliaments, even from those with parliamentary majorities of the same political family. This makes it challenging to know how to proceed in response to NPs' contributions as a whole. Thanks to changes to internal systems, the Commission should be able to make higher quality responses to contributions in future, and to do so within three months.

He responded to Ms Strik's question, saying it was important for the Commission to have information about NPs' views. This information formed an important part of the briefing for Commissioners going into negotiations in Council and Parliament, and ultimately in trilogues. He also advocated NPs submitting responses to public consultations run by the Commission, as NPs' opinions carried a great deal of weight. In the future, the Commission would inform NPs directly about public consultations and hearings, and in response to NPs' request, would send directly all the documents that were being sent to the Council.

Ms Maipetra Kumpula-Natri, Chair of the EU Affairs Committee in the Finnish Eduskunta, said that while the most important channel for the NPs to contribute to the legislative processes was through national ministers, it was also important for NPs to know about how EU proposals were being developed and where the ideas were coming from. It would be important to have those Commissioners and Commission civil servants who were responsible for a certain policy field to visit and speak to NPs—or to conduct video conferences—about policies being developed in their field.

Mr Edmund Wittbrodt, Chairman of the European Union Affairs Committee of the Polish Senate, highlighted the distinction between decisions taken by the executive and those taken by the legislature in terms of democratic legitimacy, and said a discussion was needed about whether decisions should be taken by the former or the latter.

Mr Michael Connarty, member of the European Scrutiny Committee of the UK House of Commons, argued that the yellow card mechanism had only had a minor impact, and was in fact a sop to NPs to persuade them to agree to the Lisbon Treaty. Post-Lisbon, the mechanisms of restructuring Europe had changed, and major changes were now being dictated by the response to the euro area crisis, giving the Commission greater power over euro 'ins'.

Lord Hannay of Chiswick, member of the EU Select Committee of the UK House of Lords and Chairman of the EU Sub-Committee on Home Affairs, Health and Education, disagreed with Mr Connarty, saying that the yellow card mechanism had had a slow start, but was now becoming stronger. He contrasted the eight weeks given to NPs to issue ROs with the unlimited time the Council had in which to negotiate a proposal. He also noted that the yellow card was only a negative power, setting NPs against the Commission and possibly also the EP, which often had a different view on subsidiarity to NPs. In order to have a more positive dialogue, there had to be more debate between national MPs and MEPs, as Mr Martínez Martínez had suggested. He noted that almost every inquiry conducted by the Lords EU Committee took evidence from MEPs. Lord Hannay also agreed with the suggestion from Vice-President Šefčovič that earlier engagement with policy formation was crucial.

Ms Kjer Hansen remarked on the outcome of the 'cluster' meeting held on free movement, which would be a letter to Commissioner László Andar. She said that the Commission's openness to direct contact from NPs was very welcome. She thanked Lord Boswell and the Lithuanian Presidency for organising the session and expressed the hope that there would be more such meetings in the future.

Mr Leegte commented briefly on the Tweede Kamer's experience in hearing Commissioners, using the example of discussing trade with China. He also referred to the Tweede Kamer's position paper, circulated earlier that day,[148] which called for the Commission to make a political commitment to give greater time for ROs to be submitted, and a lower threshold for triggering a 'yellow card' review. This would not require treaty change if the Commission would give a political commitment and act accordingly.

[148] This paper is available online on the Tweede Kamer website at http://www.tweedekamer.nl/images/Brochure_Democratic_Legitimacy_in_the_EU_181-237266.pdf.

APPENDIX 6: WRITTEN CONTRIBUTIONS AND REASONED OPINIONS BY NATIONAL PARLIAMENTS

This table shows:

(a) the total number of written opinions submitted by national parliaments and chambers in each of 2010, 2011 and 2012. These totals include written contributions under the Barroso initiative, and reasoned opinions submitted under Protocol 2. At the time of publication figures were not available for the total number of written opinions submitted in 2013.

(b) the number of reasoned opinions submitted by national parliaments and chambers in each of 2010, 2011, 2012 and 2013.

These figures should be taken as an approximate guide only. Different documents can give different figures, for example depending on whether a reasoned opinion relating to two proposals counts as one or two opinions.

		2010[149]		**2011**[150]		**2012**[151]		**2013**[152]
		(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	(b) Reasoned opinions
Austria	Bundesrat	13	2	3	1	12	3	6
	Nationalrat	12	1	7	0	3	1	0
Belgium	Chambre des Représentants	1	0	4	1	9	3	1
	Sénat	0	0	2	1	0	0	1
Bulgaria	Narodno Sabranie	0	0	19	2	13	0	0

[149] Figures taken from Annual Report 2010 on relations between the European Commission and National Parliaments (COM(2011) 345 final)

[150] Figures taken from Annual Report 2011 on relations between the European Commission and National Parliaments (COM(2012) 375 final)

[151] Figures taken from Annual Report 2012 on relations between the European Commission and National Parliaments (COM(2013) 565 final)

[152] Figures taken from the Written report on the work of IPEX in 2013, available on www.ipex.eu.

		2010[149]		**2011**[150]		**2012**[151]		**2013**[152]
		(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	(b) Reasoned opinions
Croatia[153]	Croatian Parliament	—	—	—	—	—	—	0
Cyprus	Vouli ton Antiproposon	1	0	1	1	2	1	1
Czech Republic	Poslanecká sněmovna	3	1	5	0	10	0	0
	Senát	29	1	43	0	46	0	2
Germany	Bundesrat	23	1	33	1	59	5	3
	Bundestag	6	1	6	1	2	1	0
Denmark	Folketing	11	2	14	1	8	3	1
Spain	Cortes Generales (both Chambers)	4	0	2	2	7	2	5
Estonia	Riigikogu	0	0	0	0	2	0	1
France	Assemblée Nationale	0	0	2	1	0	0	1
	Sénat	3	3	4	1	19	7	4

[153] Croatia formally joined the EU on 1 July 2013.

		2010[149]		**2011**[150]		**2012**[151]		**2013**[152]
		(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	(b) Reasoned opinions
Greece	Vouli ton Ellinon	4	0	4	0	6	0	2
Hungary	Országgyűlés	0	0	0	0	0	0	1
Ireland	Dail Eireann	0	0	1	1	0	0	0
	Oireachtas (both Chambers)	3	0	0	0	7	0	3
Italy	Camera dei Deputati	25	0	28	2	15	0	1
	Senato della Repubblica	71	1	76	3	96	1	1
Lithuania	Seimas	4	2	4	0	1	1	6
Luxembourg	Chambre des Députés	7	3	14	7	6	3	3
Latvia	Saeima	1	0	1	0	1	1	1
Malta	Kamra tad-Deputati	0	0	2	2	2	1	5
Netherlands	Tweede Kamer	1	0	1	1	3	3	6
	Eerste Kamer	3	0	6	0	7	2	4
	Both Chambers	2	2	3	2	1	1	0

		2010[149]		**2011**[150]		**2012**[151]		**2013**[152]
		(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	(a) Total number of opinions	(b) Reasoned opinions	(b) Reasoned opinions
Poland	Sejm	2	2	5	5	3	3	2
	Senat	5	4	4	4	11	1	1
Portugal	Assembleia da Republica	106	0	184	1	227	1	1
Romania	Camera Deputatilor	0	0	40	2	26	0	3
	Senatul	9	0	33	2	2	0	3
	Both Chambers	2	0	1	1	0	0	0
Suomi Finland	Eduskunta	1	0	2	1	1	1	1
Slovakia	Národná rada	0	0	2	2	1	1	0
Slovenia	Državni zbor	0	0	0	0	0	0	1
	Državni svet	0	0	0	0	0	0	0
Sweden	Riksdag	20	3	42	11	33	20	14
United Kingdom	House of Commons	3	3	8	3	6	3	4
	House of Lords	12	2	16	1	16	1	3
TOTAL		**387**	**34**	**622**	**64**	**663**	**70**	**92**

APPENDIX 7: GLOSSARY AND LIST OF ACRONYMS

AFCO Committee	Constitutional Affairs Committee of the European Parliament.
CFSP	The European Union's Common Foreign and Security Policy.
COSAC	Conference of Parliamentary Committees for EU Affairs. Box 4 provides further information.
CSDP	The European Union's Common Security and Defence Policy: a key component of the CFSP.
CSR	Country Specific Recommendation. (Part of the European Semester: recommendations to guide the policies of each Member State, proposed by the Commission and adopted by the Council each year.)
ECON Committee	Economic and Monetary Affairs Committee of the European Parliament.
Eurojust	An agency of the European Union dealing with judicial co-operation in criminal matters.
European Semester	The EU level-framework for co-ordinating and assessing Member States' structural reforms and fiscal policy, and for monitoring and addressing macroeconomic imbalances. See footnote 123.
Europol	An agency of the European Union supporting co-operation in law enforcement.
IPEX	Inter-parliamentary EU Information Exchange website. A platform for national parliaments and the European Parliament to share information concerning issues related to the European Union.
LIBE Committee	Civil Liberties, Justice and Home Affairs Committee of the European Parliament.
Orange Card	Under Protocol 2 to the EU Treaties, if reasoned opinions comprising over half of the available votes are issued, the Commission must review the proposal and, if it wishes to proceed, justify why it considers that the proposal complies with the principle of subsidiarity If the Commission does proceed, a majority vote in the European Parliament, or a vote of 55% of the Member States in the European Council, will block the proposal. This is known as an Orange Card. See Box 1.
Proportionality	Principle defined in Article 5 of the Treaty on European Union as requiring that "the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties". See paragraph 75.
Reasoned Opinion	Under Protocol 2 to the EU Treaties, a reasoned opinion may be issued by a national parliament or chamber if it thinks that a draft EU law does not comply with the principle of subsidiarity. See Boxes 1 and 2.

Red Card	Under Protocol 2 to the EU Treaties, a national parliament may bring a case before the EU Court of Justice, arguing that an adopted legislative act does not comply with the principle of subsidiarity. This is known as a Red Card. See Box 1. See also paragraph 92 for another meaning of 'Red Card'.
Subsidiarity	Principle defined in Article 5 of the Treaty on European Union as: "the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level". See Box 1.
TEU	Treaty on European Union.
Yellow Card	Under Protocol 2 to the EU Treaties, if sufficient national parliaments or chambers issue reasoned opinions on a draft law, the Commission must review the draft law. This is known as a Yellow Card. See Boxes 1 and 2.

Eitem 5

Y Comisiwn Etholiadol

Ymchwiliad i anghymhwyso person rhag bod yn aelodaeth o Gynulliad Cenedlaethol Cymru

Tystiolaeth y Comisiwn Etholiadol

Cyflwyniad

1.1 Mae'r Comisiwn Etholiadol yn gorff annibynnol sy'n adrodd yn uniongyrchol i Senedd y DU. Rydym yn rheoleiddio cyllid pleidiau ac etholiadau ac yn gosod safonau ar gyfer etholiadau a gynhelir yn dda. Rydym yn rhoi pleidleiswyr yn gyntaf drwy weithio i gefnogi democratiaeth iach, lle mae etholiadau a refferenda yn seiliedig ar ein hegwyddorion o ymddiriedaeth, cyfranogiad, a dim dylanwad gorfodol.

1.2 Rydym yn croesawu'r cyfle i roi tystiolaeth i Ymchwiliad y Pwyllgor. Mae'r canlynol yn berthnasol i'r Ymchwiliad:

- Yn ddiweddar fe wnaethom gwblhau ymgynghoriad y DU i gyd ar nifer o agweddau o sefyll mewn etholiad, gan gynnwys anghymhwyso ymgeiswyr. Byddwn yn cyhoeddi ein hadroddiad ym mis Mehefin 2014.
- Rydym yn cyhoeddi canllawiau i ymgeiswyr ar sefyll mewn etholiad. Mae ein canllawiau i ymgeiswyr sy'n sefyll mewn etholiad i Gynulliad Cenedlaethol Cymru ar gael ar ein gwefan: http://www.electoralcommission.org.uk/cymru/i-am-a/candidate-or-agent/national-assembly-for-wales-elections

1.3 Derbynnir yn eang fod nifer gan gyfraith etholiadol nifer o broblemau. Mae'n swmpus, tameidiog ac anghyson ar gyfer gwahanol etholiadau. Mae hefyd yn ddiangen o gymhleth mewn nifer o fannau ac mae angen ei foderneiddio. Mae angen symleiddio, diweddaru a chyfuno gwahanol ddarnau o gyfraith etholiadol.

1.4 Ar hyn o bryd mae tri Chomisiwn y Gyfraith y DU (Cymru a Lloegr, yr Alban, Gogledd Iwerddon) yn adolygu'r gyfraith sy'n llywodraethu gweinyddiaeth etholiadol yn y DU. Mae Comisiynau'r Gyfraith yn disgwyl cyhoeddi papur ymgynghori ddiwedd 2014, fydd yn gosod argymhellion a dewisiadau ar gyfer diwygio. Mae Comisiynau'r Gyfraith yn bwriadu cwblhau eu hargymhellion yn haf 2015 cyn cyhoeddi adroddiad terfynol a'r Bil ddechrau 2017. Y bwriad yw i'r newidiadau i'r gyfraith fod wedi'u cyhoeddi ac mewn grym ar gyfer etholiad cyffredinol Senedd y DU yn 2020. Mae adolygiad Comisiynau'r Gyfraith yn cynnwys y ddeddfwriaeth o ran sefyll mewn etholiad yn y DU, gan gynnwys etholiadau i Gynulliad Cenedlaethol Cymru.

1.5 Yn ein barn ni, dylai'r rheolau ar sefyll mewn etholiad edrych i hyrwyddo'r egwyddorion canlynol:

- Dylai'r rheolau, cyn belled ag sy'n bosib, hwyluso cyfranogiad yn y broses etholiadol. Ni ddylai fod unrhyw rwystrau diangen i ymgeiswyr sy'n cymryd rhan mewn etholiadau.

- Dylai'r rheolau fod yn glir, yn syml ac yn ddiamwys fel bod ymgeiswyr, asiantiaid, pleidiau gwleidyddol a'r rheiny sy'n gweinyddu'r broses etholiadol yn deall y rheolau ac yn gallu gweld eu bod yn cael eu dilyn;

- Dylid sicrhau triniaeth deg, cyn belled ag sy'n bosibl rhwng ymgeiswyr sy'n sefyll mewn etholiad, heblaw am pan fod cyfiawnhad gwirioneddol am y gwahaniaethau;

- Dylai'r rheolau fod mor gyson â phosibl ar gyfer y gwahanol fathau o etholiadol, er lles hyrwyddo cyfranogiad.

- Dylai'r rheolau fod yn gyfoes, yn adlewyrchu technoleg fodern a disgwyliadau ymgeiswyr, asiantiaid, pleidiau gwleidyddol a'r rheiny sy'n gweinyddu etholiadau.

Egwyddorion sy'n tanategu anghymhwyso

1.6 Mae anghymwysiadau, am ba bynnag reswm y'u rhoddir, yn gyfyngiad ar ryddid unigolion i gymryd rhan mewn etholiadau, ac felly dylai'r rhesymeg dros unrhyw waharddiad fod yn gyfiawn a chymesur. Dylent hefyd fod wedi'u nodi a'u hesbonio'n glir a - cyn belled ag y bo modd, gan adlewyrchu datganoliad cyfrifoldeb polisi ar gyfer gwahanol etholiadau yn y DU - yn gyson, fel bod pobl yn gallu deall yn hawdd p'un a neu beidio eu bod yn gallu sefyll mewn etholiad yn y DU.

1.7 Dylai meini prawf ymdriniaeth cyfiawn a chymesur ganiatáu i'r dewis ehangaf posib o ymgeiswyr i ddewis rhyngddynt, gan gael cydbwysedd rhwng rhwystro ymgeisyddiaeth mewn amgylchiadau cyfyngedig, penodedig, heb beidio â chefnogi cyfranogiad yn afresymol.

1.8 Mae'r meini prawf anghymhwyso ar gyfer etholiadau Cynulliad Cenedlaethol Cymru ar hyn o bryd yn berthnasol o ran y rheolau etholiad ar adeg enwebu ac adeg yr etholiad: nid ydynt yn gwahaniaethu rhwng cyflogaeth na swyddi y byddai wedi'u hanghymhwyso rhag *sefyll fel ymgeiswyr* mewn etholiadau a'r rheiny fyddai wedi'u hanghymhwyso rhag *dal y swydd* pe baent yn cael eu hethol. Gallai cael diffiniad cliriach rhwng y ddau set o feini prawf anghymhwyso, a gosod y rhesymeg tu ôl i'r ddau set, helpu sicrhau bod yr ymdriniaeth gyffredinol yn gyfiawn a chymesur ac yn seiliedig ar egwyddorion cryf.

1.9 Ystyriwn fod o leiaf ddwy egwyddor allweddol ddylai danategu deddfwriaeth ar wahardd:

- Yn gyntaf, gall y Cynulliad benderfynu bod rhai deiliaid swyddi neu weithwyr y byddai eu hymglymiad fel ymgeiswyr mewn etholiad yn

cyfaddawdu neu'n tanseili hygrededd neu amhleidioldeb y broses etholiadol.

- Yn ail, gallai'r Cynulliad benderfynu bod rhai swyddi neu swyddi cyflogedig yn anghydnaws gydag aelodaeth o'r Cynulliad, oherwydd y gellid cyfaddawdu neu danseilio ymddangosiad gwrthdaro buddiannau drwy gyflawni un o'r swyddogaethau yn effeithiol neu'n ddiduedd.

1.10 Er y dylai'r Cynulliad a'r Ysgrifennydd Gwladol barhau i benderfyni pa swyddi y dylid eu nodi ym mhob categori, dylai'r Pwyllgor ystyried sut i sicrhau bod y Gorchymyn a'r rheolau etholiadol perthnasol yn gwahaniaethu'n glir rhwng y ddau gategori.

Ystyriaethau ymarferol o ran pryd mae anghymwysiadau yn dod i rym.

1.11 Wrth benderfynu pa swyddi y dylid eu nodi ym mhob categori, mae materion ymarferol pwysig i'w hystyried. Gallai gwahaniaethau rhwng adegau pryd mae anghymwysiadau yn dod i rym achosi dryswch i ymgeiswyr sy'n sefyll mewn etholiadau, lle dylai'r rheolau fod yn glir, syml a diamwys.

1.12 Pe bai rhai gwaharddiadau yn berthnasol adeg etholiad a ddim adeg enwebu, mae mater cyfnodau rhybudd yn parhau. Byddai gwrthdrawiad buddion yn parhau i fod yn berthnasol tra bod contract cyflogaeth yn ei le a chyfnod rhybudd yn weithredol. I fynd i'r afael â'r mater hwn, gallai bod gofyn i ymgeisydd etholedig ymddiswyddo o'r swydd berthnasol ar y diwrnod gwaith cyntaf ar ôl yr etholiad er mwyn dod yn aelod o'r Cynulliad. (Dyna'r sefyllfa ar gyfer anghymwysiadau ar gyfer swyddogion a gweithwyr awdurdod lleol mewn etholiadau llywodraeth leol yn yr Alban, a gallai fod yn werth ystyried sut y mae hyn yn gweithredu[1].)

1.13 Oherwydd rhoi cyfnodau rhybudd, byddai rhoi rhai anghymwysiadau ar adeg ethol ac nid adeg enwebu yn gweithio pan ellir rhoi rhybudd sy'n effeithiol ar unwaith yn unig. Gallai hynny olygu, yn ymarferol na fyddai anghymwyso wrth ethol yn gweithio i weithwyr. Fel y sonnir isod, byddai hi'n fuddiol ymgynghori gyda sefydliadau y cynigir iddynt gael eu rhestri yn y Gorchymyn o ran sut byddai cynigion o'r fath yn gweithio, gan gynnwys sut y bydau sefydliadau yn cadarnhau, mewn egwyddor, y gellir rhoi rhybudd di-oed, a'i fod wedi'i rhoi yn achos unigolyn penodol a effeithir.

Set graidd o waharddiadau

1.14 Wrth ystyried pryd y dylai'r anghymwysiadau ddod i rym, dylid cofio bod rhai pobl sydd â swyddi penodol wedi anghymhwyso rhag bod yn aelod o Gynulliad Cenedlaethol Cymru ar hyn o bryd, yn yr un modd ag y byddent o ran Senedd y DU, Senedd yr Alban, Cynulliad Gogledd Iwerddon a Senedd Ewrop[2]. Ym mhob un o'r achosion hyn, bydd yr anghymwysiadau yn parhau i fod yn berthnasol ar adeg

[1] Adran 31A Deddf Llywodraeth Leol (yr Alban) 1973.
[2] Adran 16 Deddf Llywodraeth Cymru 2006

enwebu ac ethol. Lle bo gofyn ymddiswyddo o swydd, mae'n rhaid bod ymgeiswyr wedi rhoi a chwblhau eu cyfnod o rybudd erbyn adeg enwebu.

1.15 Mae'r rhestr yn cynnwys y bobl ganlynol: barnwr; gwas sifil; aelod o'r lluoedd arfog; aelod o'r heddlu; aelod o gorff deddfwriaethol unrhyw wlad neu diriogaeth tu allan i'r Gymanwlad (heblaw Iwerddon); neu rywun sy'n destun gorchymyn cyfyngu methdaliad. Byddai person hefyd methu â chael eu hethol neu gael swydd etholedig os ydynt wedi'u cael yn euog neu eu hadrodd yn euog gan lys etholiadol o arferion llwgr neu anghyfreithlon.

Rhestr o Gyrff yn y Gorchymyn Anghymhwyso

1.16 Caiff y rhestr o gyrdd yng Ngorchmynion Anghymhwyso'r Cynulliad, fel deddfwriaeth sy'n berthnasol i gyrff deddfwriaethol eraill, ei ddiwygio ar gyfer pob etholiad i gynnwys swyddi gan gyrff newydd neu wedi'u hail-enwi ac i ddileu cyrff nad ydynt yn bodoli bellach. Mae'r ffaith fod y rhestr yn newid yn rheolaidd yn her i ymgeiswyr a phleidiau gwleidyddol.

1.17 Mae ein cyngor cyhoeddedig a diwygiedig i ymgeiswyr[3] yn dweud wrthynt fod y rhestr lawn o anghymwysiadau yn gymhleth ac os ydynt yn ansicr os ydynt wedi'u hanghymhwyso ai peidio, i wneud y cwbl allan i wirio nad ydynt wedi'u hanghymhwyso cyn cyflwyno eu papurau enwebu. Rydym yn cynghori ymgeiswyr fod yn rhaid iddynt fod yn siŵr nad ydynt wedi'u hanghymhwyso gan fod angen iddynt nodi yn eu cydsyniad i enwebu, hyd eithaf eu gwybodaeth a'u cred nad ydynt wedi'u hanghymhwyso rhag bod yn aelod o'r Cynulliad. Mae'n drosedd gwneud datganiad ffug ar bapurau enwebu ynghylch cymhwyster i gael eich ethol, felly rydym yn cynghori ymgeiswyr os oes unrhyw amheuaeth, y dylent, gysylltu â'u cyflogwr, edrych ar y ddeddfwriaeth neu, os oes angen, cael cyngor cyfreithiol eu hunain. Nid yw Swyddogion Canlyniadau Etholiadol yn gallu cadarnhau p'un a bod ymgeiswyr wedi'u hanghymwyso ai peidio.

1.18 Nid oes gennym wybodaeth ddigonol ynghylch y cyrff penodol a restrir yng Ngorchymyn Anghymhwyso'r Cynulliad i gael barn o ran pa swyddi anghymwys ddylid eu cynnwys. Fodd bynnag, **yn ein barn ni ddylid defnyddio'r ddwy egwyddor a nodir uchod i benderfynu p'un a bod unrhyw anghymwysterau yn gyfiawn a chymesur ar adeg enwebu neu wrth gymryd swydd aelod y Cynulliad.** Mae'n rhaid gallu cyfiawnhau cynnwys ar y rhestr yn glir gan ei fod yn rhwystr i gymryd rhan mewn etholiadau.

1.19 Gallai fod yn addas ymgynghori gyda'r cyrff yr arfaethir eu rhestru cyn i'r Cynulliad wneud gorchymyn newydd, os nad yw wedi'i wneud, fel y gallent roi eu barn ar faterion sy'n effeithio gallu eu gweithwyr neu eu cynrychiolwyr i sefyll mewn

[3]Esiampl wedi'i ddiweddaru'n ddiweddar ar gyfer etholiadau lleol yng Nghymru a Lloegr www.electoralcommission.org.uk/__data/assets/pdf_file/0013/142132/Part-1-Can-you-stand-for-election-LGEW-W.pdf

etholiad. Efallai fod gan y cyrff dan sylw gyfraniad defnyddiol i'w wneud o ran p'un a byddai gwrthdrawiad buddion ai peidio. Mewn achosion eraill, efallai fod Llywodraeth Cymru neu'r Cynulliad yn ystyried ei fod yn anaddas i rywun sydd wedi'u cyflogi gan gorff penodol i fod yn aelod Cynulliad oherwydd, er enghraifft, eu bod yn gwneud penodiadau neu'n cyllido'r corff. Mewn achosion o'r fath efallai nad oes angen ymgynghori.

Materion eraill: amserlen ar gyfer gwneud y Gorchymyn Anghymhwyso

1.20 Mae'r Comisiwn o hyd yn argymell bod llywodraethau yn sicrhau fod deddfwriaeth ar gynnal etholiadau yn ei le o leiaf chwe mis cyn cynhelir yr etholiad. Fodd bynnag, yn ein barn ni, dylai'r Gorchymyn Anghymhwyso fod yn ei le o leiaf chwe mis cyn i'r enwebiadau agor. Mae'r rhesymau dros hyn isod.

1.21 Mae'r amserlen ar gyfer gwneud y Gorchymyn Anghymhwyso yn arbennig o bwysig oherwydd, fel yr esboniwyd yn gynt, efallai y bydd angen i ymgeiswyr sy'n sefyll mewn etholiad ymddiswyddo o'u swyddi ac wedi cwblhau eu cyfnod o rybudd i osgoi cael eu hanghymhwyso rhag sefyll mewn etholiad. Byddai gwneud y Gorchymyn mewn da bryd hefyd yn sicrhau fod gan bleidiau gwleidyddol ddigon o amser i wirio cymhwysedd yr ymgeiswyr i sefyll mewn etholiad mewn digon o amser cyn i enwebiadau agor.

1.22 Mae hefyd yn bwysig i'r Cynulliad hysbysu'r rheiny sydd angen gwybod fod y Gorchymyn wedi'i wneud a pha newidiadau sydd ynddo. Bydd angen cyfathrebu'r newidiadau yn y Gorchymyn i bleidiau gwleidyddol; i'r cyrff sydd wedi'u rhestru yn y Gorchymyn er mwyn iddynt allu hysbysu eu gweithwyr neu eu cynrychiolwyr ac i'r Comisiwn Etholiadol er mwyn i ni allu cynnwys unrhyw ddarpariaethau newydd ar anghymwyso yn ein canllawiau ar gyfer ymgeiswyr sy'n sefyll mewn etholiad.

1.23 Caiff ein canllawiau ei rannu i ymgeiswyr trwy bleidiau gwleidyddol a gan Swyddogion Canlyniadau ym mhecynnau gwybodaeth i ymgeiswyr ac mewn briffiadau cyn-etholiadol, yn ogystal â bod ar gael ar ein gwefan. Rydym yn cyhoeddi ein canllawiau ar sefyll mewn etholiad i ymgeiswyr yn y mis Rhagfyr cyn etholiad a gynhelir y mis Mai canlynol.

1.24 Rydym yn argymell y gwneir Gorchymyn Anghymhwyso'r Cynulliad o leiaf chwe mis cyn i'r enwebiadau agor a bod cynnwys y Gorchymyn yn cael ei gyfathrebu'n glir i gyrff a restrir yn y Gorchymyn, i bleidiau gwleidyddol ac i'r Comisiwn Etholiadol.

Y Comisiwn Etholiadol

Ebrill 2014

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