



27 September 2012

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

Prepared by the COSAC Secretariat and presented to:

**XLVIII Conference of Parliamentary Committees
for Union Affairs of Parliaments
of the European Union**

14-16 October 2012
Nicosia

**Conference of Parliamentary Committees for Union Affairs
of Parliaments of the European Union**

COSAC SECRETARIAT

WIE 05 U 041, 30-50 rue Wiertz, B-1047 Brussels, Belgium
E-mail: secretariat@cosac.eu | Tel: +32 2 284 3776

Table of Contents

BACKGROUND	iv
ABSTRACT.....	1
CHAPTER 1: RELATIONS BETWEEN THE EUROPEAN INSTITUTIONS AND NATIONAL PARLIAMENTS	3
1.1 Subsidiarity and proportionality	3
1.1.1 The principles of subsidiarity and proportionality.....	3
1.1.2 Proportionality and national Parliament scrutiny	5
1.1.3 Reasoned Opinions	7
1.1.4 Guidelines	8
1.2 The political dialogue	9
1.2.1 Activity under the political dialogue	10
1.2.2. Presentation of the Commission Work Programme (CWP)	10
1.2.3. Frequency of presentation of specific proposals in Parliaments by the Commission	11
1.2.4. Strengthening the political dialogue with European institutions.....	12
CHAPTER 2: THE TREATY ON STABILITY, COORDINATION AND GOVERNANCE IN THE ECONOMIC AND MONETARY UNION AND THE ROLE OF PARLIAMENTS	16
2.1 Ratification of the TSCG	16
2.2. Reinforcement of Interparliamentary co-operation on the basis of the role assigned to national Parliaments by Article 13 of the TSCG	17
2.3 Appropriate forum for the discussion of budgetary policies and other issues as stipulated by Article 13 of the TSCG	17
2.4 Composition of the forum	19
CHAPTER 3: ENERGY - TRANS EUROPEAN ENERGY INFRASTRUCTURE	20
3.1 Parliamentary scrutiny of the proposal	20
3.2 Specific questions considered in scrutiny	22
3.3 Content of contributions and parliamentary documents.....	23
CHAPTER 4: SINGLE MARKET GOVERNANCE	25
4.1 Parliamentary scrutiny of Single Market governance	25

BACKGROUND

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

COSAC Bi-annual Reports

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

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

The four chapters of this Bi-annual Report are based on information provided by the national Parliaments of the European Union Member States and the European Parliament. The deadline for submitting replies to the questionnaire for the 18th Bi-annual Report was 27 August 2012.

The outline of this Report was adopted by the meeting of the Chairpersons of COSAC, held on 9 July 2012 in Limassol.

As a general rule, the Report does not specify all Parliaments or Chambers whose case is relevant for each point. Instead, illustrative examples are used.

A summary of answers can be found in the appendix to the Report and complete replies, received from all 40 national Parliaments/Chambers of 27 Member States and the European Parliament, can be found in the Annex on the COSAC website.

Note on Numbers

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

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

ABSTRACT

CHAPTER 1: RELATIONS BETWEEN THE EUROPEAN INSTITUTIONS AND NATIONAL PARLIAMENTS

On the subject of subsidiarity and proportionality, their relative standing and their use in the national Parliament scrutiny processes, Parliaments/Chambers expressed varied views and exchanged much valuable information. Parliaments/Chambers are split into two broadly distinctive views on the issues for and against the arguments that subsidiarity and proportionality are of the same standing and that proportionality is an inextricable component of subsidiarity. However, it can be seen that almost all Parliaments/Chambers consider the principle of proportionality when scrutinising draft legislative acts in general.

On the subject of subsidiarity checks, there was a mixed response to the question of how often proportionality criteria are currently considered within these checks, with some using these criteria rarely or sometimes and a few more doing so often or always. There was, however, a majority of Parliaments/Chambers who stated that they do not believe that subsidiarity checks are effective without the inclusion of a proportionality check.

On further working together, half of Parliaments/Chambers stated that there is the need for further clarification of the subsidiarity check criteria used by national Parliaments and Chambers/Parliaments were almost equally divided as to whether guidelines should be laid down to improve the effectiveness of subsidiarity checks.

On the political dialogue, the majority of Parliaments/Chambers have undertaken some form of political dialogue, mostly written opinions. However, the majority also stated that such political dialogue could be strengthened or enhanced and advanced a number of ways of improving it. In general, Parliaments/Chambers would welcome more prompt and substantive responses by the Commission to concerns raised by them.

The majority of Parliaments/Chambers have never had a discussion with a Commissioner or Commission staff on the Commission's Work programme. However, there is evidence of significant and frequent contact between the Commission and/or its staff on specific Commission proposals and Parliaments/Chambers would welcome more visits and particularly with a tailored approach by Commissioners adapted to the needs of each Parliament/Chamber.

Parliaments/Chambers were, in general, in favour of closer and more frequent contacts with other Parliaments/Chambers and the Commission in respect of proposals that raise particular concerns and for which a large number of reasoned Opinions were issued. The means for such contacts are highlighted in the Report.

CHAPTER 2: THE TREATY ON STABILITY, COORDINATION AND GOVERNANCE IN THE ECONOMIC AND MONETARY UNION AND THE ROLE OF PARLIAMENTS

On the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, most Parliaments/Chambers reported that the ratification document for the TSCG has not yet been deposited, but, indicated that, during the second half of the year 2012, the ratification procedure would proceed. Concerning the reinforcement of interparliamentary co-operation as stipulated by Article 13 of the TSCG, Parliaments/Chambers emphasised that Article 13 provides a platform for closer co-operation. With regards to the appropriate forum and its composition, it seems that there have been, as exemplified in the Report, varying views and that more discussion should be expected on this matter in the future.

CHAPTER 3: ENERGY - TRANS EUROPEAN ENERGY INFRASTRUCTURE

On trans-European energy infrastructure, the replies to the questions in this chapter show that two thirds of Parliaments/Chambers scrutinised the above mentioned proposal while one third chose not to do so. Of those Parliaments/Chambers that scrutinised the above mentioned proposal two thirds were in favour and one third partly in favour of its objectives; none were against. However, several national Parliaments expressed selective concerns over various specific aspects of the above proposal which are documented in this Report.

It can be deduced from Parliaments'/Chambers' replies that future inter-parliamentary discussions on the substance of the proposal could revolve around questions linked to the funding, the allocation of EU support, the distribution of investment costs, the level of control by the Commission over the direction of projects and the role for Member States, the working patterns of regional groups the regulatory treatment and the eligibility of projects of common interest and the design of permit planning procedures as well as the pros and cons of the much earlier consultation and broader basis for involvement of the general public.

CHAPTER 4: SINGLE MARKET GOVERNANCE

Implementation and transposition of European Union legislation is receiving more and more attention as it is an area that could be more effective and might lead to substantial cost savings. This is also to be seen with national Parliaments' scrutiny where almost half of the Parliaments/Chambers answered that they had either already considered the Commission Communication on better governance for the Single Market or expressed intentions to do so in the near future. The findings of that scrutiny have been summarised in the Report.

CHAPTER 1: RELATIONS BETWEEN THE EUROPEAN INSTITUTIONS AND NATIONAL PARLIAMENTS

The first chapter of the 18th Bi-annual Report of COSAC examines two different aspects of relations between the European Institutions and national Parliaments. The chapter is therefore divided into two sections. The first section concentrates on the principles of subsidiarity and proportionality and their application by Parliaments in the scrutiny process, including the procedure for checking subsidiarity. The second section takes stock of activity taking place under the umbrella of the political dialogue and examines how it may be further enhanced.

1.1 Subsidiarity and proportionality

Subsidiarity and proportionality are principles that have underpinned the actions of the European Union since its creation and have equally attracted scrutiny from national Parliaments. Since the entry into force of the Lisbon Treaty (Treaty on the European Union or TEU), however, new light has been shone on the examination of the subsidiarity and proportionality by national Parliaments, particularly due to the Protocol (No 2) on the application of the principles of subsidiarity and proportionality.

The aims of section 1.1 of the 18th Bi-annual Report are to document the opinions of national Parliaments on the principles of subsidiarity and proportionality, their relative standing and their use in the national Parliament scrutiny processes, including a part on Reasoned Opinions. The section also aims to examine the question of the effectiveness of subsidiarity checks (without the inclusion of proportionality) and the usefulness of guidelines aimed to improve them.

1.1.1 The principles of subsidiarity and proportionality

The Lisbon Treaty in Article 5(3) TEU describes the **principle of subsidiarity** thus "in areas which do not fall within its exclusive competence, the Union shall act only if and insofar 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." It goes on in Article 5(4) TEU to describe the **principle of proportionality** thus "the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties". Both Articles state that the principles should be applied in accordance with Protocol 2 of the Treaty. This Protocol calls for the European institutions "to ensure constant respect" for the principles as laid down in Article 5 and sets out a procedure for national Parliaments to check the principle of subsidiarity.

In the replies to the questionnaire sent to all Parliaments/Chambers to gather their views, responses **as to whether the principles of proportionality and subsidiarity have the same standing** were divided between yes and no. Of the 39 responding Parliaments/Chambers 18 answered that they believed that the two principles were of equal standing, whereas 21 did not. Many Parliaments/Chambers quoted Article 5 TEU as the justification for the two principles being given the same standing. For instance, the Spanish *Cortes Generales* replied

that in Article 5 "both principles...govern the use of Union competences, and...are accordingly jointly regulated in Protocol 2" which reflects the equal importance given to both. The Cyprus *Vouli ton Antiprosopon* argued that the Treaty of Lisbon provisions to respect both principles in Article 5 should be applied in Protocol 2 and therefore this was "a clear indication that a subsidiarity check should also include a proportionality check" and that the two principles have the same standing. The German *Bundestag* checks both principles together due to the difficulty of separating the concepts and believes they enjoy the same standing. Likewise, the Dutch *Eerste Kamer* checks the legal basis, the principle of subsidiarity and the principle of proportionality together and believes all three are interlinked. According to the Hungarian *Országgyűlés*, which also agreed that both principles have the same standing, said that the "clear political character" of national Parliaments' analysis was shaped by "national and regional considerations as well as party interests." The French *Assemblée nationale* argued that the principle of proportionality brought a "more thorough and nuanced approach" to the scrutiny of EU legislative acts.

A number of those who replied that the two principles formally have the same standing acknowledged, however, that in practice this is not the case. The UK *House of Lords* explained that "because the Reasoned Opinion procedure applies only to subsidiarity, the principle receives greater focus". The Swedish *Riksdag* put forward a similar view. The Finnish *Eduskunta* also commented that the concepts of subsidiarity and proportionality "seem to have been reduced to academic issues - or a formal justification" because the use of Protocols 1 and 2 has developed into "a vehicle for expressing political opinions".

Some 15, of the Parliaments/Chambers that answered yes in this case also said that they thought that the **principle of proportionality should be considered an inextricable component of the principle of subsidiarity**. In addition the Austrian *Nationalrat* and *Bundesrat*¹ argued that "measures taken by the EU may only go as far as is necessary to achieve a legitimate goal. Measures going beyond this point are without doubt reserved to the Member States. The compliance with the principle of subsidiarity therefore necessarily involves a proportionality check". The Belgian *Chambre des représentants* explained that "logically, the proportionality check precedes the subsidiarity control as the first step to solve a problem is to determine the appropriate action (= proportionality)". The Dutch *Eerste Kamer* stated that it considers proportionality "as a component of the subsidiarity test" while the Czech *Poslanecká sněmovna* stated its view that they are "of equal importance" and "complementary".

Almost all of those 21 **Parliaments/Chambers who argued that the principles of subsidiarity and proportionality do not have the same standing**, explained that this is because Parliaments/Chambers are not given a formal right to check proportionality under the Lisbon Treaty which they are afforded for subsidiarity under Protocol 2. The fact that "[l]egally speaking the principle of proportionality is excluded from the subsidiarity check" (Danish *Folketing*) and the consequent lack of ability to legally check proportionality, they argued, meant that proportionality does not receive the same standing as subsidiarity. Some note the alternative non-legal route to raise concerns about proportionality through the informal political dialogue between national Parliaments and the EU institutions. The European

¹ Governing majority SPÖ (S&D) and ÖVP (EPP) parties

Parliament replied that "[i]t is up to the European Court of Justice to interpret the standing of the two principles."²

Many (some 16) of these Parliaments/Chambers also answered no to the question of **whether the principle of proportionality is considered an inextricable component of the principle of subsidiarity**. For example, the Portuguese *Assembleia da República* stated categorically that "the two principles are clearly different and neither can be subsumed in the other" and explained that the principle of subsidiarity ensured that legislation is adopted at the most appropriate decision-making level, while the principle of proportionality related to the content and form. The Latvian *Saeima* was equally clear that the principles "are two different principles of EU law" and Protocol 2 stipulates a procedure "for detection only of the subsidiarity principle". The UK *House of Commons* used the following analogy: "if proportionality is looking at whether a sledgehammer can be used to crack a nut, subsidiarity is looking at whether the sledgehammer should be picked up in the first place."

The opinion of the UK *House of Lords*, who responded that the two principles should be applied separately "since they regulate different aspects of a proposal", was also shared by the Irish *Houses of the Oireachtas* and the Slovenian *Državni zbor*. The Polish *Senat* referenced the *Great Britain vs Council* case (C-84/94)³ as clearly stating that subsidiarity and proportionality are independent of each other. In line with this, the Polish *Sejm* found some acts to infringe the principle of proportionality without violating the principle of subsidiarity. A few Parliaments/Chambers acknowledged that the principles are applied or considered separately, though expressed regret that this is the case (e.g. Bulgarian *Narodno sabranie* and Italian *Senato della Repubblica*).

The European Parliament did not express an opinion about whether the two principles are inextricably linked but explained that "The question to be asked in the application of the principle of proportionality is...up to which intensity can the Union exercise its competence (which it is authorised to exercise following a positive subsidiarity test)?" and made the point that "[s]ubsidiarity applies only in cases of shared competence, whereas proportionality applies also where the Union enjoys exclusive competence."

1.1.2 Proportionality and national Parliament scrutiny

Out of 41 national Parliaments/Chambers, a large majority of 37 Parliaments/Chambers **consider the principle of proportionality when scrutinising draft legislative acts** and only four do not. This indicates that national Parliaments' general scrutiny goes well beyond simply checking the principle of subsidiarity, even though many acknowledged that the latter is the only formal power given to national Parliaments under the Lisbon Treaty. It can also be seen that some national Parliaments consider the legal basis or principle of conferral (e.g. Italian *Senato della Repubblica* and Polish *Sejm*), as well as proportionality and subsidiarity (and this can be all at the same time, e.g. Cyprus *Vouli ton Antiprosopon*). For example the Dutch *Eerste Kamer* stated that it "always check proportionality when checking subsidiarity" and states "it is not possible to exclude the principles of legality."

² All replies transmitted by the European Parliament to the Secretariat of COSAC are replies prepared by its administration and do not engage the Institution politically.

³ For the text of the full judgement please see: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61994CJ0084:EN:HTML>

In contrast, however, there was a mixed response to the question of **how often proportionality criteria are considered as part of subsidiarity checks**. It appears that, in line with the arguments made for and against the two principles having the same standing and/or being inextricably linked above, the responses from national Parliaments spanned from never, rarely or sometimes (a total of 12 Parliaments/Chambers) to often or always (a total of 20 Parliaments/Chambers). The specific responses to this question can be seen in the table below:

Responses ⁴	%	No.
Never	8	3
Rarely (approximately a quarter of the time)	15	6
Sometimes (approximately half of the time)	8	3
Often (approximately three quarters of the time)	15	6
Always	35	14
Other	20	8
Total number of respondents		40

Interestingly, however, a large majority of 28 Parliaments/Chambers stated that they do not believe that subsidiarity checks are effective without the **inclusion of a proportionality check**. Many of these Parliaments/Chambers argued that including proportionality criteria in the subsidiarity check would be positive. The Latvia *Seimas* explained its view that in order to evaluate subsidiarity, i.e. to judge whether the proposal is the most effective way to solve a problem, it is necessary to check proportionality, i.e. to judge whether the proposal solves the problem at all. Another reason given was that the strict separation of the principles of subsidiarity and proportionality could undermine the effectiveness of the subsidiarity check because it was not always discernable on what grounds the breach had occurred (Czech *Senát*). Many argued along the same lines as the UK *House of Lords* who said simply that "the principles are applied by the Treaties and they are closely linked". The Polish *Senat* replied that "national Parliaments' limited power to scrutinise subsidiarity compliance should be extended to include also the scrutiny of EU legislation for its compliance with proportionality principle". The Polish *Sejm* argued for it to go further and for national Parliaments to be able to legally scrutinise the application of all the principles that are also mentioned in Article 5 TEU. In the opinion of the Cyprus *Vouli ton Antiprosopon*, an exclusion of the proportionality check posed "an unnecessary restriction to the broadness of a subsidiarity check" and "would limit the rights vested to national Parliaments under the Lisbon Treaty". Others suggested that the inclusion of proportionality principle in the subsidiarity check procedure would be "logical", "helpful", "preferable" and "more effective". According to the Dutch *Tweede Kamer* "[t]he separation of these principles ... has always been unnatural and not logical".

Of the 11 Parliaments/Chambers that answered that the check was effective without including proportionality, a number continued to make the converse point to those above that, because subsidiarity and proportionality are separate concepts and have a different

⁴Where "No." indicates the actual number of Parliaments/Chambers who responded and percentage (%) is the ratio of the actual number of responses to the total number of respondents.

standing under the EU Treaties, they could effectively only be considered separately from each other (e.g. Finnish *Eduskunta*, Maltese *Kamra tad-Deputati* and UK *House of Commons*).

1.1.3 Reasoned Opinions

A large majority of 28 Parliaments/Chambers agreed with the statement that **Reasoned Opinions (ROs)** are often based on a broader interpretation of subsidiarity than the wording of Protocol 2 of the Lisbon Treaty and nine disagreed. A number of Parliaments/Chambers, in explaining their responses, said that the interpretation of subsidiarity should be strictly limited to the legal basis under Protocol 2 of the Treaty. However, most of the respondents indicated that they thought that it was appropriate for there to be a broader or wider interpretation of subsidiarity. The Dutch *Eerste Kamer* said that "it is not possible to exclude the principles of legality and proportionality when applying a subsidiarity check...Thus Article 6 (and onwards) should be applied in the spirit and working of the preceding articles and the Title of Protocol 2". The Czech *Senát* replied that subsidiarity has a "general and abstract nature...is not a strict and clear legal concept" and therefore argued that a broad interpretation should be used. The UK *House of Lords* said that it did not have difficulty with the use of a wider interpretation because, "[a]lthough the principle is a legal concept, in practice its application depends on political judgment". The Belgian *Chambre des représentants* also viewed the content of Reasoned Opinions as a political matter. The Finnish *Eduskunta* went as far as to say that "[i]n our assessment, hardly any of the ROs submitted by national Parliaments meet the requirements of Art 5 TEU" citing its own RO to the Monti II legislation as a case in point.⁵ The Maltese *Kamra tad-Deputati* argued that "since no uniform definition of subsidiarity exists, Parliaments could be interpreting it differently and consequently using different criteria". The Swedish *Riksdag* replied that it had submitted ROs based on a broader interpretation of the principle of subsidiarity and their checks, in certain cases, had included an assessment of the principles of proportionality as well as legality.⁶

The Italian *Senato della Repubblica* noted that "the restricted notion of subsidiarity...is more adherent to the provisions of the treaties...[while] a broader notion, including the scrutiny of the legal basis (principle of conferral) and proportionality compliance...seems to be different from the formal provisions of the treaties". The European Parliament replied that it "does not assess the admissibility of the reasons given by national Parliaments with a view to concluding or not that a draft legislative act does not comply with the principle of subsidiarity."

Given the mixture of opinions on the inclusion of the principle of proportionality in ROs, it is not altogether surprising that 20 out of 40 of Parliaments/Chambers believe that there is the need for **further clarification of the subsidiarity check criteria** used by national Parliaments and an equal number do not. Comments by those who wanted further clarification included the following:

⁵ Reasoned Opinion by the Finnish *Eduskunta* on the Monti II Regulation COM (2012) 130 <http://www.ipex.eu/IPEXL-WEB/scrutiny/APP20120064/fiedu.do>

⁶ e.g. COM(2010) 486, COM(2011) 634, COM(2010) 799 and COM(2012) 130

- criteria would be useful but should not be compulsory (Polish *Senat*) and beyond basic criteria national Parliaments should be left to deal with subsidiarity in their own way (Czech *Senát*);
- criteria should bring clarification regarding what should and should not be included in or excluded from a Reasoned Opinion (Cyprus *Vouli ton Antiprosopon*) or what breaches the principle of subsidiarity (Maltese *Kamra tad-Deputati*) or could include a set of questions aimed to determine non-compliance (Latvian *Saeima*);
- exchange of information and best practices within COSAC on the criteria, methods and tools for assessment of the subsidiarity principles (Italian *Camera dei Deputati*);
- the focus should be on technical and formal criteria as laid down by the Lisbon Treaty (Hungarian *Országgyűlés*) or, as this was not possible in the view of the Bulgarian *Narodno sabranie*, on the old protocol on the application of the principles of subsidiarity and proportionality (1997) - Protocol (30) to the Treaty establishing the European Community provides a better ground for the subsidiarity checks;
- consideration should be given to collecting all contributions and articles relating to subsidiarity check and to distributing electronically to COSAC participants or to post such information on the COSAC website and all official positions of EU Institutions aiming at clarifying the procedure should also be distributed or posted (Italian *Senato della Repubblica*);
- it may be of value to have access to a comment to the Treaty or a table containing all the legal bases in the treaties (article by article) and whether or not protocol 2 should be applicable to each of them. Such a table could be drafted jointly by the legal services of the Council, the Commission and the Parliament in cooperation with the national Parliaments (Swedish *Riksdag*); and
- seminars on how to approach the assessment of subsidiarity criteria would be useful (UK *House of Commons*) or conferences, workshops, seminars with the participation of MPs and their staff (Lithuanian *Seimas*).

1.1.4 Guidelines

Just over half (20 out of 37 respondents) expressed the view that **guidelines** should be laid down to improve the effectiveness of subsidiarity checks and the other Parliaments/Chambers were against such a move. When those who answered positively were asked about what these guidelines should contain, answers included:

- specific guidelines regarding the scope of the negative reasoned opinions (Hungarian *Országgyűlés*);
- guidelines on the drawing up of reasoned opinions would be welcome as this would bring about a degree of uniformity (Maltese *Kamra tad-Deputati*);
- the exchange of best practice on procedures (Lithuanian *Seimas*) and joint experiences in different countries (Swedish *Riksdag*);
- the scope and content of reasoned opinions, with the possibility of laying down guidelines (UK *House of Commons*);
- a clear explanation of the principles of subsidiarity and proportionality - like that used in the recent Reasoned Opinion of the UK *House of Commons* on the Right to take collective action contains under point 6 a clear and useful explanation of subsidiarity. Especially the quote under 6 'The Community shall legislate only to the extent necessary' is meaningful; this regards both subsidiarity and proportionality. The

- guidelines could also be used to exchange good practices among national Parliaments. (Dutch *Tweede Kamer*); and
- such guidelines should fully clarify the principles of subsidiarity and proportionality and their interpretations (Belgian *Chambre des représentants*).

The Austrian *Nationalrat* and *Bundesrat*⁷ suggested that discussion on this topic of guidelines should take place in the forum of COSAC.

Those 17 Parliaments/Chambers that were against the idea of guidelines being laid down to improve the effectiveness of subsidiarity checks included the Finnish *Eduskunta* who "would strongly oppose any such proposal" going as far as to say "this cannot and should not be shackled by any extraneous rules" and the Polish *Senat* who suggested that a set of criteria should be used "not on a compulsory basis". The Irish *Houses of the Oireachtas* stated that "[a]s subsidiarity is difficult to define and strict guidelines may impinge on the autonomy of national Parliaments, [it] feels that sharing of best practice between national Parliaments is the best way forward". The French *Assemblée nationale* also expressed some doubt as to a more precise definition of subsidiarity which would lead to limiting national Parliaments' margin of appreciation in the context of what it calls a "political dimension" of subsidiarity control. On a similar note, the Dutch *Eerste Kamer* said it would be open to discussions, but was not in favour of a clarification that entails a restriction of the interpretation of subsidiarity check criteria.

To summarise this section, Parliaments/Chambers are split into two broadly distinctive views on the issues for and against the arguments that subsidiarity and proportionality are of the same standing and that proportionality is an inextricable component of subsidiarity. However, it can be seen that almost all Parliaments/Chambers consider the principle of proportionality when scrutinising draft legislative acts in general.

On the subject of subsidiarity checks, there was a mixed response to the question of how often proportionality criteria are currently considered within these checks, with some using these criteria rarely or sometimes and a few more doing so often or always. There was, however, a majority of Parliaments/Chambers who stated that they do not believe that subsidiarity checks are effective without the inclusion of a proportionality check.

On further working together, half of Parliaments/Chambers stated that there is the need for further clarification of the subsidiarity check criteria used by national Parliaments and Chambers/Parliaments were almost equally divided as to whether guidelines should be laid down to improve the effectiveness of subsidiarity checks.

1.2 The political dialogue

The concept of political dialogue was launched by European Commission President Barroso in 2006.⁸ It is a general term referring to a range of ways to improve communication between

⁷ Governing majority SPÖ (S&D) and ÖVP (EPP) parties

national Parliaments and the European Commission. Since its launch the use of political dialogue has evolved and greatly intensified and has given national Parliaments a greater voice and role in independently shaping and influencing EU affairs.

The aims of section 1.2 of the Bi-annual Report are to exchange information and to seek to document the activity that is currently taking place under the political dialogue. This part will examine the current state of play of the political dialogue, showing how it has evolved over the last six years, and how it might be further enhanced.

1.2.1 Activity under the political dialogue

There are many developments to report given that the majority of Parliaments/Chambers have undertaken some form of **political dialogue**. According to the answers by Parliaments/Chambers to the questionnaire, 30 parliaments/Chambers have sent written opinions to the Commission while some 25 have had other contacts with the Commission or bilateral visits to or from European institutions.⁹ 11 Parliaments/Chambers cited examples of other forms of activity they viewed as part of the political dialogue which included:

- the hosting by the Commission of study visits for national Parliament staff on topics related to new economic governance and the financial markets (the Italian *Senato della Repubblica*);
- pre-legislative consultation by the Commission on specific proposals, for example, the informal meeting between national Parliaments and DG Home Affairs concerning the parliamentary control of Europol in April 2012 (Czech *Poslanecká sněmovna*);
- meetings between parliamentary committees and national MEPs (the French *Sénat* and German *Bundestag*); and
- the organisation of technical briefings for Members of Parliament by European Commission staff on a very regular basis (Dutch *Tweede Kamer*).

Despite undertaking this type of activity some Parliaments/Chambers did not consider such contacts to be part of political dialogue. The Finnish *Eduskunta* said that political dialogue lies between the Finnish Republic and the Union and it considered other contacts to be "simply normal public information and lobbying". The Swedish *Riksdag* considered that statements from *Riksdag* committees on Green and White Papers and non-legislative communications from the European Union are, according to its Committee on the Constitution, to be considered as preliminary viewpoints of a constitutionally non-binding nature.

1.2.2. Presentation of the Commission Work Programme (CWP)

It appears from the 40 responses that some 14 Parliaments/Chambers have never had a discussion with a Commissioner or Commission officials on the **Commission's Annual Work programme**.¹⁰ A small number of Parliaments/Chambers, some nine, received a presentation from a Commissioner or the EU Representation Office every year. A smaller number, some

⁸ Commission Communication "A Citizens' Agenda - Delivering Results for Europe" COM (2006) 211 final <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0211:FIN:EN:HTML>

⁹ Also see the European Commission Annual Report 2005 to 2011 on relations between the European Commission and National Parliaments for Commission definition of the political dialogue and other information on this subject http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm

¹⁰ *ibid*

six, received a presentation from a Commissioner or officials or are in the first year of starting or have recently started what may become an annual process of discussion of the CWP with a Commissioner. Five Parliaments/Chambers held two such discussions with Commissioners. One of these (the Danish *Folketing*) said it had since discontinued the process preferring instead to debate the CWP between the European Affairs Committee and the Minister for Foreign Affairs.

1.2.3. Frequency of presentation of specific proposals in Parliaments by the Commission

All but a small number of Parliaments/Chambers reported regular **presentations to parliamentary committees on specific proposals** by either the relevant Commissioner or the local EU Representation staff. The frequency of the making of such presentations varies widely. At one end the Italian *Camera dei Deputati* had, since 2008, held 25 hearings with European Commissioners, the majority of which were dedicated to the presentation and discussion of specific proposals of the European Commission. At the other end two Parliaments/Chambers indicated that presentations are made "infrequently" (Irish *Houses of the Oireachtas*) or "not very often" (Czech *Poslanecká sněmovna*). Four Parliaments/Chambers (Finnish *Eduskunta*, Slovak *Národná rada*, Slovenian *Državni svet*, Belgian *Sénat* and Luxembourg *Chambre des Députés*) indicated that they have never had a presentation or that the opportunity has not arisen.

The reason for or substance of the presentations also varies widely although there is a clear interest across many Parliaments/Chambers in receiving presentations on the Multi-annual Financial Framework, on new economic governance rules and on the CAP reform. Presentations have been made on many matters to Committees including the following:

- an assessment of the Lisbon strategy;
- the Commission's information strategy;
- EU regional and Cohesion policies;
- environmental protection and the related EU climate and energy package;
- EU enlargement strategy;
- the Eastern Partnership;
- the green paper on the European Citizens' Initiative;
- the "Europe 2020" Strategy;
- European Commission's country-specific recommendations of 30 May 2012;
- the Single Market Act;
- a common system of financial transaction tax;
- the Common Consolidated Corporate Tax Base;
- the application of the Schengen *acquis*;
- the European "Roadmap for moving to a low carbon economy in 2050";
- multilingualism policy and the European Union's linguistic and educational strategy;
- Credit Rating Agencies III;
- pensions issues; and
- data Protection.

It is encouraging to see that, subject to competing demands, Commissioners appear to be willing to make themselves, their staff from Directorates General and their staff in EU representations in capitals, available to discuss a wide range of specific subject matters.

1.2.4. Strengthening the political dialogue with European institutions

Despite the evidence of the use of political dialogue the majority of national Parliaments (some 36 out of 40 responding Parliaments/Chambers) stated they believe that **political dialogue needs to be strengthened** with all European institutions but with particular emphasis on the relationship with the Commission. The suggestions made by parliaments for doing so are many and varied and included the following:

1. increased use by national Parliaments of targeted and relevant recommendations to the Commission to enable better responses from the Commission (the UK *House of Lords* and Dutch *Tweede Kamer*);
2. more prompt and more substantive replies from the Commission to opinions made to it (UK *House of Lords*, Irish *Houses of the Oireachtas*, Portuguese *Assembleia da República*, Italian *Camera dei Deputati*, Dutch *Tweede Kamer*, the Spanish *Cortes Generales*, German *Bundesrat* and Dutch *Eerste Kamer*);
3. a description by the Commission of the impact of the opinions made to it in terms of how it influenced legislation or policy (Maltese *Kamra tad-Deputati* and Italian *Camera dei Deputati*);
4. greater consultation of national Parliaments by the Commission in advance of legislative proposals being made particularly through the organisation of preparatory meetings to discuss politically important proposals (French *Assemblée nationale*, the Czech *Senát* and Swedish *Riksdag*); and
5. more frequent visits by Commissioners to national Parliaments to explain proposals including the use of a mandatory schedule of visits by Commissioners to national Parliaments (Polish *Senat*, Cyprus *Vouli ton Antiprosopon*, Slovak *Národná rada*, the Greek *Vouli ton Ellinon* and Romanian *Senatul*).

The Italian *Senato della Repubblica* and the French *Sénat* were the only Parliaments/Chambers that positively commented on the political dialogue with the Commission. The Italian *Senato della Repubblica* said that it "appears to be effective and satisfactory, owing to the written replies to the opinions of national parliaments. Such replies, which are chamber-specific, have recently become more accurate, thus giving national parliamentarians a better understanding of the Commission's positions and of the follow-up to the legislative proposals."

Effective use of visits as a tool and the need to strengthen contacts/visits with the Commission within the political dialogue

It has been seen already that there is a wide disparity as between national Parliaments in terms of receiving **contacts or visits** from or to the Commission to discuss proposals or other matters. The majority of national Parliaments/Chambers, some 36 of the 40 responding, nevertheless consider the visits that do occur to be an effective tool within political dialogue for the discussion of strategic proposals or initiatives. It seems that the personal contact engendered by such visits lends itself to useful discussions on matters of strategic

importance to national Parliaments. In view of the usefulness of such contacts, some 36 of the 39 responding Parliaments/Chambers believe that such contacts need to be strengthened.

The table below indicates how contacts and visits can be strengthened according to those who responded:

Responses¹¹	%	No.
Systematic annual presentation of CWP in national Parliaments	67	24
Presentation of specific proposals by the European Commission in national Parliaments (upon request)	89	32
Discussion with invited Commissioners in COSAC meetings	81	29
Greater use made of video conferencing with Commissioners	44	16
Total number of respondents		36

It is clear that a more tailored approach adapted to the needs of each national Parliament is the most favoured option. Two Parliaments/Chambers (Portuguese *Assembleia da República* and Danish *Folketing*) believe that political dialogue could be improved if consideration were given to implementing the ideas set out in paragraph 6 of the Contribution of COSAC XLVII in Copenhagen of April 2012 to which the Commission has replied.¹²

Closer cooperation between national Parliaments on proposals of particular concern

The question was raised as to whether or not Parliaments/Chambers would be in favour of **closer cooperation between national Parliaments to discuss proposals that are of particular concern and for which a large number of reasoned opinions (ROs) were issued**, even though the threshold¹³ set out under the Lisbon Treaty for reconsideration on the part of the Commission was not met. The majority of national Parliaments/Chambers, some 34 of the 39 who responded, were in favour of such an approach.

When asked how such cooperation could take place the following responses were given:

Responses¹⁴	%	No.
Letters between Chairmen of relevant committees outlining opinions to other NPs	68	23
Hold discussions between national Parliaments representatives in Brussels	71	24
Hold discussions in the forum of COSAC	85	29
Total number of respondents		34

¹¹ Where "No." indicates the actual number of Parliaments/Chambers who responded and percentage (%) is the ratio of the actual number of responses to the total number of respondents.

¹² <http://www.cosac.eu/denmark2012/plenary-meeting-of-the-xlvii-cosac-22-24-april-2012> and Commission's letter of response D(2012) 784008, 28 June 2012.

¹³ For the threshold see Article 7 of Protocol (No 2) Treaty on the Functioning of the European Union [OJ C83/206; 30.3.2010]

¹⁴ Where "No." indicates the actual number of Parliaments/Chambers who responded and percentage (%) is the ratio of the actual number of responses to the total number of respondents.

The most favoured option is the holding of discussions in the forum of COSAC. However, over half of those responding had other ideas which may also be interesting. These included:

1. greater use of IPEX and other on-line resources (Hungarian *Országgyűlés*, the UK *House of Lords* and Danish *Folketing*);
2. the use of letters to be issued to the Commission in the joint names of several parliaments to give added weight to their common concerns (Dutch *Tweede Kamer*);
3. more working meetings of experts in the margins of COSAC such as that organised by the Danish Presidency or other closer contacts (Polish *Sejm*, the Bulgarian *Narodno sabranie* and Romanian *Senatul*);
4. exchanges of information between Members of Parliament in the margins of both COSAC and sectoral meetings or casual visits by MPs to other parliaments (Portuguese *Assembleia da República*, Danish *Folketing*, UK *House of Lords* and Romanian *Camera Deputaţilor*);
5. greater use of video conferencing (UK *House of Lords* and Swedish *Riksdag*); and
6. more intensified use of the national Parliament Representatives as had recently happened with the triggering of the yellow card on the Monti II proposal¹⁵ (Belgian *Chambre des représentants*).

Two Parliaments/Chambers declared themselves to be satisfied with the current arrangements (i.e. the Swedish *Riksdag* and the Slovenian *Državni svet*), while the Finnish *Eduskunta* states that it does "not oppose any exchange of views on any topical subject, but this can be achieved rapidly by existing means of communication. We would oppose any new formalised cooperation model."

Closer cooperation between national Parliaments and the Commission on proposals of particular concern

In a similar vein the question was asked as to whether or not Parliaments/Chambers would be in favour of **closer cooperation with the Commission on proposals of particular concern**. Some 37 of the 40 respondent Parliaments/Chambers were in favour of such closer cooperation.

Responses¹⁶	%	No.
Improved responses to ROs from the European Commission	81	30
Bring to the attention of the College of Commissioners	57	21
Informal dialogue with national Parliaments Representatives in Brussels	68	25
Hold discussions in COSAC meetings	76	28
Total number of respondents		37

As was seen in response to earlier questions the majority of parliaments, some 31, would like to see improved responses from the Commission on any ROs made to it by Parliaments/Chambers. This was followed by the use of COSAC for further discussion and

¹⁵ COM (2012) 130; 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

¹⁶ Where "No." indicates the actual number of Parliaments/Chambers who responded and percentage (%) is the ratio of the actual number of responses to the total number of respondents.

greater use of the national Parliament Representatives. Additional suggestions made also included the following: further discussions with Commissioners at the appropriate sectoral meetings; videoconferencing between the responsible Commissioner and those Parliaments/Chambers submitting a RO on a proposal - to include possibly the appropriate MEPs; and the possibility to adopt an ad hoc Communication where there is a large number of ROs.

The Finnish *Eduskunta* also made the point strongly that "the current delays and lack of substance of the Commission's replies to ROs are unacceptable. All replies should be issued by the Commissioner responsible for the dossier in question (in particularly important cases, by the College) and before the issue addressed by the national Parliament has been disposed of in the Council."

To summarise this section, the majority of Parliaments/Chambers have undertaken some form of political dialogue, mostly written opinions. However, the majority also stated that such political dialogue could be strengthened or enhanced and advanced a number of ways of improving it. In general, Parliaments/Chambers would welcome more prompt and substantive responses by the Commission to concerns raised by them.

The majority of parliaments/Chambers have never had a discussion with a Commissioner or Commission staff on the Commission's Work programme. However, there is evidence of significant and frequent contact between the Commission and/or its staff on specific Commission proposals and Parliaments/Chambers would welcome more visits and particularly with a tailored approach by Commissioners adapted to the needs of each Parliament/Chamber.

Parliaments/Chambers were, in general, in favour of closer and more frequent contacts with other Parliaments/Chambers and the Commission in respect of proposals that raise particular concerns and for which a large number of ROs were issued. The means for such contacts are highlighted in the Report.

CHAPTER 2: THE TREATY ON STABILITY, COORDINATION AND GOVERNANCE IN THE ECONOMIC AND MONETARY UNION AND THE ROLE OF PARLIAMENTS

The **Treaty on Stability, Coordination and Governance (TSCG) in the Economic and Monetary Union states in Article 13** that “as foreseen in Title II of the Protocol (No 1) on the role of national Parliaments in the European Union annexed to the European Union Treaties, the European Parliament and the national Parliaments of the Contracting Parties will together determine the organisation and promotion of a conference of representatives of the relevant committees of the European Parliament and representatives of the relevant committees of national Parliaments in order to discuss budgetary policies and other issues covered by this Treaty.”

This chapter aims at exchanging information on the state of play on ratification of the Treaty.¹⁷ It also aims at initiating a debate on how the above mentioned conference could be organised and in which forum this may be most appropriately carried out.

2.1 Ratification of the TSCG

Out of 25 Member States (which is equal to 36 Parliaments/Chambers) that are signatory parties to the TSCG, 17 national Parliaments/Chambers have responded that the **ratification document has been deposited**,¹⁸ whereas 22 Parliaments/Chambers (of which 4 Chambers are not signatory parties to the TSCG) have responded that the above document has not yet been deposited.

Concerning the expected **timetable for depositing the ratification document**, most Parliaments/Chambers estimated that the ratification process would be launched, processed or concluded during the second half of 2012, and several specifically stated that the ratification process would be completed in autumn of 2012. The Swedish *Riksdag* stated that the ratification process would be dealt with during the 2012-2013 parliamentary session. The German *Bundestag* and the German *Bundesrat* adopted the law ratifying the Treaty on 29 June 2012 and, following the ruling of the German Federal Constitutional Court, the law was signed. The Cyprus *Vouli ton Antiprosopon* indicated that the TSCG is not subject to ratification by the House of Representatives and further explained that the Cyprus Constitution provides that every international agreement with a foreign state or international organisation relating to commercial and economic matters is concluded on the basis of a decision by the Council of Ministers.

The Maltese *Kamra tad-Deputati* stated that although the ratification document had been deposited on 29 June 2012, a specific timetable for debate in the parliament had not yet been decided. The Belgian *Chambre des représentants* indicated “that the Federal

¹⁷ This information is based on the replies from Parliaments/Chambers and is up to date at the time of writing and the situation is likely to have changed since then.

¹⁸ At the time of writing 12 MS already ratified: Greece, Ireland, Spain, Italy, Cyprus, Austria, Portugal, Slovenia (8 Euro MS) and Denmark, Latvia, Lithuania, Romania (4 non-Euro MS). This is the equivalent of 17 Chambers - plus Cyprus which did not ratify via an act of its Parliament.

Government wanted the entire procedure to be completed by the end of 2012". The Dutch *Tweede Kamer* stated that the ratification document for the TSCG was deposited on 3 July 2012 and the Committee on Finance will consider the matter following the general elections on 12 September 2012.

2.2. Reinforcement of Interparliamentary co-operation on the basis of the role assigned to national Parliaments by Article 13 of the TSCG

Article 13 provides for a forum that would involve the representatives of the European Parliament and the relevant committees of national Parliaments to discuss issues arising from the implementation of the TSCG. In replies to the questionnaire on this topic, some Parliaments/Chambers acknowledged the need for interparliamentary co-operation and expressed the view that Article 13 of the TSCG contributes to the **reinforcement of interparliamentary co-operation** on budgetary policies. However, nine national Parliaments/Chambers stated that they had not yet debated the issue or taken a formal decision. In addition, the European Parliament replied that, although it was very keen on reinforcing inter-parliamentary cooperation currently developed in the framework of the European Semester, it is reflecting on this matter and had not as yet a formalised position on the implementation of Article 13.

Some took the view that interparliamentary co-operation should be reinforced on the basis of existing forums. The Finnish *Eduskunta* called Article 13 "redundant" and mentioned COSAC as the preferable forum for discussion, while the Italian *Camera dei Deputati* stated that any decision on the implementation of Article 13 should be taken by the European Union Speakers' Conference. The Danish *Folketing* suggested that first and foremost Parliaments/Chambers individually needed to engage in closer political dialogue with the European Commission on issues related to the economic cooperation within the Fiscal Compact and the European Semester, and added that Article 13 could be a supplement to this cooperation in terms of exchange of best practices between national Parliaments and the European Parliament. The Spanish *Cortes Generales* supported the organisation of an annual budgetary meeting, where the co-ordination of the Member States' budgetary policies could be discussed.

2.3 Appropriate forum for the discussion of budgetary policies and other issues as stipulated by Article 13 of the TSCG

Concerning the **appropriate forum for the discussion** of budgetary policies and other issues as stipulated by Article 13 of the TSCG, 10 national Parliament/Chamber did not have a formal opinion or had not yet taken a formal decision. In addition, the European Parliament had not yet a formalised position on the implementation of the aforementioned Article 13. Some Parliaments/Chambers (Cyprus *Vouli ton Antiprosopon*, Danish *Folketing*, Irish *Houses of the Oireachtas* and Swedish *Riksdag*) explicitly stated that no new structures were required.

In this context, a number of Parliaments/Chambers were somewhat flexible about the format to be used and comments related to this included:

- "the appropriate forum would be the COSAC meeting, as well as the Conference of the Chairpersons of Finance Committee and the JCMs" (Greek *Vouli ton Ellinon*);

- "a quick solution would have to be an interparliamentary meeting organized by the relevant committees of the European Parliament" (Maltese *Kamra tad-Deputati*); and
- COSAC or the biannual meetings of the Chairpersons of Budget Committees (Hungarian *Országgyűlés*).

Others preferred any future meetings to be held at committee level. Comments on this included:

- meetings between representatives of finance committees could be used (Luxembourg *Chambre des Députés*);
- "As in article 13 we will see the cooperation through organizing conferences of chairs of relevant committees" (Estonian *Riigikogu*);
- discussions could "be held at the biannual meetings of the Chairs of the finance and budget committees" (Swedish *Riksdag*); and
- "The forum could take the form of an interparliamentary meeting involving the participation of the representatives of the finance/budgetary committees of the national parliaments, as well as of the Committee on Economic and Monetary Affairs of the European Parliament" (Cyprus *Vouli ton Antiprosopon*).

The Portuguese *Assembleia da República* and the Irish *Houses of the Oireachtas* indicated that a special conference should be organised and chaired by the Member State holding the Presidency of the Council, with the participation of national Parliaments and the European Parliament.

Yet others proposed COSAC as an appropriate forum to promote the exchange of information and best practices and comments related to this included:

- "COSAC or a similarly structured body would be the most appropriate forum" (Czech *Senát*);
- "discussions... should preferable be conducted within the frames of COSAC by inviting members of relevant committees...to participate in these discussions" (Danish *Folketing*);
- "COSAC or an ad hoc meeting within the COSAC structure" (Finnish *Eduskunta*); and
- "considers it appropriate for COSAC to organise an interparliamentary conference on the specific topics as mentioned in Article 13 TSCG, without excluding other suggestions" (Dutch *Tweede Kamer*).

A number of Parliaments/Chambers stated that a conference modelled on or similar to the Interparliamentary Conference for the Common Foreign and Security Policy and the Common Security and Defence Policy could be established (Belgian *Chambre des représentants*, French *Sénat*, Romanian *Camera Deputaţilor* and Spanish *Cortes Generales*).

The Italian *Camera dei Deputati* re-emphasised that "any decision on the implementation of Article 13 of the TSCG should be taken by the European Union Speakers' Conference". The UK *House of Commons* further indicated that the format of interparliamentary scrutiny under Article 13 should first be discussed and agreed in the appropriate forum, either the Speakers' Conference or COSAC. Further, the French *Sénat* and Romanian *Camera Deputaţilor* and the Belgian *Chambre des représentants* said that the model of the inter-parliamentary

conference for the Common Foreign and Security Policy and the Common Security and Defence Policy could be appropriate.

2.4 Composition of the forum

11 national Parliaments/Chambers, plus the European Parliament, had no formalised view or had not yet discussed the **composition of the forum**. The Czech *Senát* and the Danish *Folketing* suggested an equal number of delegates from each national Parliament and the European Parliament. The Cyprus *Vouli ton Antiprosopon* stated that the composition should be such that would "ensure the balance in the involvement between the national Parliaments and the European Parliament". The Belgian *Chambre des représentants* and the Romanian *Camera Deputaţilor* suggested that the representation of national Parliaments should be 6 per Member State and 12 MEPs

The French *Assemblée nationale*¹⁹ proposed a conference of a flexible format, "inspired by COSAC practices", gathering six members of the committees on finance and other interested committees of each Member and the Finnish *Eduskunta* proposed a conference as unregulated as possible, while the Italian *Camera dei Deputati* reiterated its position that any decision on the implementation of Article 13, including the composition of the forum, should be taken by the European Union Speakers' Conference.

The UK *House of Lords* suggested that, if the forum would discuss issues wider than those incorporated in the Treaty, it would be desirable to have the participation of the Parliaments/Chambers that are not contracting parties to the Treaty. The Bulgarian *Narodno Sabranie* and the Czech *Poslanecká sněmovna* suggested that representatives of national Parliaments, which are not part of the Eurozone, should also participate in such a conference. The Dutch *Tweede Kamer* was of the opinion "that also representatives of the relevant committees of national Parliaments of Member (or candidate) States of the EU that do not participate in the Treaty should be invited to the conference."

The Austrian *Nationalrat and Bundesrat* suggested that it is important that dialogue between the Commission and national Parliaments should be ensured. Amongst other Parliaments/Chambers, the Spanish *Cortes Generales* and the Estonian *Riigikogu* suggested the chairs of the relevant committees, both in national Parliaments and in the European Parliament should participate.

To summarise this chapter, most Parliaments/Chambers reported that the ratification document for the TSCG has not yet been deposited, but, indicated that, during the second half of the year 2012, the ratification procedure would proceed. Concerning the reinforcement of interparliamentary co-operation as stipulated by Article 13 of the TSCG, Parliaments/Chambers emphasised that Article 13 provides a platform for closer co-operation. With regards to the appropriate forum and its composition, it seems that there have been, as exemplified in the Report, varying views and that more discussion should be expected on this matter in the future.

¹⁹ See Report: "Le Gouvernement économique européen face à la crise: le rendez-vous franco-allemand pour porter une ambition pour l'Europe" by Pierre Lequiller.
<http://www.assemblee-nationale.fr/13/europe/rap-info/i4449.asp>

CHAPTER 3: ENERGY - TRANS EUROPEAN ENERGY INFRASTRUCTURE

The **Commission proposal on guidelines for trans-European Energy infrastructure** adopted on 19 October 2011,²⁰ aims at laying down rules for the development and interoperability of trans-European energy networks, in order to ensure the functioning of the internal energy market, the security of energy supply in the Union, the promotion of energy efficiency, the development of new and renewable forms of energy, and the promotion of the interconnection of energy networks.

The above proposal constitutes part of the Union's efforts to modernise and expand European energy infrastructure as set out in the Commission Communication on energy infrastructure priorities for 2020 and beyond, adopted on the 17th November 2010.²¹ This called for a new infrastructure policy to coordinate and optimise network development in Europe. The Commission Communication "A budget for Europe 2020", adopted on the 29th June 2011,²² proposed the creation of the Connecting Europe Facility through which the completion of priority energy, transport and digital infrastructures will be promoted, setting aside a budget of €9.12bn for investment in the field of energy.

Chapter 3 of the Bi-annual Report aims at exchanging information pertaining to the above proposal between Parliaments/Chambers in order to facilitate the substantive debate of the proposal as well as its future implementation.

3.1 Parliamentary scrutiny of the proposal

Parliaments/Chambers were asked whether they **scrutinised the proposal**, for which reasons they agree or disagree with the objectives set out therein and whether they submitted an opinion in the framework of the political dialogue or adopted any other parliamentary document (e.g. resolution, report, decision, reasoned opinion etc.).

27 of 41 Parliaments/Chambers scrutinised the proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European Energy infrastructure and repealing Decision No 1364/2006/EC (COM(2011) 658) while 14 Parliaments/Chambers replied that they did not.

Four Parliaments/Chambers submitted a contribution on the proposal, while 11 adopted another parliamentary document such as resolutions or reports in committees. No Reasoned Opinions were adopted.

²⁰ Commission proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European Energy infrastructure and repealing Decision No 1364/2006/EC (COM(2011) 658). - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0658:FIN:EN:PDF>

²¹ Communication from the Commission on Energy infrastructure priorities for 2020 and beyond - a Blueprint for an integrated European energy network (COM(2010) 677) - [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SPLIT_COM:2010:0677\(01\):FIN:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SPLIT_COM:2010:0677(01):FIN:EN:PDF)

²² Communication from the Commission on A budget for Europe 2020 (COM(2011) 500/I & II final) - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0500:FIN:EN:PDF>

Of those who scrutinised the proposal, 25 Parliaments/Chambers replied to the question if they agreed with the objectives, with 17 being in favour and eight being partly in favour of the objectives and none against.²³

Most of those 17 Parliaments/Chambers that agreed with the proposal and its objectives, stated their conviction that the proposal would contribute to reaching the core objectives of EU energy policy, namely the completion of the internal market for energy, competitiveness, the diversification and security of supply. Two Parliaments/Chambers (the Italian *Senato della Repubblica* and the European Parliament) linked these objectives to achieving the 2020 energy objectives. The German *Bundesrat* emphasised that coordinated expansion of energy infrastructure at the EU level is an essential prerequisite to attain the energy policy goal of safe, affordable and climate-friendly energy supply both at the European level and at the level of the Member States. The Maltese *Kamra tad-Deputati* and the Dutch *Tweede Kamer* regarded the proposal as a priority and the Finnish *Eduskunta* as well as both Romanian Chambers pointed out that it was congruent with the national priorities for energy. While the Estonian *Riigikogu* expressed its overall support for the EU energy action plan, the Dutch *Tweede Kamer*, the Swedish *Riksdag* and the Portuguese *Assembleia da República* pointed out the need for European cooperation in this field.

Despite their general support for the proposal eight Parliaments/Chambers criticised several of its specific aspects. Addressing a general issue, the two UK Chambers considered the budget proposed as over-ambitious, while the Czech *Senát* pointed out that the funds for the Connecting Europe Facility should not be transferred from the Cohesion Fund. The Slovenian *Državni svet* and the UK *House of Commons* shared concerns about the principle for the allocation of EU support which should be limited to projects with a clear EU-added value while upholding the "consumers pay" principle for commercially attractive investments. In contrast to that the UK *House of Lords* would like to see economic viability to be put at the centre of considerations. The Slovenian *Državni svet* and the Cyprus *Vouli ton Antiprosopon* were concerned about the provisions regarding the distribution of investment costs which, according to them, could present a risk to small countries (Slovenian *Državni svet*) and should ensure that the return of each project is consistent with the risk undertaken (Cyprus *Vouli ton Antiprosopon*).

The following were among the particular concerns mentioned by individual Parliaments/Chambers:

- the level of control the Commission would take over the direction of the projects and the key role that had to be secured for Member States (UK *House of Lords*);
- the insufficient definitions of certain concepts and the unclear working patterns of regional groups (Slovenian *Državni svet*);
- the regulatory treatment and the eligibility of projects of common interest (PCIs) (Cyprus *Vouli ton Antiprosopon*);
- the fact that more cross-border interconnectors should not excuse Member States from producing the electricity they consume (French *Sénat*); and

²³ Two Parliaments/Chambers did not provide further information on their positive scrutiny result. See annex on COSAC website for full information on replies giving the response of each Parliament/Chamber.

- the potential encroachment on Member States' planning law and the necessary respect of the constitutionally guaranteed competence of the federal states (*Länder*) for implementation and design of planning and permit granting procedures (German *Bundesrat*).

3.2 Specific questions considered in scrutiny

Parliaments/Chambers were asked to state whether they considered specific questions arising in connection with the proposal and had an opportunity to provide additional information related to the proposal.

Environmental protection

(i) It is interesting to point out that ten Parliaments/Chambers considered whether the proposed legislation affords adequate protection to the environment whilst promoting the development of trans-European energy networks, but none of them voiced any criticism in this regard. For example, the Cyprus *Vouli ton Antiprosopon* noted the inclusion of provisions regarding the protection of the environment and the Commission's pledge that measures promoted under this proposal will not undermine EU environmental legislation. Only the government statement in the UK *House of Commons* pointed to the need for additional information on how the money will be spent best to aid growth and to support environmental objectives. However, the Danish *Folketing* argued for a higher priority of green elements which might contribute to achieving the 2020 goals and the 2050 objectives throughout the proposal and the European Parliament examines strengthening environmental provisions in amendments.

Transparency and effective participation

(ii) Eight Parliaments/Chambers replied that they had scrutinised whether the proposed Regulation adequately addresses transparency and effective participation of the public during consultations for a proposed infrastructure project, in the light of the time constraints imposed by the "fast track" permit granting procedure. While the Cyprus *Vouli ton Antiprosopon* and the French *Sénat* expressed concerns as to whether effective consultations of the public can be achieved within the short time frames set by the proposal, the German *Bundesrat* welcomed the much earlier consultation and broader basis of involvement of the general public (not just direct stakeholders). The European Parliament looked into suggestions how to carry out the public consultations in order to ensure maximum transparency despite the time constraints.

Permit granting process

(iii) 11 Parliaments/Chambers confirmed that they considered whether a reorganisation of the permit granting process in their country would be needed in order to enable decisions within the time constraints imposed by the Regulation, especially in cases where multiple authorities are engaged. Several Member States will have to adjust their permit granting processes according to the replies from the Polish *Sejm*, the UK *House of Lords*, the Cyprus *Vouli ton Antiprosopon* and the French *Sénat*. The German *Bundesrat* drew attention to the fact that Germany has entirely revised and considerably accelerated the planning and permit granting procedure for electricity transmission grids thanks to the Grid Expansion Acceleration Act (*Netzausbaubeschleunigungsgesetz/NABEG*) of which the innovations were called into question again by the Commission proposal. The Latvian *Saeima* voiced concerns

about the feasibility of ensuring a timely establishment of a new institution for issuing permits for projects of common interest. The Swedish *Riksdag* (as does the German *Bundesrat*) underlined the need to respect national sovereignty with regard to the permit granting procedures and the Finnish *Eduskunta* reminded that the permit granting process has to take into consideration other legitimate interests such as the adequacy and sufficient expertise of environmental impact assessment processes, constitutionally protected rights of municipalities and adequate possibilities for public participation and access to information.

Projects of common interest (PCIs)

(iv) Ten Parliaments/Chambers replied that they had looked into the question of whether they had any objections with regard to the rules set out by the proposed regulation concerning the eligibility of projects of common interest (PCIs) for financial assistance from the EU. Only the Cyprus *Vouli ton Antiprosopon* mentioned this point as an initial stumbling block for its support of the Commission proposal but concedes that in the meantime many of its comments and suggestions concerning the criteria for the selection of projects of common interest (PCIs) had been taken into consideration. Contrary to that, the French *Sénat* stated that it did not have any objection to the defined rules from the outset. At the same time, the European Parliament examined whether the rules need to be better defined, in particular as regards the governance of regional groups (as was requested also by the Romanian *Camera Deputaților*).

3.3 Content of contributions and parliamentary documents

Those 15 Parliaments/Chambers which submitted contributions or adopted any other document were asked to summarise the content of their documents. Only three Parliaments/Chambers, the Bulgarian *Narodno sabranie*, the Italian *Senato della Repubblica* and the Slovenian *Državni svet*, made additions to what had already been presented above. The Bulgarian *Narodno sabranie* supported the Connecting Europe Facility, the optimised permit granting procedures (as mentioned as well by the Slovenian *Državni svet*), the designation of trans-European priority corridors (as the Italian *Senato della Repubblica* and the Slovenian *Državni svet*), the designation of projects of common interest (as the Italian *Senato della Repubblica* and the Slovenian *Državni svet*). The Italian *Senato della Repubblica* also spoke out in favour of Smart Grids, a role for sponsors of private industrial projects in the designation of the European Coordinator, a model of choice between simplified authorisation procedures, avoiding the risk that the new cost-benefit analysis methodology results in cost for the users and a safeguard clause in favour of commercially viable projects.

The Council Presidency and the European Parliament's rapporteur are committed to work towards the adoption of the proposal by the co-legislators by the end of 2012/beginning of 2013. Depending on the trialogue negotiations the European Parliament plenary could possibly adopt a position in January 2013.

To summarise this chapter, the replies to the questions show that two thirds of Parliaments/Chambers scrutinised the above mentioned proposal while one third chose not to do so. Of those Parliaments/Chambers that scrutinised the above mentioned proposal two thirds were in favour and one third partly in favour of its objectives; none were

against. However, several national Parliaments expressed selective concerns over various specific aspects of the above proposal which are documented in this Report.

It can be deducted from Parliaments'/Chambers' replies that future inter-parliamentary discussions on the substance of the proposal could revolve around questions linked to the funding, the allocation of EU support, the distribution of investment costs, the level of control by the Commission over the direction of projects and the role for Member States, the working patterns of regional groups the regulatory treatment and the eligibility of projects of common interest and the design of permit planning procedures as well as the pros and cons of the much earlier consultation and broader basis for involvement of the general public.

CHAPTER 4: SINGLE MARKET GOVERNANCE

In relation to the re-launch of the Single Market, the Europe 2020 Strategy and the continuing financial crisis, the Commission presented in June 2012 a Communication on better governance for the Single Market.²⁴ As can be seen in the latest governance check-up of the implementation of Single Market directives the average transposition deficit has risen from 0.7% in 2009 to 1.2% in February 2012.²⁵ The Commission Communication states that a more efficient transposition of EU legislation could lead to an overall cost saving of almost 40 billion euro and calls for a renewed commitment to make the Single Market deliver. In the 17th Bi-annual Report several Parliaments/Chambers underlined the "need to improve Member States' transposition and application of EU legislation" and a discussion on Single Market governance was opened at the XLVII COSAC meeting in Copenhagen April 2012. This discussion will be continued with an organised debate on Single Market Governance at the XLVIII COSAC meeting in Nicosia in October 2012.

The fourth chapter of the 18th Bi-annual Report aims to facilitate the exchange of information about the parliamentary activity around the subject of better governance for the Single Market.

4.1 Parliamentary scrutiny of Single Market governance

Out of 40 respondents, 12 Parliaments/Chambers replied that they had considered the Commission Communication "**Better governance for the Single Market**" or the role of national Parliaments in the transposition of Single Market legislation (e.g. the Danish *Folketing*, the Romanian *Senatul* and the UK *House of Lords*). However, an additional eight Parliaments/Chambers expressed their intention to hold a debate on the subject or have already scheduled a discussion in the near future (e.g. the German *Bundestag*, the Hungarian *Országgyűlés* and the Polish *Sejm*).²⁶ The Dutch *Tweede Kamer* stated that the governance of internal market directives has been debated, but that the "role of national parliaments in transposition and effective implementation of European legislation on the internal market did not receive particular attention".

Of those Parliaments/Chambers which have already considered the subject, five answered that they have submitted an opinion or a parliamentary initiative. The Bulgarian *Narodno sabranie* adopted in May 2012 a statement in which the Committee on European Affairs and Oversight of European Funds called for effort at EU-level focusing on "better use of the single Market's untapped potential by removing the remaining obstacles, complying with its rules and turning it into an engine of growth". It expressed furthermore concern with the existing restrictions on free movement of people within the EU and the "lack of full mutual

²⁴ COM (2012) 259, "Better governance for the Single Market" - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0259:FIN:EN:PDF>

²⁵ "Making the Single Market deliver, Annual Governance Check-up 2011", European Commission, Internal Market and Services, 27.02.2012 - http://ec.europa.eu/internal_market/score/index_en.htm or the background note produced for the XLVII COSAC Meeting by the COSAC Secretariat, "State of transposition and enforcement of Single Market directives in the EU Member States" - <http://www.cosac.eu/denmark2012/plenary-meeting-of-the-xlvi-cosac-22-24-april-2012/>

²⁶ See annex on COSAC website for full information on replies giving the response of each Parliament/Chamber.

recognition of professional qualifications".²⁷ The European Parliament adopted in June 2012 a resolution drafted by the Committee for Internal Market and Consumer Protection (IMCO). The resolution focused among other things on a "balanced way forward to deepen and modernise the Single Market" and "provides for an upgrading of the governance of the Single Market by establishing country-specific recommendations".²⁸ The French *Sénat* and *Assemblée nationale* participated, together with the government, in a working group on improving the transposition of directives. This resulted in a "*guide de bonnes pratiques*" which was implemented in January 2012.²⁹

To summarise this chapter, implementation and transposition of European Union legislation is receiving more and more attention as it is an area that could be more effective and might lead to substantial cost savings. This is also to be seen with national Parliaments' scrutiny where almost half of the Parliaments/Chambers answered that they had either already considered the Commission Communication on better governance for the Single Market or expressed intentions to do so in the near future. The findings of that scrutiny have been summarised in the Report.

²⁷ Statement of the National Assembly of The Republic of Bulgaria, 30.05.2012 -

http://parliament.bg/pub/cW/201206051253034.Statement_EN_Single_Market.pdf

²⁸ European Parliament resolution of 14 June 2012 on "Single Market Act: The Next Steps to Growth" -

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-258>

²⁹ "Guide de Bonnes Pratiques Concernant la Transposition des Directives Européennes" - http://www.fonction-publique.gouv.fr/files/files/textes_de_reference/GBP_transpo_directives.pdf