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STRENGTHENING PARLIAMENTARY VOICES IN THE EU'S MULTI-LEVEL SYSTEM

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Executive summary

Two scrutiny relationships in the EU's multi-level system are particularly complex: National parliaments are monitoring the activities of the European Commission, and the European Parliament has started to act as a public forum that does not hesitate to pick a fight against any individual national government. In both cases, parliamentary voices can articulate their ideas, concerns and general views. Taking the European Parliament's Rangel report and recent interparliamentary developments as a starting point, this Policy Paper puts forward six recommendations to enhance the ways in which parliamentary voices are heard in the EU's multi-level system.

Although citizens' trust in political institutions and the European Union as a whole has recovered slightly, better parliamentary scrutiny can reduce the perceived democratic deficit of the EU's multi-level system. This Policy Paper is guided by the principles of building upon current practices and avoiding Treaty change. It recommends to:

1. refrain from assigning any collective decision-making or veto powers to national parliaments,

2. acknowledge the diversity of political views within parliamentary chambers at the national and the European level,

3. put a green card procedure for suggesting legislative initiatives to the European Commission into practice,

4. extend the eight-week standstill period in the Early Warning Mechanism through a technical gimmick,

5. manage the European Parliament's plenary debate invitations to national leaders free from party-political considerations

6. and create the foundations for lively and visible plenary debates with national leaders in the European Parliament.
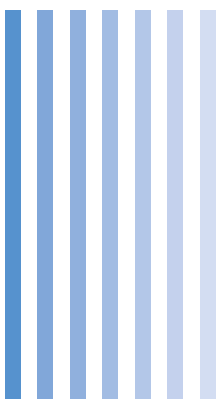
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INTRODUCTION

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The Lisbon Treaty, which has been called the "Treaty of Parliaments", empowered both the EU's national parliaments and the European Parliament. Since then, the activities of parliaments in the EU – at the European level and the national level – have intensified significantly. The EU has nevertheless often been criticised for a democratic deficit in its institutional system. Such criticism is likely to re-emerge and feature prominently in the electoral campaign for the 2019 European Parliament elections.

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THE IMPORTANT ROLE OF PARLIAMENTS IN EUROPEAN INTEGRA-TION HAS BEEN WIDELY RECOGNISED

In the current debate about the future of the EU, the important role of parliaments in European integration has been widely recognised, but there are different ideas and proposals about **the precise role that parliaments should play at their respective level and across the different levels of the EU's multilevel polity**. The coalition agreement of Germany's new Grand Coalition, signed in February 2018, for instance, states the objective to strengthen the European Parliament and to achieve a lively parliamentarism at the national, regional and local level.[1]

Two lines of scrutiny (or, to be more precise, two lines of accountability) in the EU's multi-level system are fairly straightforward: National parliaments hold national governments to account and the European Parliament holds the European Commission to account. All other scrutiny relationships in the EU's multi-level system are more complex.

This Policy Paper first looks at the overall relations between national parliaments and the European Parliament. It then examines the **more complex scrutiny relationships between parliaments and executive actors**: The second part analyses how national parliaments interact with the European Commission under the relevant Lisbon Treaty procedures; the third part of this Policy Paper assesses how the European Parliament and national governments interact in the EU's multi-level system in a much less structured and more ad-hoc way.

1. NATIONAL PARLIAMENTS AND THE EUROPEAN PARLIAMENT

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The EU rests upon two sources of democratic representation and legitimacy, which are anchored in Article 10 TEU, through a two-channel structure: Citizens are represented in their national parliaments, which exercise control over their governments in the Council of the European Union and the European Council, and citizens are also directly represented in the European Parliament.[2] The EU's sources of (input) legitimacy are therefore firstly the European Parliament, secondly the national governments in the Council through their national parliaments, and thirdly interparliamentary bodies (to a very limited extent).

Interparliamentary relations between national parliaments and the European Parliament were, for many years, characterised by **conflict and cooperation**.[3] Disagreements between parliaments at the two levels have typically oscillated around issues such as the weight given to

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1. CDU, CSU und SPD, Ein neuer Aufbruch für Europa. Eine neue Dynamik für Deutschland. Ein neuer Zusammenhalt für unser Land, Koalitionsvertrag, 19. Legislaturperiode, Februar 2018, S. 6. Original: „Wir wollen ein Europa der Demokratie mit einem gestärkten Europäischen Parlament und einem lebendigen Parlamentarismus auf nationaler, regionaler und kommunaler Ebene."
2. Ben Crum and John E. Fossum, The Multilevel Parliamentary Field: a framework for theorizing representative democracy in the EU, in: European Political Science Review, 1/2009, pp. 249-71, here: pp. 249-250.
3. Karlheinz Neunreither, The European Parliament and national parliaments: conflict or cooperation?, in: The Journal of Legislative Studies 11(3-4), 2005, pp. 466-489.

each level in new interparliamentary bodies.[4] They can still emerge today. But national parliaments and the European Parliament have left "constitutional jealousy"[5] behind.

The first part of this Policy Paper sheds light on **the two sides of the relationship** between national parliaments and the European Parliament. Section *1.1* looks at the **national parliaments** and their reflections about what role(s) they would like to play and how the EU's institutional structure should evolve. Section *1.2* turns to the European Parliament and its latest report "on the implementation of the Treaty provisions concerning national parliaments", drafted by rapporteur Paulo Rangel (EPP). This report contains the position of the **European Parliament** on the functioning and possible further development of the role of national parliaments. It is an important document for assessing parliamentary scrutiny in the EU's multi-level system and allows to dissect the position of the European Parliament on this issue.

This Policy Paper also opens up the "black box" of the European Parliament: Instead of treating the European Parliament as a unitary actor in interparliamentary relations, it examines how the European Parliament's eight political groups voted in roll-call votes on the Rangel report. This allows to reveal the conflict lines *inside* the European Parliament.

1.1 National parliaments' reflections about their role

In previous years, various **political actors in the United Kingdom were pivotal in setting the agenda for strengthening national parliaments** and suggesting new ways to involve them into decision-making at the EU level. Most prominently, initiatives by the House of Lords EU Select Committee (for a "green card") and the UK government under Prime Minister David Cameron (for a "red card") received widespread attention in 2015/2016. Brexit means that this agenda-setter for strengthening national parliaments will leave the club.

Other national parliaments must now **develop and promote new ideas** about the future collective role of national parliaments in the EU. The French Sénat, for instance, has called for a far-reaching reorganisation of the EU's institutional set-up and for greater involvement of national parliaments.[6] Previous experience, however, shows that national parliaments' views are "unlikely to add up to a single coherent voice."[7]

Only few national parliaments/chambers **support a Treaty change that would give national parliaments a more significant role in the EU legislative process**.[8] It remains to be defined and agreed what exact changes would be made in case of Treaty change. But if the debate on the Future of Europe confirms this reluctance by national parliaments about embarking on Treaty change, this is a worrying signal for proponents of Treaty change: National MPs would be represented in a Convention under the ordinary procedure for Treaty revision and, ultimately, they have to ratify any changes to the EU's constitutional architecture.

1.2 The European Parliament's plenary vote on the Rangel report

The European Parliament's report "on the implementation of the Treaty provisions concerning national parliaments" assesses the use of current mechanisms for national parliaments'

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> NATIONAL PARLIA-
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> DEVELOP AND PRO-
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4. Valentin Kreilinger, Possibilities for upgrading inter-parliamentary cooperation after the 2014 European elections, in: The Polish Quarterly of International Affairs 1/2014, pp. 57-67.

5. European Parliament, Report on the implementation of the Treaty provisions concerning national parliaments (2016/2149(INI)), 28 March 2018, Explanatory Statement - Summary of facts and findings, p. 5.

6. COSAC, 28th Bi-annual Report on Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny, 26 October 2017, pp. 12-13.

7. Ben Crum and John E. Fossum, "Practices of interparliamentary coordination in international politics: the European Union and beyond", in: Ben Crum and John E. Fossum (eds.) *Practices of inter-parliamentary coordination in international politics the European Union and beyond*. Colchester: ECPR Press, pp. 1-14, here: p. 3.

8. For more details, see COSAC, 29th Bi-annual Report on Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny, June 2018, forthcoming.

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> THE EUROPEAN
> PARLIAMENT'S POSI-
> TION AND PROPOSALS
> ABOUT THE ROLE OF
> NATIONAL PARLIA-
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participation in the European political process and examines possible improvements to those mechanisms, "to bring national parliaments closer to the overall integration process"[9]. This report contains the European Parliament's position and proposals about the role of national parliaments in the EU's multi-level system. It encourages national parliaments to fully exercise their roles in EU affairs in order to directly influence and scrutinise the content of European policies. The report, for instance, recommends better involvement of national parliaments in the European Semester[10] and calls for better coordination of the budgetary calendars at national and European level.[11]

The report was adopted by a **large consensus** on 19 April 2018. In the vote on the resolution as a whole, 518 MEPs (84%) voted in favour, 50 MEPs (8%) voted against and 46 MEPs (7%) abstained. 91% of MEPs voted along European political group lines. The majority was formed by EPP, S&D, ALDE, ECR and Greens/EFA (see Table 1).

TABLE 1 ▪ Vote on the implementation of the Treaty provisions concerning national parliaments

| GROUP	FOR	AGAINST	ABSTENTIONS	TOTAL PRESENT
EPP	179	3	0	182
S&D	157	0	0	157
ALDE	56	0	1	57
ECR	52	1	0	53
Greens/EFA	46	0	0	46
GUE/NGL	13	10	18	41
EFDD	13	3	19	35
ENF	0	26	4	30
NI	2	7	4	13
All groups	518	50	46	614

Source: VoteWatch Europe.

The leftist **GUE-NGL group** witnessed a serious breakdown of its internal cohesion: 13 MEPs voted in favour, 10 MEPs voted against and 18 MEPs abstained. The votes in favour mostly came from GUE-NGL delegations from Finland (*Vasemmistoliitto*), Germany (*Die Linke*), Greece (*SYRIZA*) and Italy, while its MEPs from Cyprus (*Progressive Party of Working People - Left - New Forces*), Ireland (*Sinn Féin*), Portugal (*Partido Comunista Português*) and the UK (*Sinn Féin*) mostly voted against. MEPs from other national delegations within GUE-NGL abstained (see Figure 1).

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9. European Parliament, Report on the implementation of the Treaty provisions concerning national parliaments (2016/2149(INI)), 28 March 2018, Explanatory Statement - Summary of facts and findings.
10. See also: Valentin Kreilinger, Scrutinising the European Semester in national parliaments: what are the drivers of parliamentary involvement?, in Journal of European Integration, 40 (3), 2018, pp. 325-340.
11. See also: Cristina Fasone, Towards a strengthened coordination between the EU and national budgets. A complementary role and a joint control for parliaments?, in Journal of European Integration, 40 (3), 2018, pp. 265-279.

FIGURE 1 ■ Vote on the implementation of the Treaty provisions concerning national parliaments – national delegations within GUE/NGL group
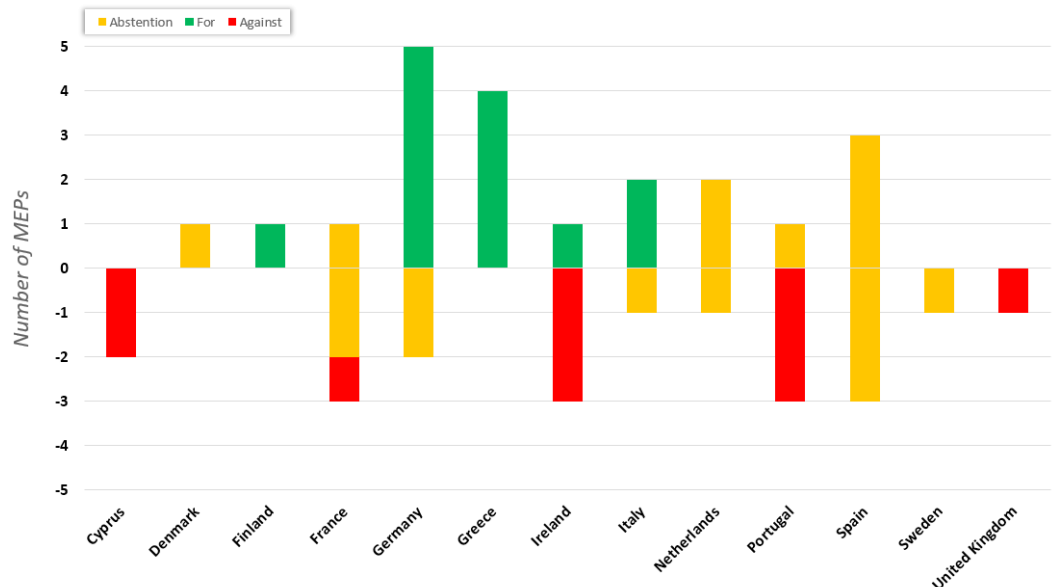
Source: VoteWatch Europe.

The very high cohesion of the mainstream political groups in the European Parliament (EPP, S&D, ALDE, ECR, Greens/EFA) indicates that it is (still) possible to build solid majorities on constitutional issues like the role of national parliaments. Only MEPs in the political groups at the very left and the very right of the political spectrum deviated from the pro-European position that 5/6 of the European Parliament expressed.

This large consensus in the European Parliament did not hold on all issues. On one specific issue, the **possible introduction of a red card procedure** that would give national parliaments some kind of collective veto over legislative proposals (see also sub-section *2.2*, below), the vote in the plenary was quite tight. Recital R of the resolution ("whereas the implementation of a red card procedure is not conceivable at this stage") was subject of a separate roll-call vote that had been requested by the conservative ECR group.

In the roll-call vote, 309 MEPs (50.2%) voted in favour of **Recital R** (they opposed the introduction of a red card procedure as "not conceivable at this stage"), 273 MEPs (44.3%) voted against Recital R, 34 MEPs (5.5%) abstained on this issue.

The majority in favour of opposing the introduction of a red card procedure was formed by EPP, ALDE and Greens/EFA (see Table 2).

Interestingly, the **S&D group** voted against Recital R as it was included in the resolution tabled by rapporteur Paulo Rangel (EPP) and previously adopted by the AFCO committee.

TABLE 2 ▪ Level of opposition to the introduction of a red card procedure

GROUP	FOR	AGAINST	ABSTENTIONS	TOTAL PRESENT
EPP	183	0	1	184
S&D	3	154	1	158
ALDE	50	7	0	57
ECR	1	52	0	53
Greens/EFA	48	0	0	48
GUE/NGL	21	15	4	40
EFDD	0	19	16	35
ENF	3	17	9	29
NI	0	9	3	12
All groups	309	273	34	616

Source: VoteWatch Europe.

Another political group also opposed Recital R despite supporting the resolution as a whole: The **ECR group**, whose biggest national delegations are the British Conservatives, the Polish Law and Justice Party and the Czech Conservatives. Its MEPs voted in favour of the resolution as a whole, but against Recital R, because they see **the introduction of a red card procedure favourably**. Such a procedure had been a priority for the UK's former Prime Minister David Cameron in his renegotiation of the UK's EU membership ahead of the referendum. The current governments of the Visegrad countries Poland, the Czech Republic, Slovakia and Hungary voiced their support for such a procedure in a joint declaration in January 2018.[12]

In this context, it is important to note that Hungarian Fidesz MEPs did not deviate from the line of their political group (EPP). At the left side of the political spectrum, **GUE-NGL** was internally divided – just like in case of the resolution as a whole (see above).

The cohesion of the European Parliament's right-wing political groups, **EFDD** and **ENF**, was, as usual, quite low. One national party within the ENF group, the French *Front national*, voted in a particularly incohesive way: 3 MEPs voted in favour, 3 MEPs voted against and 8 MEPs abstained on Recital R. The two Eurosceptic parties which form the new Italian government, *Lega* and *M5S*, voted differently on the red card provision: All MEPs who belong to *M5S* abstained (see Figure 2, EFDD) while *Lega* MEPs voted against Recital R (see Figure 3, ENF).

" THE TWO EUROSCEPTIC PARTIES WHICH FORM THE NEW ITALIAN GOVERNMENT, LEGA AND M5S, VOTED DIFFERENTLY ON THE RED CARD PROVISION

12. Visegrad Group, V4 Statement on the Future of Europe, 26 January 2018.

FIGURE 2 ▪ Level of opposition to the introduction of a red card procedure for national parliaments – national delegations within EFDD group
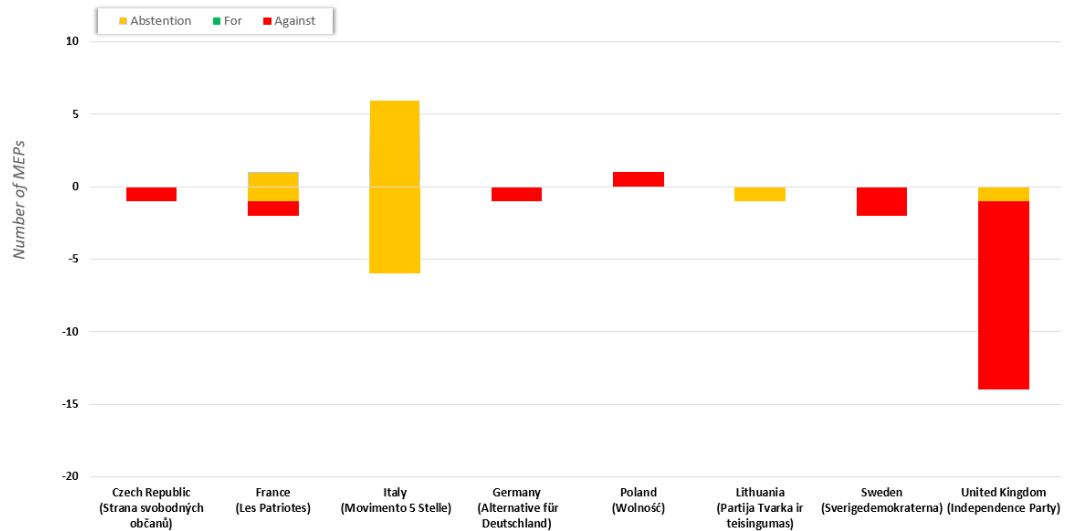
Source: VoteWatch Europe.

FIGURE 3 ▪ Level of opposition to the introduction of a red card procedure for national parliaments – national delegations within ENF group
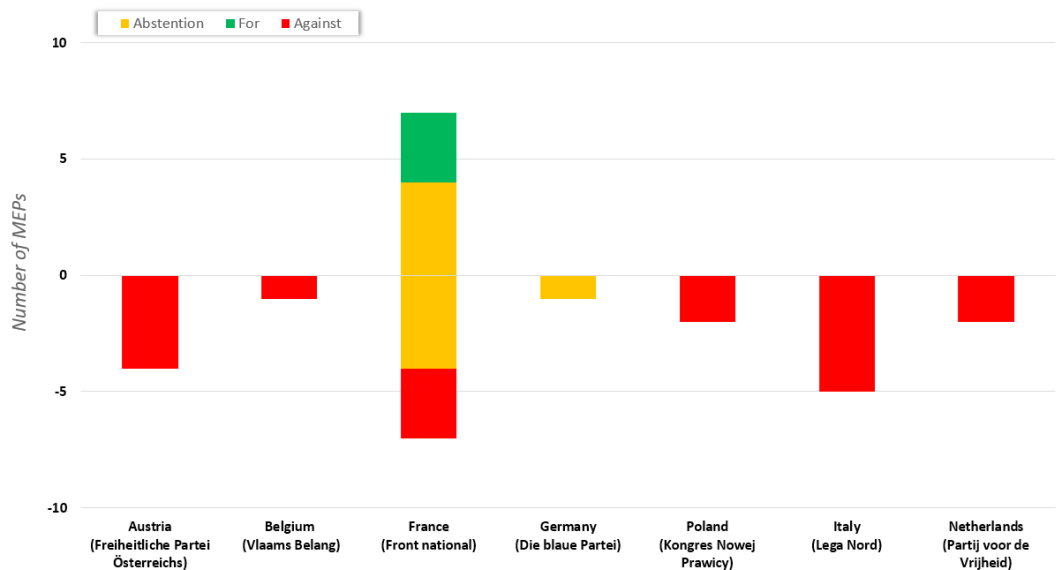
Source: VoteWatch Europe.

As a result of the vote in favour of Recital R, its wording remained unchanged: "whereas the implementation of a red card procedure is not conceivable at this stage". **The European Parliament hence explicitly opposes the introduction of a procedure that would allow national parliaments to block EU legislation** as "not conceivable at this stage".

If MEPs had voted against Recital R, the phrase on the red card procedure would have simply disappeared from the final text of the resolution. This also explains the unlikely joint opposition by S&D, ECR, EFDD, ENF and large parts of the GUE-NGL group which *almost* succeeded in removing Recital R.

1.3 How much and what kind of joint scrutiny?

In the EU's multi-level level system, both national parliaments and the European Parliament play a crucial role, but relations between them suffered from tensions in the past. Maintaining the current **spirit of good cooperation between national parliaments and the European Parliament** is therefore an absolute necessity. The new Joint Parliamentary Scrutiny Group for Europol is an example for regular and institutionalised cooperation between national parliaments and the European Parliament could serve as a blueprint for other bodies of that kind in the Area of Freedom, Security and Justice as well as in other policy areas.[13] This would mean that joint scrutiny spreads in the EU's multi-level system. National parliaments (and the European Parliament) become better informed and could "exert countervailing power, both individually and collectively."[14]

National parliaments and the European Parliament must act in order to make parliamentary voices with their political views heard. Otherwise they risk being **marginalised by executive actors** in the EU multi-level system. But this should not be done via the introduction of a red card procedure (see sub-section *1.2*, above, and sub-section *2.2*, below).

Based on the previous analysis, this Policy Paper recommends to

1. Refrain from assigning any collective decision-making or veto powers to national parliaments.

Collective decision-making powers could jeopardize the delicate equilibrium both among legislatures and in the multi-level system. Any kind of veto power would push national parliaments into a "take it or leave it" situation. Their ability to shape and influence decisions, on the contrary, requires that parliaments can **make their voice heard early in the process** instead of being trapped to agree at the final procedural stage (and a national government able to put considerable pressure on the national government).

In addition, it is important to

2. Acknowledge the diversity of political views within parliamentary chambers at the national and the European level.

The previous analysis has already shown the diversity inside the European Parliament. Political parties represented in parliamentary assemblies rarely unanimously agree on a common position. In national parliaments, the conflict line between governing parties and opposition parties shapes the parliamentary arena, including in EU affairs. Interparliamentary cooperation and coordination are, however, too often geared towards majority positions. Opposition parties and minorities views should be properly represented in delegations to interparliamentary meetings and expressed in parliamentary reports or opinions. **Minority positions in one national parliament can easily be the majority position in another national parliament**.[15]

> " NATIONAL PARLIAMENTS AND THE EUROPEAN PARLIAMENT MUST ACT IN ORDER TO MAKE PARLIAMENTARY VOICES WITH THEIR POLITICAL VIEWS HEARD

13. Valentin Kreilinger, A Watchdog for Europe's Policemen: The Joint Parliamentary Scrutiny Group for Europol, Jacques Delors Institute - Berlin, Policy Paper No.197, June 2017.
14. Deirdre Curtin, Challenging Executive Dominance in European Democracy, in: The Modern Law Review, 77 (1), 2014, pp. 1-32, here: p. 30.
15. Olivier Rozenberg, The Role of the National Parliaments after Lisbon: Potentialities and Challenges, European Parliament, 2017, p. 53. See also European Parliament, Report on the implementation of the Treaty provisions concerning national parliaments (2016/2149(INI)), 28 March 2018, Explanatory Statement - Summary of facts and findings., pp. 4-5.

FIGURE 4 ▪ National parliaments and the European Parliament
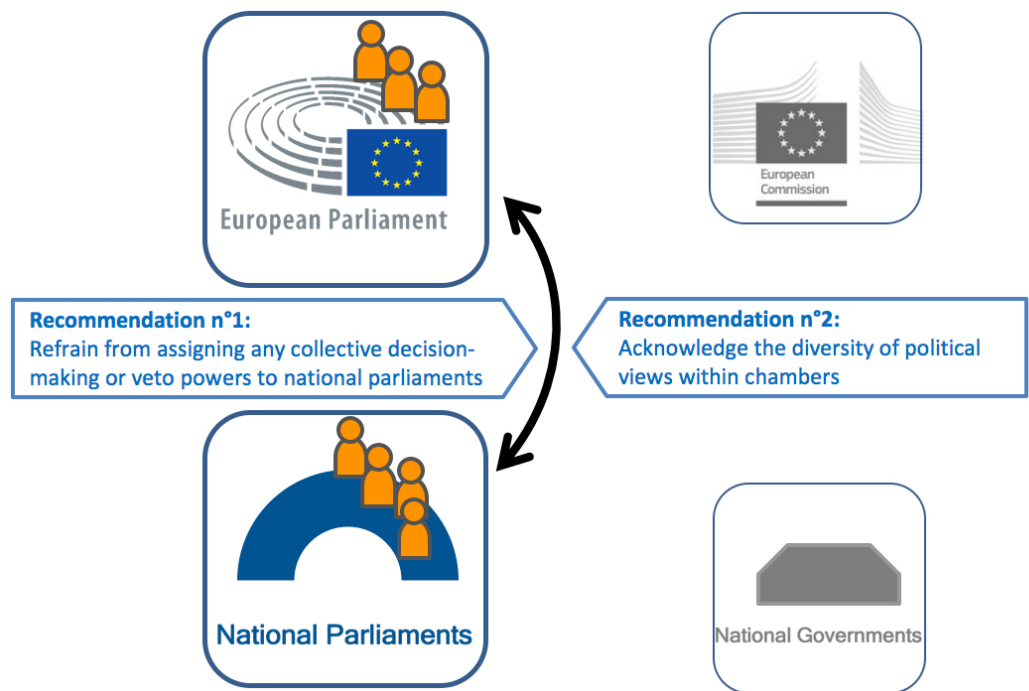
Source: Valentin Kreilinger.

Through greater diversity of national parliamentary voices, joint scrutiny that does not merely replicate governmental positions (as often expressed by parliamentary majorities) could emerge over time and lead to **lively and constructive interparliamentary debates** in the EU's multi-level system.

2 ▪ NATIONAL PARLIAMENTS AND THE EUROPEAN COMMISSION

> AN OPPORTUNITY FOR NATIONAL PARLIAMENTS TO VOICE THEIR (SUBSIDIARITY) CONCERNS AND MORE GENERAL VIEWS ABOUT LEGISLATIVE PROPOSALS

There is no doubt that national parliaments dedicate significant time and resources to EU policy issues, e.g. to make use of the provisions in the Lisbon Treaty.[16] As "multi-arena players", they can act individually and collectively at the EU level, as well as independently of their national governments.[17] The most important instruments allowing national parliaments to have direct influence over the EU legislative process are the Political Dialogue and the Early Warning Mechanism. This **complex scrutiny relationship between national parliaments and the European Commission** is governed by a range of procedures in the Lisbon Treaty. They provide an opportunity for national parliaments to voice their (subsidiarity) concerns and more general views about legislative proposals by the European Commission.

Members of the European Commission have, in addition, undertaken over 700 visits to national parliaments since Jean-Claude Juncker took office in November 2014, most recently in particular as a follow-up to his September 2017 State of the Union speech.[18]

16. Olivier Rozenberg, The Role of the National Parliaments after Lisbon: Potentialities and Challenges, European Parliament, 2017.
17. Katrin Auel and Christine Neuhold, Multi-arena players in the making? Conceptualizing the role of national parliaments since the Lisbon Treaty, in: Journal of European Public Policy, 24 (10), 2017, pp. 1547-1561.
18. European Commission, Visits and meetings of Members of the Commission with national Parliaments since the beginning of the mandate, 1 November 2014 – 9 February 2018.

Two widely discussed proposals for strengthening the role of national parliaments in the EU – the **"green card"** and the **"red card"** – would change the relationship between national parliaments and the European Commission in the Political Dialogue and the Early Warning Mechanism. These two proposals are assessed in the following two sub-sections *2.1* and *2.2*.

2.1 Political Dialogue

In a report on the role of national parliaments in the EU, adopted in March 2014, the **House of Lords EU Select Committee** proposed to enhance the Political Dialogue by offering national parliaments the possibility to **suggest a legislative initiative to the European Commission**. Such a green card would allow national parliaments to play a proactive, agenda-setting role in the EU legislative process. In addition to already existing forms of parliamentary scrutiny and involvement, national parliaments could use this new mechanism to further contribute to the good functioning of the EU.

National parliaments have had different ideas about the **possibilities that a green card should offer**. Most of them emphasised that the green card should enhance the existing Political Dialogue and allow national parliaments to submit non-binding political and legislative suggestions to the European Commission, without undermining its right of legislative initiative under the EU Treaties or its competences in the Early Warning Mechanism.

The first green card was sent to the European Commission in July 2015: The UK House of Lords had convinced 16 chairpersons of national parliaments and chambers to sign a letter in which it asked the European Commission to address the problem of **food waste**. In its reply, the European Commission promised to pay particular attention to the suggestions of national parliaments, but, if at all, they only played a marginal role in its subsequent Circular Economy Package.

The European Parliament's resolution of 16 February 2017 on possible evolutions and adjustments to the current institutional set-up of the European Union proposes "complementing and enhancing the powers of national parliaments by introducing a 'green card' procedure whereby national parliaments could submit legislative proposals to the Council for its consideration".[19] The low support for subsequent green card initiatives[20] could suggest that **the Commission should listen to the suggestions of national parliaments more carefully**. The green card could be put into practice relatively easily, i.e. without a very demanding threshold and serve as a bridge between the public opinions of Member States (represented by their national parliaments) and "Brussels" (the European Commission). Green cards could be prepared by policy-specific interparliamentary meetings, possibly of sub-groups of national parliaments, and COSAC could subsequently act as the forum for a first assessment of a green card.

2.2 Subsidiarity control

Under the **Early Warning Mechanism**, a national parliament can send a reasoned opinion to the European Commission in case of subsidiarity concerns about a legislative proposal. If one third of national parliaments think that a particular legislative matter should better be regulated at the national level (and not the EU level), the threshold for a **yellow card** is reached. The Commission must then decide whether it amends, withdraws or maintains the proposal, but any decision must be justified.

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19. European Parliament, Resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union (2014/2248(INI)), para. 60. The European Parliament's Resolution of 19 April 2018 on the implementation of the Treaty provisions concerning national parliaments (2016/2149(INI)) points out that "such a procedure cannot consist of a right of initiative, or the right to withdraw or amend legislation" (para. 18).
20. Olivier Rozenberg, The Role of the National Parliaments after Lisbon: Potentialities and Challenges, European Parliament, 2017, p. 38.

Since the Lisbon Treaty added this mechanism, a yellow card has only been triggered three times (see Table 3). One reason is that the threshold is difficult to reach within the given time-frame of eight weeks. In addition, there is no obligation for the Commission to take the concerns into account and withdraw the legislative proposal when a yellow card is triggered.[21]

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> A YELLOW CARD HAS ONLY BEEN TRIGGERED THREE TIMES

The current way of involving **national parliaments** in the Early Warning Mechanism means that parliaments **have to act collectively in order to have an impact**. The third yellow card is a case in point: Only the timely coordination within a regional block and the high salience of the Posted Workers Directive allowed reaching the threshold in May 2016.[22] In the end, Central and Eastern European countries expressed their policy discontent through subsidiarity concerns. As a consequence, on the one hand, there have been proposals to lighten the requirements of the Early Warning Mechanism, e.g. by extending the timeframe for reasoned opinions to ten or twelve weeks. On the other hand, many observers have stressed the importance of the Political Dialogue (see above, *2.1*) as a possibility to simply exchange views between the European Commission and national parliaments.

TABLE 3 ▪ Yellow cards by national parliaments under the Early Warning Mechanism

REFERENCE	TITLE OF LEGISLATIVE PROPOSAL	NUMBER OF REASONED OPINIONS
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 ("Monti II")	12 (= 19 votes)
COM(2013) 534 final	Proposal for a Council Regulation on the European Public Prosecutor's Office (EPPO)	14 (= 18 votes)
COM(2016) 128 final	Proposal for Directive of the European Parliament and of the Council amending Directive 96/71/EC concerning the Posting of Workers in the framework of the provision of services	14 (= 22 votes)

Source: Own elaboration. In bicameral systems, each chamber has one vote, while in unicameral systems, the national parliament has two votes.

The activity of the United Kingdom on the subject of strengthening national parliaments was a key factor in all discussions over last years. Its departure means that the remaining 27 national parliaments and the European Parliament will have to **consider which ideas are worth pursuing** and – given their overall reluctance to follow the British ideas – to rethink the role of national parliaments.

Strengthening the role of national parliaments was a key demand of the UK government under Prime Minister David Cameron and figured prominently among his priorities for EU reform. In November 2015, he suggested to **give national parliaments the power to stop EU laws by showing a "red card"**. Under the red card procedure that the President of the European Council subsequently offered to the United Kingdom in February 2016 (and to which the other 27 Member States had agreed in principle), the same voting system as for the Early Warning Mechanism would have been used. **55% of national parliaments would have been able to**

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21. Only if more than half of national parliaments raised subsidiarity concerns, the threshold for an orange card would be reached. In this case, a qualified majority in the Council or a simple majority in the European Parliament would be sufficient to force the Commission to withdraw its proposal. This has not happened until now.

22. Diane Fromage and Valentin Kreilinger, National Parliaments' Third Yellow Card and the Struggle over the Revision of the Posted Workers Directive, in: European Journal of Legal Studies 10(1), 2017, pp. 125-160.

challenge a draft legislative act. After that, the matter would have had to be discussed in the Council of the EU and the consideration of the draft legislative act would have been discontinued – unless it would have been amended to accommodate the subsidiarity concerns of those national parliaments behind the red card.[23]

This was less radical than what the United Kingdom had demanded: The red card would not mean an automatic parliamentary veto – the Council of the EU would decide and discontinue the consideration of a draft legislative act. But unlike in case of a yellow card, the European Commission would no longer have had a role in the red card procedure, something that according to Olivier Rozenberg "is not negligible given its past reactions when yellow cards had been raised."[24] The idea of a red card **has not completely disappeared from the political debate**, but it is unlikely to be introduced any time soon.

> THE IDEA OF A RED CARD IS UNLIKELY TO BE INTRODUCED ANY TIME SOON

For its part, the **European Commission** has now set up a "Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently", under the leadership of First Vice President Frans Timmermans, which is to draw up recommendations by July 2018. Commission President Jean-Claude Juncker announced in his State of the Union speech in 2017 that this Subsidiarity and Proportionality Task Force should contribute to ensuring that the EU focuses on really important issues and identify cases where it may make sense to return competencies to the Member States. This Task Force is made up of three representatives from national parliaments and three representatives from the Committee of the Regions.[25]

2.3 A step-by-step development of existing procedures

An enhanced role for national parliaments in their relationship with the European Commission could be implemented **with or without EU treaty change**, depending on the specific content of such reforms. They would not only require agreement among the national parliaments, but a greater willingness of the European Commission to take national parliaments' input on board: The green card could provide **an opportunity for parliamentary voices to express positive ideas** and suggest possible legislative initiatives to the European Commission (and not merely raise subsidiarity concerns, as under the Early Warning Mechanism).

> DEVELOPING THE EXISTING PROCEDURES WITHOUT CHANGING THE TREATY

On the basis of the previous analysis, this Policy Paper recommends developing the existing procedures of the Political Dialogue and the Early Warning Mechanism without changing the Treaty, but in an **ambitious** way through the following two measures (see also Figure 5):

3. Put a green card procedure for suggesting legislative initiatives to the European Commission into practice.

Building upon the Political Dialogue and without a very demanding threshold, green cards would probably need a parliamentary "entrepreneur" to push such an initiative. They could then be prepared in greater detail by policy-specific interparliamentary meetings of a groups of likeminded parliamentarians. The bi-annual **COSAC** meeting could subsequently serve as the **forum for a first assessment of a green card initiative**.

The introduction of a green card procedure would have to be accompanied by at least an informal commitment of the European Commission to **publicly debate about a green card initiative after it has been signed by a certain number of national parliaments and submitted**. In this regard, the European Parliament should consider national parliaments as a scrutiny partner and not resent or try to water down a possible green card procedure.

23. European Council, Draft Decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union. EUCO 4/16, Section C, February 2016.

24. Olivier Rozenberg, The Role of the National Parliaments after Lisbon: Potentialities and Challenges, European Parliament, 2017, p. 35.

25. European Commission, Decision of the President of the European Commission on the establishment of a Task Force on Subsidiarity, Proportionality and "Doing Less More Effectively", C(2017) 7810, 14 November 2017.

4. Extend the stand-still period in the Early Warning Mechanism through a technical gimmick.

A longstanding demand of proponents of the Early Warning Mechanism has been to extend the eight-week period. While the changing the duration would require Treaty change, there is no plausible explanation why, similar to the letter by Commission President Barroso and Commissioner Malmström setting out **technical arrangements** in 2009, the Christmas period could be excluded. Furthermore, a creative solution as to **when exactly the clock starts ticking** and what the formal date of transmission for a legislative proposal is, could be explored.[26]

FIGURE 5 ▪ National parliaments and the European Commission
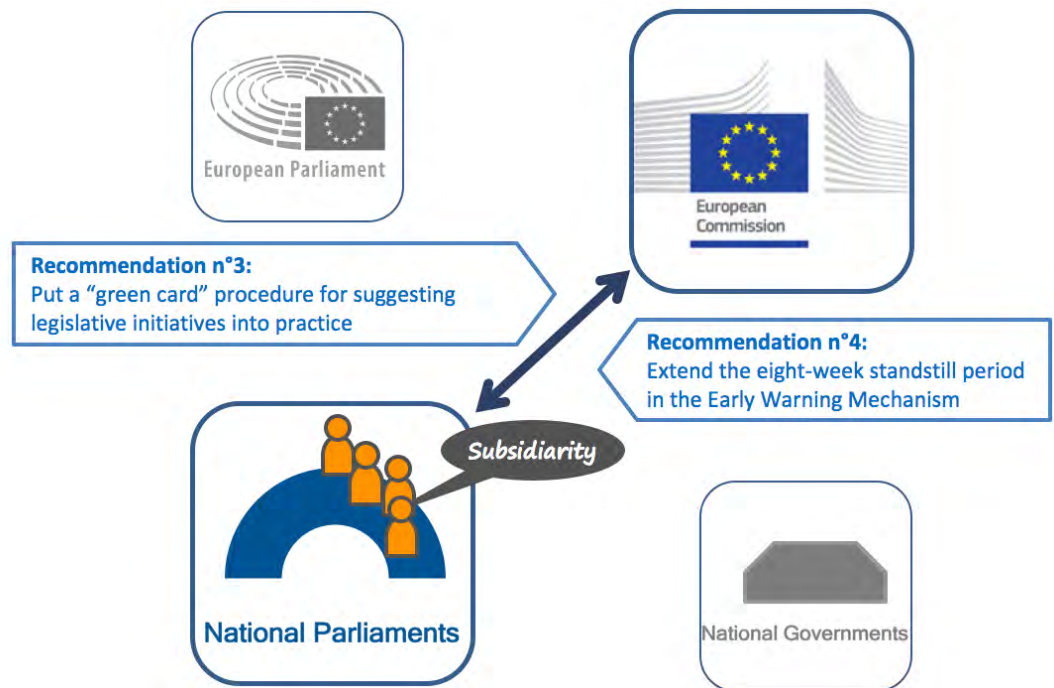
Source: Valentin Kreilinger.

After the Lisbon Treaty provisions regarding national parliaments were introduced with the entry-into-force of that treaty on 1 December 2009, time has come to **think about possible revisions**. The current reluctance to embark on Treaty change should not prevent decision-makers from seeking reforms to the Political Dialogue and the Early Warning Mechanism.

3 ▪ THE EUROPEAN PARLIAMENT AND NATIONAL GOVERNMENTS

THE SCRUTINY RELATIONSHIP THAT REALLY ALLOWS TO MAKE PARLIAMENTARY VOICES HEARD

Another complex scrutiny relationship exists between **the European Parliament and national governments**. They **interact in a much less structured way** and more ad-hoc in the EU's multi-level system than national parliaments and the European Commission. But this one is possibly the scrutiny relationship that really allows to make parliamentary voices heard in the multi-level system.

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26. See also European Parliament, Resolution of 19 April 2018 on the implementation of the Treaty provisions concerning national parliaments (2016/2149(INI)), para. 18.

In their interaction, party-political motivations often prevail – as only few relevant legal provisions govern the relationship between national governments as individual actors and the European Parliament. But if national governments act collectively in intergovernmental EU institutions (Council of the European Union or European Council), naturally, a whole range of treaty provisions governs their relationship with the European Parliament.

The European Parliament has become a venue for speeches by national leaders – not only when their country occupies the rotating Council Presidency (this is examined in section *3.1*). A particularly interesting development is that, on certain institutional issues, alliances and clashes between individual Member States and the majority of the European Parliament have happened. Then the above-mentioned **party-political motivations** come into play. MEPs have, at the end of the day, two principals: their European political group and their national party. The political group controls their career prospects in the European Parliament, but the re-election of an MEP is to a great extent in the hands of his/her national party.[27] In section *3.2*, this Policy Paper studies the examples of the **Spitzenkandidaten** process and the possible introduction of **transnational lists**, both debated in early 2018 and likely to re-emerge as major inter-institutional issues after the 2019 European Parliament election.

3.1 A public forum for debating the future of Europe

In a shift from previous practices that only Heads of State were allowed to address the European Parliament, President Antonio Tajani has recently opened plenary debates to other "high-profile" political figures. This is part of an effort to **boost the assembly's standing** and enhance European democracy.[28] Six Heads of State or Government (Irish Prime Minister Leo Varadkar, Croatian Prime Minister Andrej Plenković, Portuguese Prime Minister António Costa, French President Emmanuel Macron, Belgian Prime Minister Charles Michel and Luxembourg's Prime Minister Xavier Bettel) have contributed to the debate on the future of Europe by delivering speeches to the European Parliament since the beginning of 2018.

The purpose of these speeches has been to **turn the European Parliament into the centre of debating the future of Europe**, with MEPs being able "to quiz their guest speakers rather than just listening passively."[29] At the same time, MEPs themselves are able to raise their voice in the debate on the future of Europe.

> PARTY-POLITICAL MOTIVATIONS ALSO COME INTO PLAY

Some other debates with national leaders have also received significant media attention, for instance those on specific topical issues such as the **rule of law**. Individual Member States (e.g., Poland, Hungary or Malta) clashed with MEPs in 2017 and 2018. Notably, no longer only the national delegations from the respective country but **MEPs from all Member States are interested**: "[L]awmakers are now increasingly eager to judge their neighbo[u]rs."[30] But party-political motivations also come into play. The party-affiliation of Member State governments seems to affect how the European Parliament deals with a country: An "invitation" to appear before the plenary must be approved by a majority in the European Parliament[31] which is more difficult to reach if either of the two big political groups (EPP or S&D) is reluctant to put her Prime Minister on the spot.

However, not all debates with national leaders mobilise MEPs in an equal manner: In July 2017, at a plenary debate to mark the end of the Maltese Council Presidency, Commission President Jean-Claude Juncker famously called the European Parliament "ridiculous" when it was half-empty during the speech by Prime Minister Joseph Muscat.

27. Simon Hix, Abdul G. Noury and Gérard Roland, *Democratic politics in the European Parliament.* Cambridge University Press, 2007, p. 133.

28. Maïa de La Baume, Tajani wants to turn European Parliament into a global stage, POLITICO Europe, 5 October 2017.

29. Ibid.

30. Harry Cooper and Maïa de La Baume, Parliament courts controversy by sitting in judgment, POLITICO Europe, 14 June 2017.

31. Ibid.

Similar to the European Parliament's new role, the Rangel report proposes a series of forums on the future of Europe, to be organised by national parliaments and the European Parliament "as natural representatives of the European demos […] in which members of national parliamentary chambers would simultaneously discuss European affairs with Commissioners and Members of the European Parliament."[32] This could indeed help fostering the emergence of a European public sphere.

3.2 Differences on polity issues

Two polity issues, the introduction of **transnational lists and Spitzenkandidaten**, were intensely debated within and between EU institutions in early 2018. In this context, individual national governments, political groups in the European Parliament and national delegations within these groups positioned themselves. National leaders also addressed these polity issues when they spoke on the future of Europe before the European Parliament (see section *3.1*).

On 28 and 29 June 2018, the European Council is supposed to formally approve the **proposal for the composition of the European Parliament** that Leaders agreed to on 23 February 2018. The introduction of transnational lists is off the table for 2019. Quite a few national governments, including the French government, supported the idea of transnational lists. But in the European Parliament's proposal for the composition of the European Parliament, a provision in favour of transnational lists was voted down.

On the Spitzenkandidaten question, not all EU Member States are of the opinion that this model has proved its worth, since it has reduced their role in making appointments to top EU positions. This has led to **divergent interpretations** by the European Parliament on the one hand and (most) national governments on the other hand **with regard to how the election results are to be "taken into account"**. In 2014, the various political families nominated *Spitzenkandidaten* for the role of Commission President. Jean-Claude Juncker, the candidate who was able to rally a majority in the European Parliament behind him, was nominated by the European Council and elected by the European Parliament. In its Conclusions of 23 February 2018, the European Council rejected any automaticity[33] while the European Parliament insists on exactly this link to ensure that the result of the election is "taken into account". National leaders are expected to try to control who is selected by their respective European political family as *Spitzenkandidat*, but they could later also "resort to a hardline policy of 'no automaticity' and propose an alternative candidate for Commission President."[34] A clash between EU institutions (European Council and European Parliament) could happen in June 2019.

3.3 Aiming for more visibility and transparency

At a time of lower legislative output and discussing (not deciding) institutional reforms, **the re-invention of the European Parliament as a public forum** could, as apparently intended by its President, improve its standing. The voice of the European Parliament would become more audible.

The previous analysis highlighted the opportunities and risks in the evolving multi-level relationship between the European Parliament and national governments. This Policy Paper makes two recommendations to ensure fairness and foster visibility (see also Figure 6):

*5. **Manage the European Parliament's plenary debate invitations to national leaders free from party-political considerations.***

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32. European Parliament, Resolution of 19 April 2018 on the implementation of the Treaty provisions concerning national parliaments (2016/2149(INI)), p. 9, Recital I.
33. European Council, Conclusions of 23 February 2018.
34. Agata Gostyńska-Jakubowska, The member-states and the EU: taking back control?, CER Bulletin, Issue 119, April/May 2018.

The political groups in the European Parliament should **resist any temptation** to exploit invitations (or withhold them) due to **party-political considerations,** but they should not shy away from expressing their distinct political views in the debates.

A majority threshold to invite a national leader to appear for a plenary debate therefore seems too high. Just like in case of the confidence relationship between a legislature and a government, a **lower threshold** would be appropriate **to make a national leader appear**. The European Parliament could then put (public) pressure on the national leader to accept the invitation. Another option could be to establish a regular schedule according to which Heads of State or Government debate with MEPs.

6. Create the foundations for lively and visible plenary debates with national leaders in the European Parliament.

The plenary debates should really **allow for interaction**, as it was the case when French President Emmanuel Macron spoke in Strasbourg on 17 April 2018. Joint appearances, like by Chancellor Merkel and President Hollande in October 2015 to commemorate the joint appearance of their predecessors Kohl and Mitterrand in 1989[35], could also take place more often and in different configurations.

If national leaders had to express their views about the State of the European Union, possibly in regular intervals (see above), they could not hide away from EU issues. **Political choices would become more visible** and national governments would have to assume ownership. And if, in addition, these plenary debates in the European Parliament were then **televised in the respective country**, the EU would move closer to Europeanizing its public spheres.

FIGURE 6 ▪ The European Parliament and national governments
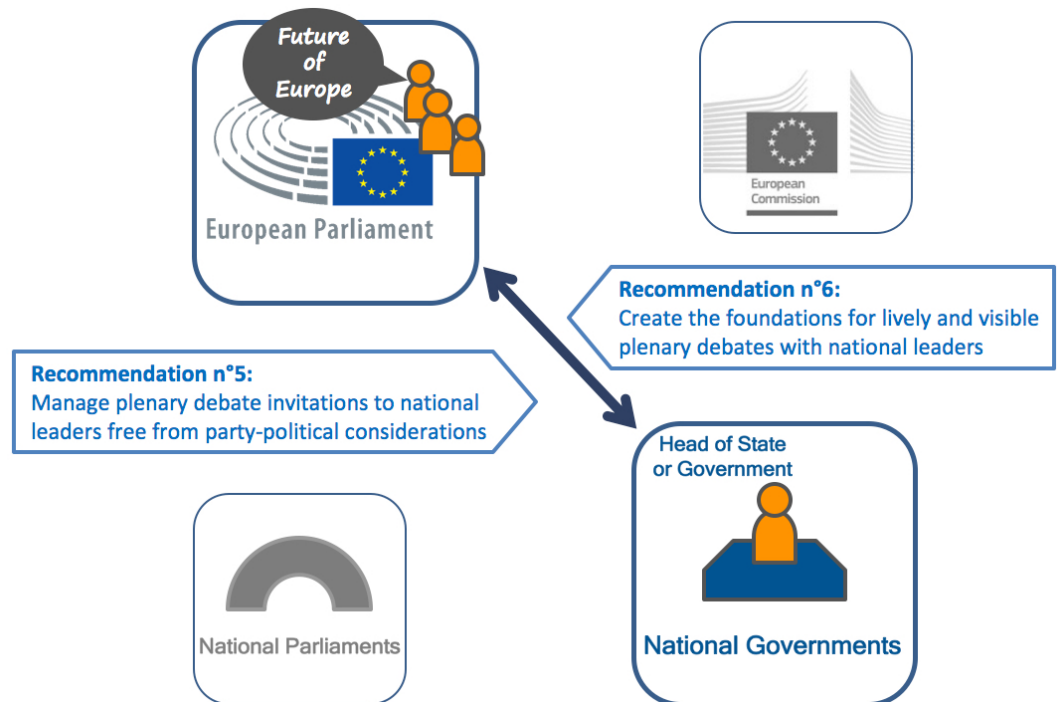
Source: Valentin Kreilinger.

35. European Parliament, François Hollande and Angela Merkel face MEPs, Press Release, 7 October 2015.

CONCLUSION

In the EU's multi-level system, national parliaments hold national governments to account while the European Parliament holds the European Commission to account.

This Policy Paper examined two other scrutiny relationships in the EU's multi-level system that are more complex than those within a (closed) political system (see Figure 5):

- National parliaments' monitoring of the activities of the European Commission and their interaction with the European Commission under the relevant Lisbon Treaty procedures;

- and the European Parliament's new role as a public forum that does not hesitate to pick a fight against any individual national government and whereby interaction is less structured and more ad-hoc.

In these two relationships, **parliamentary voices can articulate their ideas, concerns and general views**. European legislatures are "unlikely to add up to a single coherent voice"[36], but the different parliamentary voices in the EU multi-level system and the precise role that parliaments play at their respective level and across the different levels of the EU's multilevel polity can still be further developed. This Policy Paper therefore presented six recommendations to enhance the ways in which parliamentary voices are heard in the EU's multi-level system. These recommendations intend to reinforce existing mechanisms without embarking on a process of Treaty change and assume that better parliamentary scrutiny can reduce the perceived democratic deficit of the EU's multi-level system.

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> REINFORCE EXISTING MECHANISMS WITHOUT EMBARKING ON A PROCESS OF TREATY CHANGE

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