

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT** **C**  
**CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS**



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**Democratic Control in the  
Member States of the  
European Council and the  
Euro zone summits**

STUDY





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**

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CONSTITUTIONAL AFFAIRS**

**CONSTITUTIONAL AFFAIRS**

# **Democratic Control in the Member States of the European Council and the Euro zone summits**

**STUDY**

## **Abstract**

The European Council is increasingly central to the governance of the European Union. Even if national parliaments have originally focused their involvement in EU affairs on the ordinary legislative process, most of the chambers have started to develop specific activities, before or after European summits. From ex-ante influence to ex-post accountability, seven different models of control have been identified. Beyond their differences rooted in national democratic systems, they call for twelve recommendations listed in this report.

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## LIST OF ABBREVIATIONS

- AT** Austria
- BE** Belgium
- CFSP** Common Foreign and Security Policy
- COSAC** Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union
- CSDP** Common Security and Defence Policy
- CY** Cyprus
- CZ** Czech Republic
- DE** Germany
- DK** Denmark
- EAC** European Affairs Committee
- EE** Estonia
- EL** Greece
- EP** European Parliament
- ES** Spain
- ESM** European Stability Mechanism
- EU** European Union
- FI** Finland
- FR** France
- HU** Hungary
- IE** Ireland
- IT** Italy

- LT** Lithuania
- LU** Luxembourg
- LV** Latvia
- MEP** Member of the European Parliament
- MP** Member of Parliament
- MT** Malta
- NL** Netherlands
- PL** Poland
- PT** Portugal
- RO** Romania
- SE** Sweden
- SI** Slovenia
- SK** Slovakia
- TSCG** Treaty on Stability, Coordination and Governance in the Economic and Monetary Union
- UK** United Kingdom



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## EXECUTIVE SUMMARY

This study follows a **unique design** based on the one hand on a questionnaire filled in by experts of all Member States, and on the other hand on in-depth reports focused on a sample of 12 Member States.<sup>1</sup>

Part 1 presents the context of the study: European Council meetings and Euro summits play an increasingly important role in the governance of the European Union, especially in the context of the ongoing financial and economic crisis. **Those meetings appear to be difficult to control for national parliaments** both because they are behind closed doors and because the adaptation of national parliaments to Europe was not fitted for that purpose. Regarding national parliaments' adaptation to the EU, part 1 presents two kind of rankings based on formal rights and actual practices, as well as six theoretical models about what could be the role of national parliaments vis-à-vis the European Council.

In part 2, the existing rules related to the parliamentary control of the European Council are first presented. In a majority of Member States, there are **formal rules mentioning explicitly the parliamentary control over the European Council**. In all cases those rules are focused on securing information about the summits. In some cases, they also allow parliaments to give opinions and even mandates. By contrast, very few specific rules about Euro summits are to be found.

Logically, parliaments that are generally regarded as Europeanised have been granted important rights related to the European Council and make use of them before European Council meetings. Yet, many parliaments are also active after the summits and this is not limited to those that are considered the most Europeanised. Those differences indicate that there are indeed several patterns of parliamentary control as far as European Council meetings are concerned. On the basis of three criteria (timing, locus, and significance of parliamentary control), **seven different models have been distilled as indicated by the synthesis presented on the following page**. Those models differ not only in the level of involvement (from Romania to Denmark) but also in the purpose of parliamentary control: influence, public debate, expert discussion or government accountability.

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<sup>1</sup> The authors would like to thank all the experts who have been involved into this project. The questionnaires and in-depth reports on the individual Member States are collected in two separate annexes which can be requested from the European Parliament, from TEPSA or from *Notre Europe – Jacques Delors Institute*.

The following experts participated in this project (sorted by alphabetical order according to the Member States covered): Eric Miklin (Austria); Regis Dandoy, Clément Jadot (Belgium); Dobrin Kanev (Bulgaria); Viera Knutelska (Czech Republic); Kalliope Agapiou-Josephides (Cyprus); Mette B. Christensen (Denmark); Piret Ehin (Estonia); Tapio Raunio (Finland); Valentin Kreiling, Kateryna Perepechay, Olivier Rozenberg (France); Claudia Heffler, Oliver Höing (Germany); Konstantin Iliopoulos, Anna Vallianatou (Greece); Gabriella Ilonszki (Hungary); Gavin Barrett (Ireland); Michele Comelli (Italy); Zaneta Ozolin (Latvia); Ramunas Vilpisauskas (Lithuania); Astrid Speitzer (Luxembourg); Roderick Pace (Malta); Iona Ebben, Adriaan Schout, Jan Marinus Wiersma (Netherlands); Maria Karasinska-Fendler, Anna Jedrzejewska (Poland); Davor Jancic (Portugal); Angela Tacea (Romania); Andrea Figulova (Slovakia); Ana Marija Kristovic, Vid Tomic, Zlatko Sabic (Slovenia); Manuel Sánchez de Dios (Spain); Hans Hegeland (Sweden); Ariella Huff, Julie Smith (United Kingdom).

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**Table 1: Seven models of parliamentary control of European Council meetings<sup>2</sup>**

Ex-ante Ex-post	Reduced involvement	Committee	Plenary	Involvement both in Committees and Plenary
	Reduced involvement	<b>TRADITIONAL MODEL</b> <i>Hungary Luxemburg Romania</i>	<b>"EUROPE AS USUAL"</b> <i>Czech Republic Estonia Italy Latvia Poland Slovakia</i>	<i>Netherlands</i>
Committee	<i>Cyprus</i>	<b>EXPERT MODEL</b> <i>Belgium Finland Lithuania Slovenia</i>	<i>France</i>	<b>POLICY MAKER</b> <i>Germany</i>
Plenary	<b>GOVERNMENT ACCOUNTABILITY</b> <i>Bulgaria Malta Spain UK</i>	<i>Austria Sweden</i>	<b>PUBLIC FORUM</b> <i>Ireland</i>	
Involvement both in Committees and Plenary	<i>Greece</i>	<i>Portugal</i>		<b>FULL PARLIAMENTARISATION</b> <i>Denmark</i>

Source: Jean Monnet Chair, University of Cologne / Notre Europe – Jacques Delors Institute.

Despite those diverging patterns, there are similarities throughout national parliaments in Europe. Even if exceptions are numerous, **the following common trends can be identified:**

- the personal and increasing involvement of the Prime Ministers;
- the shift from ex-post control to ex-ante control;
- the publicity around parliamentary activities related to the European Council – even when at the level of committees;

<sup>2</sup> Please find in section 2.2.3 several remarks to the models that have attributed to individual countries and definitions of the categories "reduced involvement", "plenary" and "committee".

- the greater involvement of European Affairs Committees (EACs) over other committees;
- the regularity of the control of European summits.

In Part 3, four specifically important issues for this survey are addressed:

- Is it possible for national parliaments to mandate Prime Ministers before European Council meetings? The answer to this question illustrates the difference between legal and political obligations. Legally, some parliaments are able to mandate their Prime Ministers sitting in the European Council but very few issue formal written instructions. Politically, **all members sitting at European Council meetings are aware of the red lines** they should respect given the views within their parliamentary majority.
- Is there an information gap to the detriment of the legislatures? **The existence of an information gap to the detriment of the legislative branch is confirmed** and is even more significant than for the ordinary legislative process. Strong variations can still be observed on that issue between governments that share nearly everything they know and governments that hide nearly everything. On that question, the existence of formal rights and procedures is capital for securing the information given to the parliament.
- What is the political salience of the parliamentary control? As for other European activities within national parliaments, there are many chambers where the control of European Council meetings suffers from a mimetic lack of interest from politicians, journalists and citizens. Yet, there is evidence that, in the most recent years, **the European debate is gaining ground in national legislatures throughout Europe**. In a particularly difficult economic and often political context, parliamentary debates before or after European summits are incentives for MPs to engage in EU activities.
- *Are parliamentary debates related to the European Council mainly critical about the EU?* Even if it is difficult to give a single answer to that question, the report tends to answer by “no, but”. “No”: parliamentary debates on the European Council are opportunities to voice a diversity of viewpoints about Europe. Eurosceptic MPs are active in many assemblies but they are challenged by many other political forces. We add the word “but” since national MPs debating European Council summits are mainly concerned by national interest and politics.

Part 4 presents some general conclusions and develops recommendations. Two main conclusions are drawn:

- **Beyond the diversity of the practices within national democracies, a few models of parliamentary control of European Council meetings and Euro zone summits are emerging.**
- **Beyond the traditional motivational issue faced when trying to involve MPs in EU affairs, “something is happening” in national parliaments in relation to European Council meetings.** By that, we mean that, as a mean, the actual involvement of national parliaments in control European Council meetings is far from negligible and involves a rich diversity of practices and procedures.

Then, the following **12 recommendations** about activities within parliaments (1-4), national governments' practices towards their assemblies (5-9) and inter-parliamentary cooperation (10-12) are finally presented:

1. Ensure **transparency** and openness of parliamentary meetings – including of EACs – and increase the awareness of their activities
2. Oblige **Prime Ministers to be present** – after or before the debates on the summits, be they ordinary or extraordinary
3. Provide for the government to answer MPs during parliamentary debates - and not just to deliver a speech
4. Guarantee and protect a specific role for the **opposition**
5. **Transmit all EU draft texts** before the summits, including draft versions of the conclusions but also other types of official texts
6. Notify European Affairs Committees about developments during **the last days** before the summits
7. Secure parliamentary information and consultation when new treaties are under preparation
8. Allow the chair of the European Affairs Committee to participate in **governmental internal meetings** preparing a European Council (with no official role and with the obligation of confidentiality)
9. Invite the chair of the European Affairs Committee to participate in the **national delegation during the European Council** (with no official role and with the obligation of confidentiality)
10. Deepen the link between national parliaments and the **European Parliament (EP)**
11. Create a **specialised parliamentary conference on budgetary policies** – this last recommendation being especially drafted as a response to the provision of Article 13 TSCG<sup>3</sup>
12. Deepen the relations within **European Political Parties**

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<sup>3</sup> Here this report aims to contribute to the reflections which are taking place within and between the institutions and notably to the fourth "building block" on "Democratic legitimacy and accountability" in the interim report "Towards a genuine Economic and Monetary Union written by European Council President Herman Van Rompuy (together with the President of the Commission, the President of the Eurogroup and the President of the European Central Bank) and discussed at the European Council of 18 and 19 October 2012.

## INTRODUCTION

In March 2012, the European Parliament issued a tender on the “**Democratic control in the Member States of the European Council and the Euro zone summits**”. The terms of reference of the call were focussed on the rules and activities within national parliaments related to the control of any kinds of European summits composed of heads of state or government. Among the issues raised by these questions, some were specifically mentioned as the location of the control within parliaments (committee or floor), Prime Ministers’ involvement and the potential changes introduced since the ratification of the Lisbon Treaty.

**TEPSA and Notre Europe, two complementary organisms, joined their forces to answer the call**, TEPSA being a network of research institutes throughout Europe; and Notre Europe, the think tank funded by Jacques Delors. Together, a three-step approach according to the following scheme has been proposed:

- **A comprehensive overview of all 27 Member States** with a common questionnaire based on the terms of evidence as well as common templates to be filled out by experts for each country.
- **A detailed account for 12 Member States focussed** on the significance of the parliamentary control of the European Council as well as on the “information gap” between governments and parliaments. The 12 Member States have been carefully selected in order to get both a representative sample and to have a precise overview of the impact of the on-going Euro crisis.
- A commitment to include **policy recommendations** into our final report.

This report is composed of four parts:

- **Part 1** presents the context of the study. The respective roles of the European Council and the National Parliaments in the European governance are analysed.
- **Part 2** provides a synthesis of the questionnaires filled in by our experts in the 27 Member States of the European Union. It offers a perspective on both the rules and practices within all lower houses. Some quantitative rankings of the parliaments are also proposed.
- **Part 3** is based on the in-depth reports in 12 Member States that are particularly relevant. Special attention is paid to four questions: the issue of mandating Prime Ministers, the information possessed by national legislatures, the political salience of their control and the issues debates within assemblies.
- **Part 4** presents the conclusions of the study as well as 12 recommendations.

# 1 THE RISING GAP BETWEEN THE EXECUTIVE GOVERNANCE OF THE EU AND PARLIAMENTARY CONTROL

## KEY FINDINGS

- European Council meetings and Euro summits play an **increasingly important role** in the governance of the European Union, especially in the context of the on-going financial and economic crisis.
- The meetings of heads of state or government are **difficult to control** for national parliaments because they are secret and “performative” but also because the adaptation of national parliaments to European legislature was not fitted for that purpose.
- As a whole, **national parliaments have adapted to the EU** developing specific structures and procedures. Even if there are common trends regarding their Europeanisation, it is possible to differentiate lower chambers both in terms of formal rights and actual practices.
- **Six theoretical models** about what could be the role of national parliaments vis-à-vis European Council meetings are distinguished.

This first part presents the general frame of the study describing first the empowerment of the European Council (1.1). The central role played by those summits, newly recognized as “institutions of the EU” raises the issue of their democratic control (1.2). If national parliaments have developed specific activities vis-à-vis European affairs their Europeanisation does not seem to be fitted for the control of the European Council (1.3). Finally, six different models for their extent of Europeanisation are explored before considering the actual involvement of the legislatures in controlling the European Council (1.4).

## 1.1 The empowerment of the European Council

The European Council has taken a dominant position in the Union’s institutional architecture (see e.g. de Schoutheete 2012 a and b). The heads of state or government, characterized as the ‘Unions highest executive leaders’ (Van Rompuy 2012:5) or as a highest political representatives of the Member States as ‘Master of the Treaties’ (BVerfG 2009: par. 298), have turned the European Council into **the key player in the EU’s multi-level system**. This body with ‘the highest authority’ (Giscard d’Estaing in Norman 2003: 224) *and* with a profile of a ‘provisional European government’ (Monnet 1975: 592) exercises the ultimate power for many areas and procedures of the EU. It has turned into the constitutional architect for system making.

Though the European Council has played a major role since its creation in 1974 the heads of state or government have intensified their activities in recent years (see graph 1 on the frequency of meetings) to take salient measures highly relevant for national parliaments. Since the economic crises from 2008 onwards the heads of state or government have taken decisions which deeply affect the budgetary sovereignty of the Member States and their parliaments. This trend can also be observed by the changes in the treaties with the

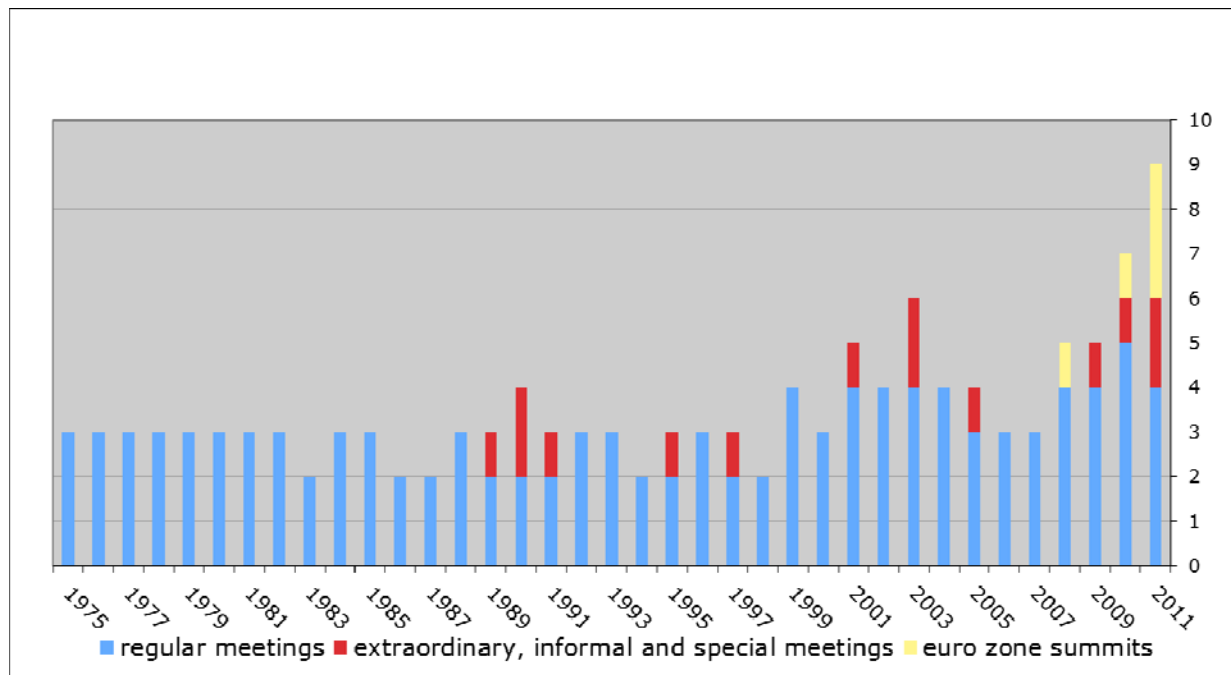


**recognition of the European Council as an EU institution in the Lisbon Treaty (Article 13 TEU) or with the creation of its permanent president in Article 15 TEU.**

Some European studies specialists have also observed a progressive shift of the governance of the EU through the last decade. For better or worse, the “new European model” (Magnette / Remacle 2000 and 2001) or the “Union Method” in Angela Merkel’s Bruges speech (Merkel 2010) would be characterised by a certain come-back of the heads of government. Since the financial crisis of 2008, such a diagnosis has been confirmed on several critical occasions where some of the EU national leaders, especially those from large Member States, played a key role in proposing common decisions and even new treaties. They notably created and used the **Euro summit**, an institution even further away from our customary checks and balances.

In the end, European Council meetings are less and less mere talking-shops in charge of long-term issues. On the contrary, they are **increasingly involved directly in the decision-making process**, be it for agreeing on international treaties (like the TSCG), for agreeing on a common position related to international conference (as before the Copenhagen conference on climate change) or deciding to aid a Member State with high interest rates at the bond markets.

**Figure 1: Frequency of European Council meetings and Euro summits**



Source: Wessels (forthcoming): The European Council.

As indicated by this graph, since 2008 one to two ad hoc meetings have been held every year in addition to the four regular ones. In addition, Euro summits have also taken place at the level of the heads of state or government. Those meetings were especially significant in the context of the **sovereign debt crisis**. In the end, no less than nine meetings took place in 2011 which means nearly once a working month. Therefore, it can be said that European Council meetings are both more significant but also tend to create a new routine between national leaders. As a result of the empowerment of those summits, they are also more politically salient at the domestic level. Decisions taken in those meetings by Prime Ministers can be criticized within national parliaments, which, in some cases, have recently provoked governmental crisis and political downfalls.

## 1.2 Controlling the European Council: a democratic challenge

With its activities, agreements and acts the European Council has a deep impact on the institutional balance both on a national and a Union level. Being able to use their key position on both levels the heads of state or government gained *de facto* power vis-à-vis the competences and powers of national parliaments and the EP, as neither one of these is an active multi-level player. Increasingly this dominating position of the executive is assessed in view of its alleged lack of legitimacy. Hectic night sessions working under the rules of 'professional secrecy' (Article 11 of the Rules of procedure for the European Council; see Wessels (forthcoming), chapter 8.1., p. 217) imply that a small group of the European elite takes decisions with long lasting impact on the economic and political destiny of European nations without public discourse, transparency, and parliamentary involvement. Leading Members of the European Parliament blame the European Council to be a 'Dictate from Brussels' (Schulz 2012). This situation has also been assessed as 'post democratic executive federalism' (Habermas 2011: 48).

In detail, four problems can be distinguished regarding the lack of democratic control over the European Council:

1. The **procedural style of the summits** is not fitted for an efficient control. Meetings are secret. Few public documents are distributed before. The governance can be qualified as "performative" as many summits took place in a tense context, with suspense and surprise after night sessions.
2. Contrary to the European Commission that is responsible to the European Parliament, the **European Council, taken as a whole, is not under the control of a single political institution**. It is only the members of the European Council who are individually controlled within their state. On that aspect, there is a common European parliamentary model according to which Prime Ministers, who are leading the national delegation, can be removed by their parliament through a censure motion. Yet, important exceptions to that model should be noted. In the political system of Cyprus the post of a Prime Minister does not exist and the President is independent from the parliament. In France and Lithuania, there is a Prime Minister but it is the President who leads the French delegation and he is not responsible to the parliament. The responsibility for leading the delegation has been a matter of discussion, and in some cases open conflict, in several countries, as Romania, Finland, Poland and the Czech Republic.
3. Moreover, the issue of the control over the members of the European Council is **highly politically sensitive**. The significance of the decisions taken as well as the exceptional attention from the media contribute to put pressure on the shoulders of Prime Ministers. Their individual political capital is at stake when they sit with their peers as illustrated by Berlusconi's rapid fall in late 2011 once European Council meetings had made clear how isolated he was.
4. Last, but not least, **the Europeanisation of national parliaments - understood as the way national parliamentary assemblies adapted to the EU - is largely and mostly unfitted for controlling European summits**. To a large extent, the adaptation of national parliaments to the EU was designed for the ordinary legislative procedure. Thus, national chambers were given the right to be informed and to give their opinion vis-à-vis draft regulations or draft directives. The timing as well as the organization of the parliamentary scrutiny were established according to the agenda of the traditional EU decision-making process. This issue becomes therefore critical for national parliaments when the decision-making process follows

less and less this practice and calls increasingly for the participation of the head of government. The changes in different national constitutions that were introduced from Maastricht to Lisbon to the benefit of national parliaments were designed to control ministers in the Council of the EU rather than Prime Ministers in the European Council.

### 1.3 The Europeanisation of national parliaments: the current state

In the intensive debate on the evolution of the political system which, since the Maastricht Treaty, has been called the 'European Union', the role of national parliaments was always somewhere present in the background but for a long time absent in European studies. In view of the evolution of this system from a Community with limited (but real) shift of competences in two industrial sectors to the conferral of a differentiated set of state-like areas to the Union (see Art. 2-6 TFEU), **the general assessment was to classify national parliaments as 'losers'** (Maurer / Wessels 2001). Especially in areas of the Union's exclusive and shared competences (Art. 2-4 TFEU), key issues of traditional and modern national sovereignty, national parliaments were seen to transfer via their ratification of subsequent EU treaties, major legislative prerogatives and functions to the EU level. There is an intensive and controversial debate about measuring such a 'Europeanisation of national legislation' (see e.g. Töller 2010).

**From the Maastricht Treaty onwards, national parliaments reacted to these apparent reductions of traditional powers.** In the academic state of the art, we find a growing set of studies describing and analysing forms and intensity with which national parliaments have created and used institutional opportunities to scrutinize and influence the positions of national governments (Maurer/ Wessels 2001, Maurer 2002, Raunio 2005, Winzen 2012). National parliaments were offered a reinforced empowerment to get involved in EU policy making. Progressively, they gained access to accurate information. In most of the countries, they obtain the right to give their opinion on draft legislation. In some, they were even allowed to mandate "their" minister in the Council. A scrutiny period was also granted in several countries, the Treaty of Lisbon giving an eight-week period between the date the proposal is made by the Commission and the date when it is placed on a provisional agenda for the Council. Given both the number of EU documents produced and their usual complexity, specialised structures, called European Affairs Committees (EACs), play a key role in that process.

Lastly, the provisions of the Lisbon Treaty (Art. 12 TEU and subsidiarity protocol) have installed new opportunities for an 'early **warning mechanism**' on subsidiarity issues and access to the Court of Justice of the European Union. But a closer look on national parliaments reveals that they still remain outside the EU's institutional architecture in the proper sense. Research so far documents empirical evidence which shows that national parliaments have used those additional opportunities only to a limited degree (see e.g. de Wilde 2012, Jancic 2012, for further information see website of the Observatory of Parliaments after Lisbon: opal-europe.org).

#### 1.3.1 Rights and practices: two ways of classifying the parliamentary involvement in EU affairs

Despite the convergence of the procedures related to the control of EU affairs between national parliaments, some important differences remain. Two criteria can be differentiated in order to map the 27 Member States according to their level of Europeanisation.

First, parliament can be opposed according to the amount of **institutional prerogatives** that were given to them in EU affairs. On the basis of previous works, Winzen (2012, see also Karlas 2012) differentiates three institutional indicators in that perspective:

1. The degree of information with: the access to EU documents and the production of government memoranda;
2. The kind of processing of EU draft legislation with: the type of EU committee, the involvement of specialised committee and the scrutiny reserve;
3. The type of mandating power of the parliament over the government.

By giving equal weight to those three criteria, Winzen creates a 3-point scale of parliamentary control in 2010 with Denmark (2.67), Finland, Lithuania and Slovakia (2.5 each) at the upper end and with Cyprus (0.33), Belgium and Luxembourg (0.67 each) at the lower end.

Second, **actual practices** in national parliaments related to the EU also need to be looked at (Raunio 2005). The institutional account of the Europeanisation process appears indeed, not to be sufficient since legislatures may not make full use of their powers. Some parliaments, such as the Austrian one, may have obtained important constitutional prerogatives, like mandating rights, given their temporary position of strength during treaty changes. Once the balance of power has changed to the benefit of the government, they are no longer able to make use of their theoretical rights. In other and numerous cases, MPs also suffer from a motivational problem as far as the scrutiny of EU affairs is concerned (Rozenberg 2009). Rational MPs can, indeed, find difficulties in satisfying their interest when controlling EU affairs – be they votes, careers or office seekers.

For all these reasons, a behavioural assessment of the parliamentary scrutiny of EU affairs is needed when ranking national parliaments. Although comprehensive comparable data are still missing on that aspect, Spreitzer and Pigeonnier (2012) offer a partial but still interesting account with the number of meetings of EACs in 2011<sup>4</sup>. The aspect is partial since national parliaments may be active in different ways on EU affairs: through floor debates, by producing reports, with written and oral questions. Yet, the number of EACs meetings is still an interesting criterion since the Europeanisation of national parliaments took the shape of the institutionalisation of one or several specific EU committees all around national parliaments. Their ranking for the recent period puts Italy (94 meetings) and Latvia (90) at the upper end and, at the lower end, Malta (13), Austria (14) and the Czech Republic (15)

The following two tables locate each lower house according to both dimensions.

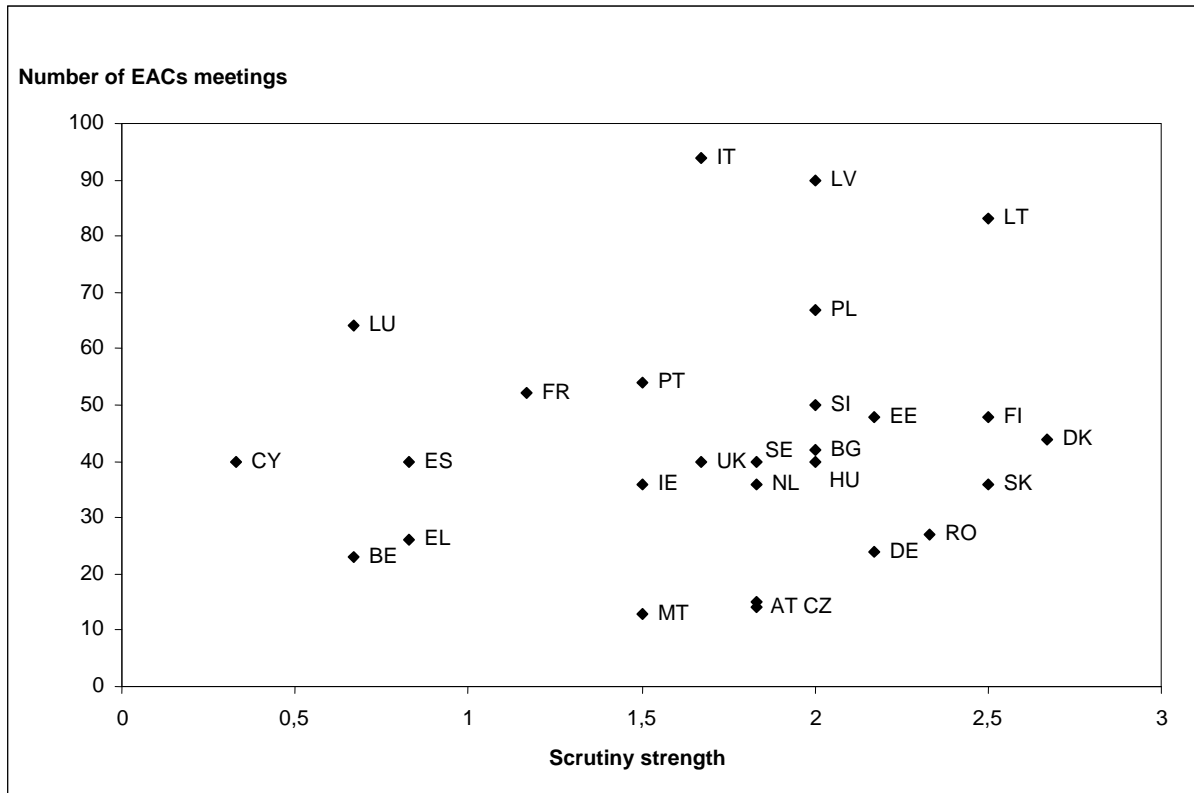
**Table 2: The degree of Europeanisation of 27 lower houses according to their institutional setting and practices (2011)**

		Scrutiny strength			
		--	-	+	++
Frequency of EACs meetings	-	GR, BE	MT	CZ, AT	RO, DE
		ES, CY	PT, IE, FR	SI, BG, HU, NL, SE	DK, FI, SK, EE
	+	LU		LV, PL, IT, UK	LT

Sources: Winzen 2012 for scrutiny strength and Spreitzer/Pigeonnier 2012 for the frequency of EAC meetings

<sup>4</sup> We thank them for allowing us to use their data.

**Figure 2: The degree of Europeanisation of 27 lower houses according to their institutional setting and practices (quantitative).**



Sources: Winzen 2012 for scrutiny strength and Spreitzer/Pigeonnier 2012 for the frequency of EAC meetings.

Both tables enable the observation of **the lack of correlation, positive or negative, between the institutional strength of national parliaments and their actual activities**<sup>5</sup>. There are countries where the Parliament is both powerful and active as in Lithuania, Denmark, Finland, Slovakia and Estonia; and there are countries that do not score on both dimensions such as Greece and Belgium. But divergent cases are nearly as numerous. The diversity of the political situation, logic and culture within of the 27 Member States is the main explanation for this lack of correlation. There are Member States where significant rules in favour of the parliament have just not been implemented so far (Romania), others where MPs suffer from a strong motivational problem (Austria), others where the EAC is in competition with other powerful committees (Germany), others where the parliament tries to compensate its limited capacity by rather frequent meetings (France). In the end, there are 27 different national tales.

### 1.3.2 The explanatory criteria for the degree of Europeanisation

Despite the lack of correlation between the institutional settings and real practices, several studies have tried to explain why some national parliaments are actively controlling EU affairs and why others are not (Bergman 2000, Raunio 2005, Spreitzer/ Pigeonnier 2012). There is a large agreement on the role played by three different elements by decreasing order of significance:

<sup>5</sup> The correlation rate between the 2 series is 0.14 (Pearson's r).

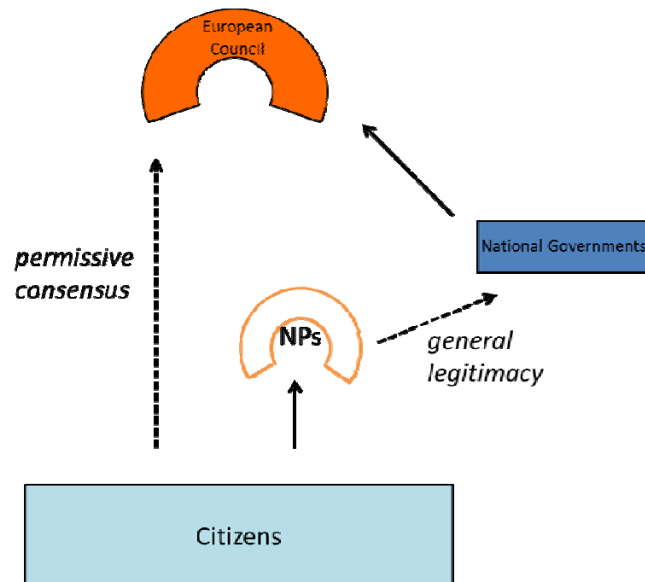
1. **The institutional strength of the parliament in domestic affairs** with a strong parliament being more influential and/or active on EU issues. In some cases, such as the Danish one, the strength of the parliament does not only result from the constitution but also from the frequency of minority governments that forces the cabinet to find ad hoc majorities in parliament.
2. **The European views within public opinion** with Eurosceptic Member States being more inclined to scrutinize EU affairs. Such a tendency does not mean that national parliaments necessarily try to support Eurosceptic views but, more generally, that the political salience of EU issues within public opinion is a strong incentive for engaging in scrutiny.
3. **The year of accession** is the third explanatory criterion with parliaments from recent Member State being more able and/or willing to control EU affairs. Those late comers have benefited from the experience of older Member States, and their legislatures sometimes played an active role in preparing the accession. EU affairs may also appear more prestigious in the eyes of MPs who joined the EU more recently.

#### **1.4 The Europeanisation of national parliaments: six theoretical models**

For studying the relations between national parliaments and the European Council and its national members several partly competing, partly complementary models have been identified. They have been used to put the empirical evidence, collected in the questionnaire, into a structured framework.

##### **1.4.1 The traditional model – No need for parliamentary control**

The historical point of departure is the view that framing and making EU-politics are prerogatives of the executive branch of government; heads of state or governments in the European Council are (only) 'democratically accountable either to their national parliaments or to their citizens' (Art. 10(2) TEU). In this model such a provision for democratic principles can be interpreted as a general norm, which leaves national leaders a high degree of discretion as far as the respective national constitutions allow. The activities, agreements and acts are based on an enabling permissive consensus from their citizens. No specific procedures of scrutiny by national parliaments are needed (see graph 2).

**Figure 3: The traditional model of the European Council**

5

Source: Jean Monnet Chair, University of Cologne.

Enumerating the procedures in which 'national parliaments contribute actively to the good functioning of the Union' Article 12 of the Treaty on European Union (TEU) does not make any reference to the European Council, except indirectly in the procedures for the 'ordinary' and the 'simplified treaty revisions' (Art. 12(d) and Art. 48 TEU).

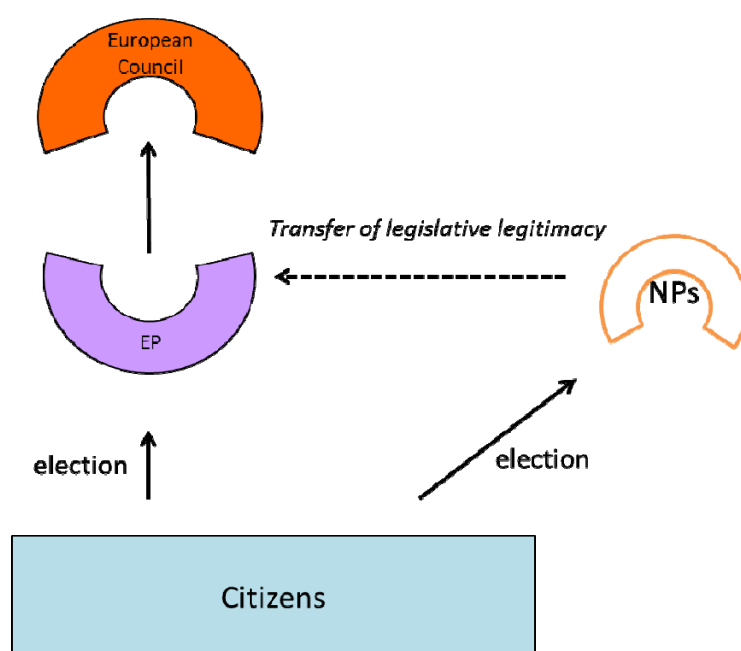
Fundamentally, this model assumes that major executive decisions in foreign policy or in reacting to currency turbulences have to be taken discretely – a long open public discourse seems not functionally adequate; the decisions have to be discretionary – thus, by single steps, and not after a lengthy legislative procedure. Reacting to external shocks and internal crises like in the Euro zone over the past two years the European Council needs or is even obliged to act with a supreme authority of the highest sovereignty. Similar constellations exist in relation to international conflicts and crises in the neighbourhood (the Arab spring). The relevant treaty provisions for the Common Foreign and Security Policy (CFSP, including the Common Security and Defence Policy (CSDP)) put the European Council at the top of this institutional architecture (see especially Art. 26 TEU), without mentioning national parliaments.

This model explains and justifies the key role of the European Council in the EU's multi-level system. Following its basic assumptions, there is no need or even desirability for more formal and extensive functions and powers for national parliaments. As long as members of the European Council exercise the power allocated to them in conformity with national constitutions and with the implied confidence of the majority of their parliaments, there is no need for further debate about legitimacy. Decisive for the legitimacy of the EU system is thus not the input, but the output (see e.g. Scharpf 2005) which comes under the responsibility of the European Council.

### 1.4.2 The model of supranational parliamentarism – the EP substituting national legislatures

The political and academic debate also raises alternative schools of thought. One way to react to the perceived democratic deficit caused by the increasing losses of the *de jure* competences of national parliaments was the demand to upgrade the legislative power of the EP as a major source of parliamentary legitimacy. Following the assumptions of this model of supranational parliamentarism the empowerment of this institution compensates parliamentary deficits at the national level. The EP, being the only directly elected EU institution, fulfils the demanded legitimacy to take binding decisions for European citizens by substituting national parliaments. The record of the last five treaty revisions shows a considerable increase in the EP budgetary and legislative powers.

**Figure 4: Model of supranational parliamentarism in control of the European Council**



2

Source: Jean Monnet Chair, University of Cologne.

At a first view the process of getting more legislative and budgetary powers to the EP looks irrelevant for the European Council as it 'shall not exercise any legislative functions' (Art. 15(1) TEU) and the European Council is not even mentioned in the financial provisions (Art. 310-316 TFEU). *De facto*, the European Council has, however, turned into the ultimate decision maker due to the size of the Union's own resources and the categories of the multiannual financial framework and partly, also, due to legislative issues (see e.g. de Schoutheete 2012, Eggermont 2012, Wessels 2013). Except for some procedures, where the European Council and the European Parliament share responsibilities (as for the election of the President of the Commission and the collegiate body (Art. 17(7) TEU)) the procedural links between the two institutions are restricted. The short presentation of EP positions by its President at the beginning of each session of the European Council, after which he has to leave the meeting, and the report of the President of the European Council to the EP after each session, which does not go beyond the information already presented to the media, do not lead to a meaningful involvement and control by the EP.



The decision making in the Euro zone crises has highlighted even more the marginal role of the EP – even though the EP has contributed to some measures by its legislative work e.g. on the six pack legislation. The claim of the EP President to attend the whole session of the European Council and also to be invited to the Euro Summit clearly documents this state of non-relations.<sup>6</sup>

Seen from the national parliaments' perspective, the EP has not substituted their role – at least not in the relation to the European Council and its decisions affecting fundamental rights of national parliaments. Some of the EP's positions might have followed the European Council's decisions reducing the budgetary autonomy of national parliaments, e.g. by hardening the Stability and Growth Pact. Such an analysis does not exclude the claim for a closer cooperation between the EP and national parliaments (see below).

#### 1.4.3 National paths: From a weak via a medium to a full domestic parliamentarization

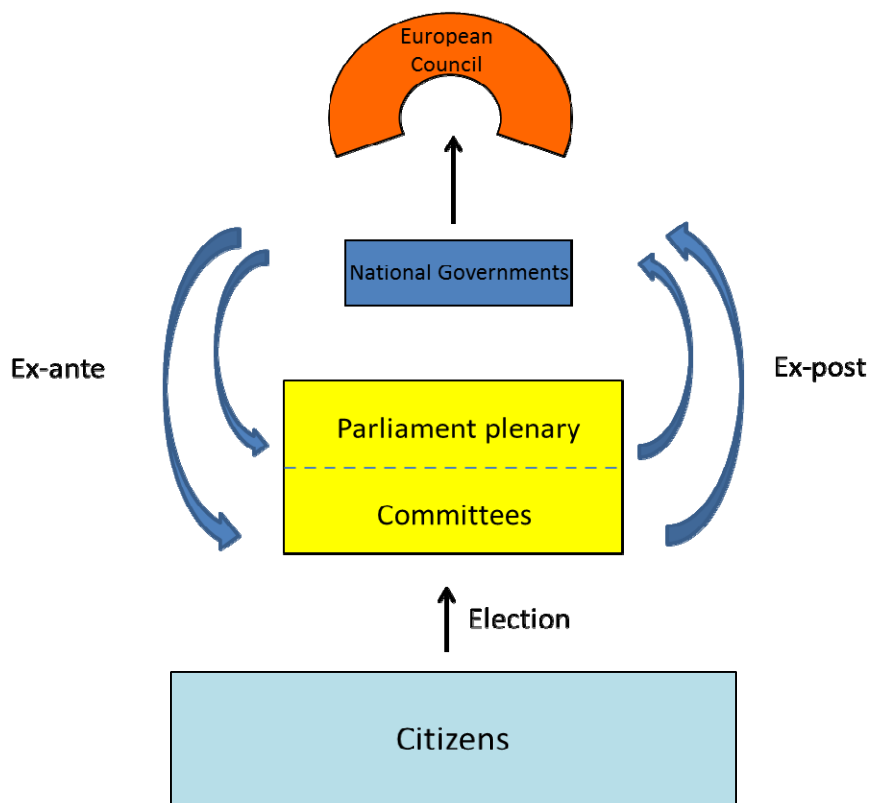
The increase of powers of the EP, first on the yearly EC budget and since the Single European Act also in legislative procedures, did not really calm the worries of national MPs. With the Protocol of the Maastricht Treaty and subsequent changes of national constitutions, national parliaments – each in its own way (see e.g. Maurer/Wessels 2001; O'Brennan / Raunio 2007, Raunio 2005) – tried to increase their influence and control of governmental positions in the Council. Efforts of the Danish parliament are generally rated as the model for the most powerful influence of a national parliament on its government's position in Brussels (see eg. Sousa 2009, Damgaard 2005). The major focus was, however, on parliamentary preferences in legislative procedures within the institutional triangle of the Community method. Positions of heads of state or government in the European Council were rarely on the agenda of national parliamentary debates. Major exceptions were treaty revisions.

This model takes up normative claims and some existing practices of national parliaments and describes a full involvement of national parliaments in the policy cycle of the European Council – at least for those categories of competence in which their rights are affected (see graph 3). It implies that parliament must be well informed in good time on the agenda of the European Council and the government position. All relevant documents for the upcoming summit must be available for the parliamentarians (in good time). A comprehensive full preparation in relevant committees, a plenary debate (or *public* committee debate) with a statement by a head of government should complement the written information supply. In order to substantially influence the Member States' position in the EU negotiations, a parliamentary resolution with a mandate (with either formally binding character or politically binding effect) must be possible and, *de facto*, used. For the ex-post scrutiny an active feed-back process on the results of the European Council and a similar procedure to ex-ante is relevant to assure parliamentary control in the long-term. The scrutiny of decisions, the control of the implementation and the availability of sanctions are significant parts of this model.

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<sup>6</sup> In a speech at the European Council meeting of 28 June 2012, Martin Schulz demanded to participate in the discussion on the "political union" of the commission, council and euro-group. See: [http://www.europarl.europa.eu/the-president/de/press/press\\_release\\_speeches/speeches/sp-2012/sp-2012-june/speeches-2012-june-1.html](http://www.europarl.europa.eu/the-president/de/press/press_release_speeches/speeches/sp-2012/sp-2012-june/speeches-2012-june-1.html).

**Figure 5: Model of full parliamentarization of scrutiny of European Council meetings**



Source: Jean Monnet Chair, University of Cologne.

Important for the relevance of this model is that these procedures are more than just alibi shows but are politically salient. The mere formal rules – in however detailed a form – do not guarantee a substantive control by the parliament. The use of the instruments available varies significantly in the EU Member States and plays a crucial role in effective control of governmental activities at this highest level.

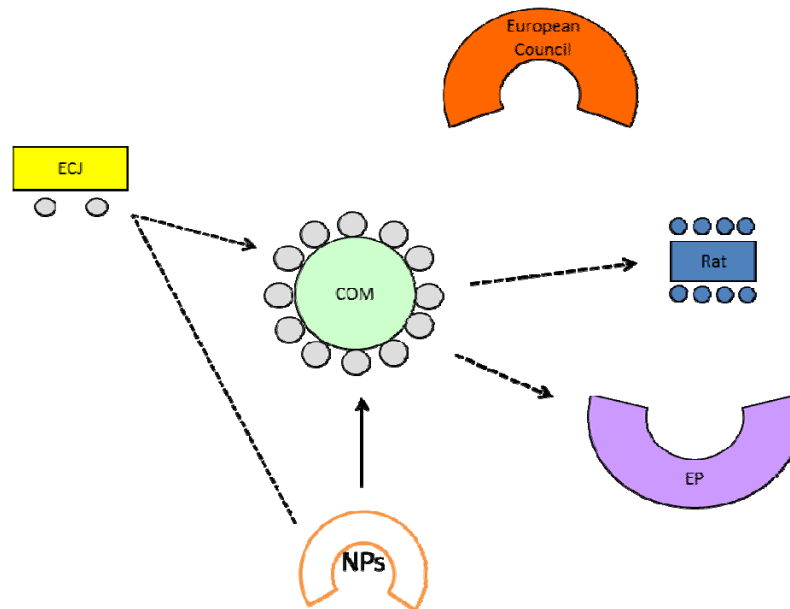
Such a model claims a legitimacy bonus as national parliaments are seen as the best representative of their citizens – being closer to their constituencies than MEPs in Brussels/Strasbourg or the head of government in a possibly distant national capital.

#### 1.4.4 Getting (in)to the EU arena – a marginal player on the EU level

Besides the domestic participation and control mechanism, national parliaments have, for a long time, searched for direct influence in policy cycles of the EU's architecture through contacts with several institutions. A major step was a treaty based involvement of national parliaments in the Union's ordinary legislative procedure introduced by the Lisbon Treaty (see graph 5). The new subsidiarity procedure of the 'early warning mechanism' offers parliaments a channel of direct communication with the Commission in the decision-making stage. National Parliaments may present reasoned opinions in view of subsidiarity infringements on a legislative proposal of the Commission in areas of mixed competences. Each parliament is attributed two votes (in bicameral systems each chamber has one vote) and with a third of all votes (18) the threshold for a 'yellow card' is reached which demands that the Commission amends, withdraws, or maintains the proposal. Despite this lack of legal impact, the possibility for parliaments to file action against a legislative

proposal at the European Court of Justice in the implementation phase, might strengthen the anticipatory influence of their opinions.

**Figure 6: The subsidiarity model of scrutiny of the European Council**



4

**Source:** Jean Monnet Chair, University of Cologne.

The impact of this early warning mechanism and access to the Court remained so far marginal (see e.g. de Wilde 2012, Jancic 2012, Heffler 2012). Effective use of this instrument is hampered by the restricted time of eight weeks for reasoned opinions after the translation of a Commission proposal in all official EU languages. Furthermore, the threshold for a 'yellow card' has only been reached once in the two and a half years since the coming into force of the Lisbon Treaty. A general lack of motivation by members of many parliaments and a lack of coordination of the subsidiarity checks between active parliaments have, so far, prevented a strong voice by national parliaments. De Wilde argues in a more principled manner against the early warning mechanism, as it "blurs existing channels of delegation and accountability". The main focus of national parliaments should remain the control of their government (2012: 4).

This model of limited pre-legislative influence does not offer any direct link to the European Council. There is but a very indirect effect on the control of European Council meetings. Due to the increased awareness of national parliaments for EU decisions in the pre-legislative phase, the control of government behaviour in the European Council may be more effective. It should not be excluded that debates in national parliaments have an impact on some positions of national governments and thus, for decision making in the European Council. But the majority of decisions of the European Council do not fall under the empowerments of national parliaments due to the subsidiarity control function.

So far, national parliaments have remained marginal players on the EU level. Thus, in relation to the European Council as a highly effective multi-level player, the new procedure

has not reduced the gap to the executive branch of government. Given the dramatic economic challenges for national parliaments, the Lisbon provisions already look outdated.

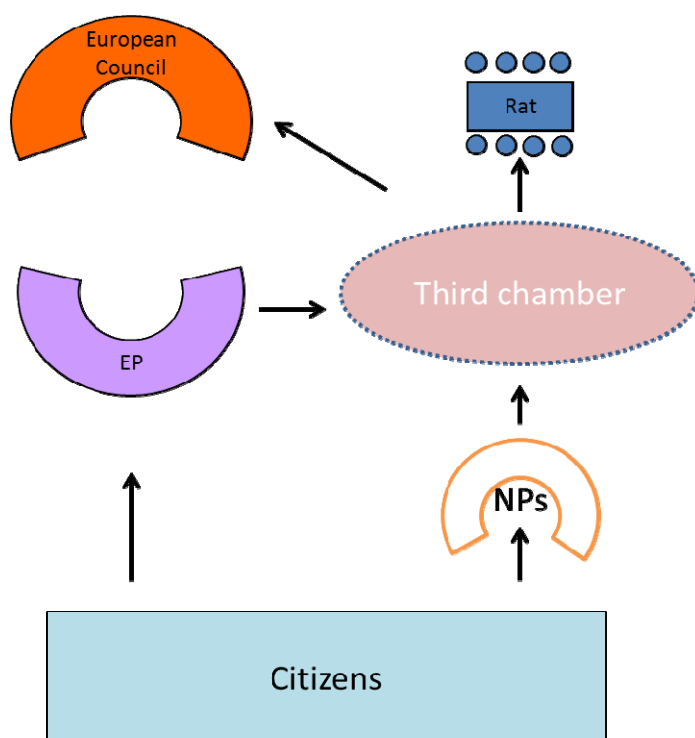
#### 1.4.5 A second (or third) chamber: a veto player role

As one strategy to overcome this fundamental weakness, there are, in the political and academic debate, proposals for an upgraded direct role for national parliamentarians within the EU architecture.

Since the *de facto* end of the EP composed of delegated representatives of national parliaments in 1979, there is a claim that national parliaments should be again directly represented at the EU Level (see graph 6).

Thus, a next step in getting national parliaments into the EU institutional architecture is the creation of a 'second chamber' (speech by the former German Foreign Affairs Minister Joschka Fischer in 2000 at the Humboldt University in Berlin) or rather – 'third chamber' given the role of the Council (see Art. 16(1) TEU).

**Figure 7: A third chamber of national parliaments' representatives**



3

Source: Jean Monnet Chair, University of Cologne.

Functions and forms of such an institution are unclear and disputed. As for its functions, it might include all legislative issues and thus take up the tasks which are now anchored in the provisions for the subsidiarity procedure. Such an agenda would need a full time engagement for the EU acts – which is difficult to combine with meaningful activities in the national parliament. Indeed, the time factor might even be more important, as negotiations with the other two legislative chambers would be long and complicated. For all, not at least for the Union's citizens, the complexity of who makes what decisions when, would increase and the accountability would be even further reduced.

In a second option the agenda might be limited to a few areas where national competences are paramount: thus this body would become the direct watchdog and perhaps partner of

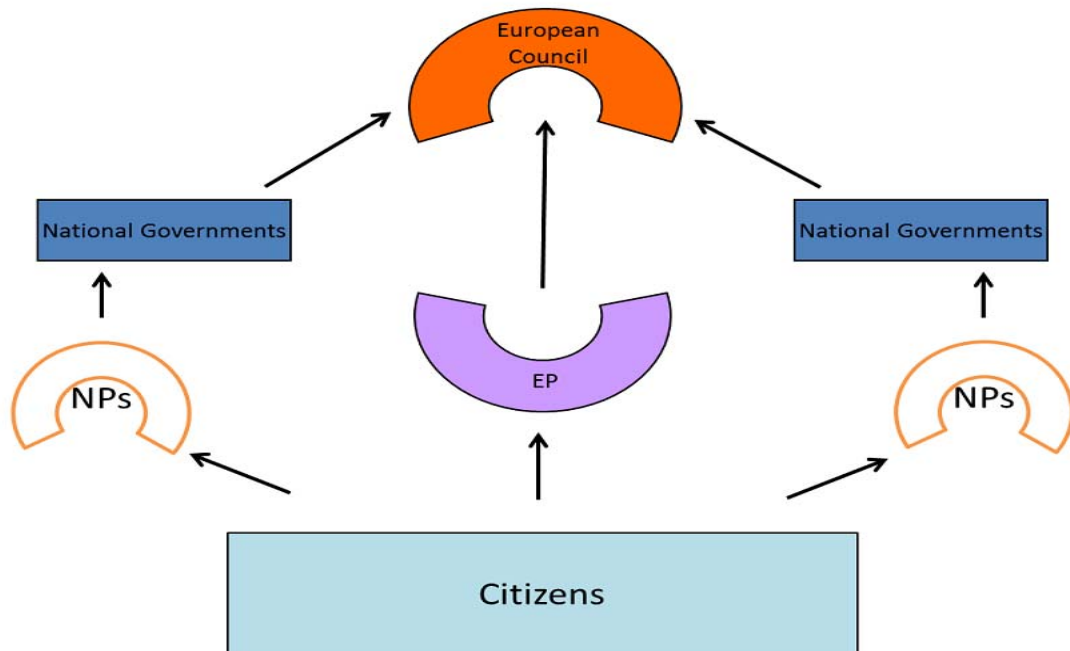
the European Council in foreign and security policies as well as in matters of a fiscal and transfer Union.

In both cases one major issue concerns representative legitimacy. National parliaments are hesitant or not even empowered (see the judgement of the German Federal Constitutional Court on 28 February 2012, 2 BvE 8/11) to delegate the exercise of their competences to a small group of their members (see also below the case of COSAC). A major conflict will be about the 'fair' distribution of seats among the Member States. Even more problematic are strong trends towards a multi-tier Union. Thus, we might need several chambers of national MPs in co-existence.

#### 1.4.6 A multi-level model of interparliamentary participation and scrutiny

Since the increase of the powers of the EP and the losses of legislative competence of national parliaments, one favourite line to react to assumed democratic deficits are proposals to create institutional and procedural opportunities to compensate the ever more important and uncontrollable role of national governments in and via the European Council by a cooperation between national parliaments and the EP (see graph 7: Multilevel parliamentary alliance). In a coordinated division of labour, parliaments of both levels should jointly exercise a comprehensive participation in the preparation and an ex-post scrutiny and control. This model is based on a strategy of a multi-level alliance or coalition of parliaments vis-à-vis power seeking executives. The strategic position of the European Council as key player on both levels could be balanced by a multi-level set-up of parliaments based on a dual European and national legitimacy.

**Figure 8: A multi-level parliamentary alliance to control the European Council.**



Source: Jean Monnet Chair, University of Cologne.

Several ways and approaches of parliaments on both levels to inform each other and deliberate on issues of shared responsibilities have been observed (see e.g. Wessels 2000). Thus, committees of national parliaments offer a special status to their colleagues from the EP. We also observe bilateral visits and interparliamentary conferences.

The most extensive network is 'the Conference of Parliamentary Committees for Union Affairs' (known as COSAC). The results and the impact of this loose set-up are marginal both on the EP's as on the national parliaments' side. A reference to the European Council's conclusions and objectives can frequently be observed in the contributions of the bi-annual meetings of COSAC. Since 2010 the President of the European Council is invited to the COSAC meetings and attended the conference in Brussels in October 2010.

The Lisbon Treaty has not upgraded these arrangements, which were developed outside the EU's formal institutional architecture. Vague provisions of the Lisbon Treaty enable 'the European Parliament and national parliaments to determine the organization and promotion of effective and regular interparliamentary cooperation within the Union' (Art.9, Protocol 1). COSAC is empowered to organize meetings also on CFSP and CSDP topics, which would cover parts of the European Council's agenda. This set-up got only negligible rights: '(It) may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission' (Art.10, Protocol 1) but the European Council is again not mentioned in this list. To put that in comparison: this entitlement is weaker than that of the citizens' initiative. Significant for the limits of the authority of COSAC, are formulations dealing with its supposed impact: 'Contributions from the conference shall not bind national parliaments and shall not prejudice their positions' (Art.10, Protocol). Such provision actually expresses the fear from some national MPs that a participation of their parliament at the EU level could be detrimental to the "ordinary" control of the European policy of their national government. It also derives from a structural reluctance of the parliament to endow some delegates to speak in their names. More effective cooperation might be taking place through informal channels such as party links (see Crum and Miklin 2011).

In a similar approach, Article 13 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, also proposes that the EP together with the national parliaments "determine the organization and promotion of a conference of representatives of the relevant committees of the national Parliaments and representatives of the relevant committees of the European Parliament in order to discuss budgetary policies and other issues covered by this Treaty".

In the political and academic debate we also find proposals for an upgraded set-up for interparliamentary cooperation. A specific form would be a French style 'Congrès' which – composed of members of the national parliaments and of the EP would take specific decisions in the EU's institutional architecture – as e.g. electing the President of the European Council (Draft constitution of Giscard d'Estaing, in Norman 2003: 224)

More relevant are joint forms of deliberations for making the EU polity. Earlier forms of 'assises' (Westlake 1995, Fox 2012)<sup>7</sup> led to the installation of a Convention in which a small group of national and EP parliamentarians cooperated to draft the 'Charter of Fundamental Rights' and more important the 'Treaty on the Constitution for Europe'. This form of a

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<sup>7</sup> The 'assises' was the name given to the meeting of the national parliaments of the Member States and the European Parliament that took place in Rome (also known as the Conference of the Parliaments) in 1990 before the intergovernmental ministers' meeting agreed the Maastricht Treaty. French President Francois Mitterrand had first raised the idea, suggesting in a speech in October 1989, that the European Parliament organise an 'assises' in which the Parliament's delegations would sit alongside those from national parliaments, the Commission and Member State governments to discuss the future of the Community. The European Parliament adapted the concept as a joint parliamentary initiative to inform preparations for the crucial inter-governmental meeting.

multi-level parliamentary forum has been formalized in the Lisbon provisions for the 'ordinary revision procedure': '(It) shall adopt by consensus a recommendation (to an IGC)' (Art. 48(3) TEU). However, such a convention is not a purely parliamentary set-up: also heads of state or government and the Commission will delegate representatives to such a body preparing treaty revisions. It is not a permanent body, but restricted to a special function in rare occasions: Treaties outside the legal framework of the EU treaties are not elaborated by a convention; and when the European Council adopted a decision to add a third paragraph to Art. 136 TFEU the legal basis was the simplified treaty revision according to Art. 48(6) TEU and this did not fall under the rule in which a Convention needed to be convened. There are other examples of multi-level parliamentary cooperation beyond the models described above. In recent times, the emergence of new and rather informal forms of cooperation between the European Parliament and national ones has been observed:

- the meetings of Chairs of many select committees, like finance and budget committees;
- the meetings of the Chairs of the Presidents of the Parliamentary Assemblies;
- the newly created Inter-Parliamentary Conference for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP), composed of both EU national parliamentarians and MEPs. Each National Parliament can send 6 Members (the same number of delegates for uni- and bicameral systems). The European Parliament can send 16 Members, for a total number of 178 parliamentarians. National parliaments of candidate countries and non-EU European NATO members can each send 4 Members of Parliament.<sup>8</sup> This conference will be referred to in the recommendations;
- many ad hoc experiences like video-conferences between a given assembly and MEPs (see the Italian in-depth report);
- and at the administrative level, the Permanent Representatives of national parliaments now meet on a weekly basis.

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<sup>8</sup> For information on the Presidency Conclusions of the Conference of Speakers of the European Union Parliaments: <http://www.ipex.eu/IPEXL-WEB/euspeakers/getspeakers.do?id=082dbcc530e432c20130e615b59d02f6> (last retrieved on 27 August 2012) and <http://isiseurope.wordpress.com/2012/04/27/parliamentary-scrutiny-of-csdp-creation-of-a-new-inter-parliamentary-conference> (last retrieved on 27 August 2012)

## 2 NATIONAL PARLIAMENTS AND THE EUROPEAN COUNCIL: A PICTURE OF THE RULES AND PRACTICES WITHIN THE 27 MEMBER STATES

Based on the questions for all EU Member States and additional qualitative information certain patterns can be observed by which lower chambers of national parliaments have created and used opportunities to influence and scrutinize the way their heads of state or government act in the European Council. This second part distinguishes the rules established within each parliament (2.1) from the actual activities related to the European Council (2.2).

### 2.1 The rules and procedures: information, opinion & timing

#### KEY FINDINGS

- In a majority of Member States (17 out of 27), there are **formal rules mentioning explicitly** the parliamentary control over the European Council. Those rules provide rights of information (always), consultation (sometimes) and binding opinions (rarely).
- Generally, there are **no specific rules** and procedures aimed at controlling Euro summits.
- Parliaments that have been given significant rights on **EU affairs in general** are also richly endowed regarding European Council meetings in particular.
- **Two recent trends** can be observed regarding the parliamentary control of the European Council: 1. the personal involvement of the Prime Ministers; 2. the shift from ex-post control to ex-ante control.

One persistent pattern is that each parliament has procedural rules to deal with EU affairs. As found in earlier studies, marked differences can still be observed, which could be explained by a differentiated set of factors (see e.g. Maurer/ Wessels 2001, Maurer 2002, Raunio 2005, Winzen 2012): the obligations of government to share information on European Council and Euro summits and the rights of parliaments to state their position before and after the summits vary significantly among the 27 national parliaments in the EU.

Many national parliaments and heads of government have established a rich variety of institutional and procedural opportunities. Only in two cases, Malta and currently still Romania, are there no or very limited channels for dialogue and scrutiny. On the other hand, there are very few cases of binding obligations of heads of government to report before or after the European Council session to the plenary or committees of their parliaments and to take the parliament's position into account.

#### 2.1.1 The frequency of the rules related to the control over European Council meetings

There are **seventeen Member States with formal rules explicitly mentioning the European Council** in the Constitution or in the Rules of Procedure of parliamentary assemblies (Belgium, Bulgaria, Czech Republic, Denmark, Finland, Germany, Hungary,



Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Spain, and Sweden<sup>9</sup>).

The specific rules on the parliamentary scrutiny of the *European Council* in these countries all treat the issue of **informing the parliament** on European Council procedures and decisions and define either the obligation of government to provide certain **written** documents on the European Council (i.e. annotated draft agenda, strategy papers, government position, report on results) or the obligation of explanations by the government in **oral** form.

Furthermore, in Estonia, Latvia, Lithuania, Slovenia, Slovakia, and Sweden, formal rules with specific procedures on the control of the European Council also prescribe the option or even necessity of government **to consult parliament** and to seek parliament's opinion, in the case of Lithuania a **binding** mandate.

The use of the *passerelle* clause (**simplified treaty revision**) which is decided upon in the European Council is subject to specific formal rules in several parliaments like the Austrian, Czech, Belgian, Bulgarian, Estonian, German, and Polish ones. These rules define not only the necessity of informing parliament on the use of the simplified treaty revision, but also prescribe that parliament must actively approve and state its position. In Germany, Austria and the Czech Republic the assent of both chambers is necessary.

**Priority debates** are possible (*de jure* or *de facto*) in Cyprus, the Czech Republic, Hungary, Ireland, Luxembourg, Malta, Netherlands, Portugal, Slovenia, Slovakia, Spain, and Sweden. Under different provisions in details, this system means that floor debates concerning the European Council have priority over the ordinary agenda items of the parliament.

Regarding the **structure of the debate**, debates where the head of government participates in many cases look like this: a statement by the head of government is followed by a debate of question and answer rounds where all parliamentary party groups may participate whereto the head of government replies. In Germany and Luxembourg parliamentary rules of procedure state that the speaking time allocated to each party group corresponds to the number of seats. However, there are several deviations from this basic structure. In Ireland and Italy the head of government does not reply or, does not reply himself to questions asked. Neither in Ireland nor in Malta does a true debate follow the government declaration. In Ireland, a series of statements by all parliamentary party groups follows in reply to the government statement.

In the overwhelming majority of Member States, **there is no differentiation between the different kinds of European Council meetings**. It remains unclear whether this has a positive effect (all European Council meetings are scrutinized) or a negative impact (only regular European Council meetings are scrutinized): the interpretation of the formal rules varies from country to country. In several countries a debate occurs only before and after *ordinary* European Council meetings even though the rules do not specify this focus.

Only in Austria and Latvia a differentiation by kind of summit is made. In Austria, committees debate also the extra-ordinary European Council meetings as well as Euro summits. In Latvia, parliament has the right to issue a resolution only on regular European Council meetings; informal ones must be argued to be in the "national interest of Latvia".

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<sup>9</sup> Romania will have specific rules on the scrutiny of the European Council, if the new "Law on the cooperation between the Parliament and the Government in EU Affairs" from 25 June 2012 comes into force after the judgement of the Constitutional Court on 19 September 2012.

### 2.1.2 The scarcity of rules related to the control over Euro summits

**In only three Member States are there formal rules also applying to the *Euro summit*:** in Austria, Germany and Spain.<sup>10</sup> In Austria, the general framework on scrutiny of EU affairs also applies to the control of Euro summits. The broad definition in the Austrian Constitutional Act of parliamentary scrutiny of “all projects” within the framework of the EU allows for parliament to extend its control to these summits. In January 2012 an internal document of parliament defined that the scrutiny of the Euro summit falls under the responsibility of the Main Committee (EAC).

For Germany, the most recent judgement of the Federal Constitutional Court (June 2012) has defined the ESM and TSCG to be treated as “EU Law” due to their proximity to regular EU law and to the EU institutions. This should imply that the control of Euro summits follows the same procedures as EU affairs in general and as the European Council meetings in detail.

In most Member States belonging to the Euro zone the parliamentary scrutiny informally follows the same structure as scrutiny of the European Council meetings or as the general scrutiny of EU affairs. The control of the Euro summits remains, however, up to date often a grey zone. If the timing of the meeting of the heads of state or government of the Euro zone countries coincides with the European Council meeting, parliaments seem to include it into their debates. The one Euro summit, on 21 July 2011, which took place independently of any other summit has the lowest number of debates, governmental declaration or votes in all parliaments – even if this is also to be explained by the fact that in mid-July many parliaments are in summer recess already.

### 2.1.3 Information sharing: the devil is in the details

In almost all Member States the legal rules on the control of government activity in EU affairs provide either a general guideline or even a detailed prescription on information sharing with parliament. Only Ireland<sup>11</sup> does not have formal rules on information sharing.

#### Level of legal provisions on information sharing

In Austria, Bulgaria, the Czech Republic, Germany, the Netherlands, and Slovenia a general guide-line like “detailed and timely” or “regular and prior” information of parliament in EU affairs is anchored in the **Constitution**.

In all other countries but Ireland, there are formal rules on the level of **statutory provisions or standing orders**, which define the obligation of government to provide information to parliament.

In most countries the rules on information sharing foresee room for “executive privilege”, where parliament must not (directly) be informed (see the “traditional model”, part 1.5.1). However, in the Netherlands it is defined that government must provide all information “unless such provision of information contradicts the interest of the state”. **Finland is a unique case, where the Constitution prescribes unlimited access to information for parliament.**

#### Preciseness of legal prescriptions

There are wide differences in the Member States’ formal rules in how precisely these obligations of the government are defined. **Germany can serve as a case in point for detailed specification** on the kind of documents and their oral or written communication.

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<sup>10</sup> No information available on: Belgium, Luxembourg, and Slovakia.

<sup>11</sup> The new coalition government which was elected in 2011 committed itself to governmental declarations before and after European Council meetings in their election campaign. Thus, now there is an informal rule established to have pre-briefings and de-briefings on these summits.

In other Member States, as in Denmark, an informal agreement defines the obligation of the government in very general terms: to forward all politically important documents. In practice, the Danish EAC and FAC receive the confidential draft conclusions of the upcoming European Council. The Danish parliament receives the draft conclusions of the European Council and other documents which are considered "politically important" as soon as they are available.

The case of Portugal shows how the country's formerly informal system of scrutiny of EU affairs evolved through the European Scrutiny Act (adopted 25 August 2006, amended 17 May 2012).<sup>12</sup> It is particularly interesting to see how European Council meetings were not scrutinised with any degree of regularity before 2006, how a plenary debate with a representative of the government after the last European Council of each Presidency became obligatory in 2006 (hearings in Committee before and after the European Council meetings) and how, finally, since 2012 plenary debates are to be held before each European Council meeting in the presence of the Prime Minister. The Prime Minister could have appeared before parliament anyway, but there is a trend towards formal provisions and towards stricter provisions.

**As described above, slightly more than half of the EU Member States have explicit legal rules on which documents or information must be provided on European Council meetings.**

The precision of the formal rules on information sharing does not necessarily correlate with the assessment of the parliamentarians about their level of information. In Germany, parliamentarians still feel a lack of information despite the very detailed legal prescriptions (see the most recent judgement from the Federal Constitutional Court in June 2012, BVerfG, 2 BvE 4/11 from 19 June 2012).

Countries like Denmark, Sweden, and Finland have clear legal rules on information sharing and really are well informed on all governmental activities in regard of the (European) Council. Members of the Finnish and Swedish parliaments can even be **informed during European Council** meetings should new initiatives or issues arise at the summit.

The Czech Republic is a particular case of *ex-ante* information on European affairs: **Civil servants of both chambers** (typically the head or deputy head of EU unit in each chamber) **participate in the preparation of the European Council by the government in the executive coordination mechanism**: They attend the meetings (short: PV-EU) as associate members at the working-level where the government position for the European Council is prepared and discussed intensively. The position is approved at the ministerial level. But through the participation in the government coordination mechanism, the Czech Parliament has good access to information on all EU issues.

#### Rules about the timing of information sharing

**The timing of the information sharing with parliament is decisive for its ability to form a position on the issue.** If a statement by the Prime Minister is delivered only a few days before a European Council (and parliament did not have access to the government position beforehand), there will be no time to elaborate a position prior to the summit. On the contrary, if the parliamentary meeting is organised too early before the Council, the discussion may not be relevant.

The new law on scrutiny of EU affairs in Romania ("Law on the cooperation between the Parliament and the Government in EU Affairs"<sup>13</sup> from 25 June 2012, not in force yet) aims

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<sup>12</sup> D.Jancic, Report on Portugal, p. 64-66.

<sup>13</sup> Draft bill on the cooperation between the Parliament and the Government in EU Affairs <http://www.dae.gov.ro/articol/2656/proiect-lege-privind-cooperarea-intre-parlament-si-guvern-in-domeniulafacerilor-europene> (last retrieved on the 25 July 2012).

at preventing time pressure for parliamentarians: the government must deliver its position to parliament seven days before the European Council.

**Ireland can serve as an opposite example of unfavourable timing.** As an election promise in the campaign in 2011, the Taoiseach committed himself to pre-briefings in the plenary. They take place two weeks before European Council meetings. As the summit is still relatively distant, the upcoming decisions at the European Council are not salient yet and neither parliamentarians nor the participating press are very interested in the Taoiseach statement. The attendance rate at the pre-briefings is usually very low.

*Kind of Information: Agenda of the European Council and government position*

In order to enable parliament to have a meaningful scrutiny of the decisions at the European Council, it is relevant whether MPs are informed on the agenda of the upcoming European Council and, especially, on the government position in regard of the agenda items. **In general, national parliaments of most countries are informed on the government position either in written or oral form.** In only three Member States the parliamentarians are – at least not officially – informed on the countries position in the summit: Bulgaria, Malta, and Spain. A certain degree of confidentiality on a government position prior to the summits must necessarily be preserved, especially in public debates to avoid the negotiating power of the government at the summit from being reduced. Thus, even if parliaments are provided with information on the government position, the openness and level of detail of information about the government position will vary.

*In written or oral form*

For the information on the proceedings of the European Council and the countries' negotiation positions therein, the government can inform parliament either in written form (by providing the documents relevant for the European Council or by providing explanatory memoranda for parliament on the government position) or in oral form (through a statement by a member of government in a committee or at the plenary).

The Netherlands and Finland are two examples of information rights provided for both: oral and written form. In the Netherlands, an **annotated agenda of the European Council** needs to be provided ex-ante and a written report ex-post. Furthermore, the Prime Minister participates in preparatory debates. In Finland, since 2006 written reports before and after the summits are prescribed on top of the participation of the Prime Minister in committee debates in preparation and follow up of European Council meetings.

In several countries **written reports on the results of the European Council** are demanded through formal rules, as in the Czech Republic, Estonia, Slovenia, and the UK. In the UK, the committee responsible for European Affairs receives a letter on the government position and the agenda of the European Council prior to the summits. Thus, this information is provided despite a lack of debates at committee or plenary level.

**Austria and Estonia have established access for parliament to the electronic government database<sup>14</sup>**, which contains relevant EU documents as well as documents from the government itself on matters concerning the EU.

#### 2.1.4 The recent trends in parliamentary scrutiny of European Council meetings

Rules related to the control of the European Council have evolved in many countries, notably during treaties ratification. The following table presents the changes in formal rules observed in nine Member States since 2007.

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<sup>14</sup> The database in Austria is not run by the government but by the parliamentary administration.

**Table 3: Change in formal rules on the scrutiny of the European Council**

Country	Change after Lisbon on European Council	Year	Content
Austria	no	2012	The EU Information Law (EU-InfoG) came into effect which formalised established practice on the information-flow between government and parliament.
Czech Rep	yes	2006 & 2009	2006: Directive of Government on transmission of information on EU affairs, which specifies information on the European Council. 2009: Due to the new simplified treaty revision procedures the prior assent of both chambers is prescribed in the Rules of Procedures.
Finland	no	2006 & 2012	Since 2006: government must provide a written report ex-ante and ex-post to European Council meetings. Since the end of 2009 the Prime Minister has represented Finland in the European Council. This is now also recognised in the Finnish constitution (the amendment entered into force in March 2012). This change obviously benefits the Eduskunta as the President is not directly accountable to the parliament.
Germany	yes	2009 & 2012	2009: revision of the EUZBBG with new provision on info rights on European Council meetings. On the Euro summit: BVerfG judgement from June 2012
Hungary	no	2004 & 2012	Law on EU scrutiny was introduced as requirement for accession. It was reviewed in 2012: less precise than before.
Luxembourg	yes	2009	In May 2009 the Agreement between parliament and government on possible debates on European Council meetings was formalized (as Annex to the Rules of Procedure); before the Lisbon Treaty excluded the Ministers of Foreign Affairs from the European Council, it used to be the Minister reporting to the EAC
Portugal	yes	2012	Amendment of the European Scrutiny Act in 2012: move from ex-post to ex-ante plenary debate
Romania	yes	2012	New law, not in force yet (judgement by Constitutional Court on 19 September 2012): defines information rights and non-binding mandate on the European Council
Sweden	no	2007	On 1 January 2007 the regulation in the Riksdag Act that the Government shall consult the Committee on EU Affairs prior to meeting of the European Council came into force. The regulation was considered to be a formalization of practice, and did not change actual behaviour

**Source:** Information from the 27 questionnaires of the NPEC study.

In addition to a change in formal rules, several parliaments have established practices of scrutinizing the summits which have become obligatory for the government, even though they are not legally prescribed:

**Table 4: Change in informal rules on scrutiny of the European Council**

Country	Year	Content
Spain	1989	Since 1989: common practice of ex-post plenary debates
Sweden	1998	Since 1998: informal agreement to hold ex-post plenary debates
France	2005	Since the failed referendum on the Constitutional Treaty: ex-ante plenary debates before ordinary European Council meetings
Italy	2009	Due to the expulsion of Foreign Affairs Ministers from the EC meetings after Lisbon, it is now the Minister of EU Affairs or the Prime Minister himself who report to parliament. Since the outbreak of the financial crisis the NP has been increasingly active.
Finland	2010	Since the Euro crisis in spring 2010, there has been serious political pressure on Prime Minister to appear in plenary
Netherlands	2010	Since end of 2010 the EAC decided to move its General Discussion before European Council meetings to the plenary. Thus, more involvement of the entire chamber; this entails a shift towards the preparatory phase, and more involvement of the entire chamber, which facilitates the system of politically binding mandates.
Ireland	2012	Since mid-2012 regular ex-ante debate in plenary as 2011 the new coalition government committed itself to an obligation of ex-ante debate at the plenary with a statement by the Prime Minister
Estonia	2012	Minutes of the EAC are made public on the NP's website; before, only the agenda was publicly available.

**Source:** Information from the 27 questionnaires of the NPEC study.

Both tables make clear that many of the changes were dictated by domestic input. Yet, two general trends can be observed:

- First, a tendency to involve Prime Ministers directly in the parliamentary process: Indeed, the Lisbon Treaty triggered a change in the scrutiny of European Council meetings in an indirect way. **Whereas only seven parliaments explicitly changed their formal rules on the scrutiny of European Council meetings, all 27 Member States were affected by a change in the membership of the European Council.** Since December 2009 the Ministers of Foreign Affairs are excluded from the European Council meetings, and it is only the heads of state or government who participate. In several countries, this change in the structure of these summits resulted in an increased direct accountability of the Prime Minister to parliament. Thus, in Finland and Luxembourg the formal rules recognize the change in the setting of the European Council with participation of only the head of government in the parliamentary debates, not of the Ministers of Foreign Affairs.
- **Second, several parliaments set their focus on ex-ante control in the past years,** as in France, the Netherlands, Ireland and Portugal. Indeed, the majority of the changes in informal rules concerning the scrutiny of European Council meetings touch upon the issue of ex-post or ex-ante plenary debates. As the failed referendum on the Constitutional Treaty in France in 2005 and the Euro crisis in all



the affected Member States raised the salience of the European Union, this triggered an increased political pressure on the government to be accountable to parliament.

## 2.2 The parliamentary activities related to European Council: meetings, debates and votes

### KEY FINDINGS

- **Parliaments that are active before a European Council meeting are, in general, the ones that have developed a strong scrutiny system of EU affairs in general. This is not true for ex-post control.**
- Seven models of parliamentary activities related to European Council meetings can be identified according to the timing, the locus and the significance of the control:
  1. the **traditional model**, i.e. limited involvement (e.g. Hungary),
  2. the **“Europe as usual” model**, following the system established for ordinary legislation (e.g. Italy),
  3. the **expert model**, based on EACs (e.g. Finland),
  4. the **“public forum” model**, based on plenary sessions (e.g. Ireland),
  5. the **“government accountability” model**, based on plenary sessions after the summits in order to question the government policy (e.g. UK),
  6. the **“policy maker” model** with emphasis put on ex-ante control (e.g. Germany),
  7. the **“full parliamentarization” model** illustrated by the Danish case.
- The **personal involvement of the Prime Minister** in parliamentary control is observed throughout Europe, and especially in fully-Europeanised parliaments or in the Westminster system.

With respect to the actual practices in the 27 national parliaments, the collected evidence shows a great variety in the use of the instruments available for the control of the European Council. A distinction is made between ex-ante (2.2.1) and ex-post control (2.2.2), before offering a synthesis on the types of parliamentary control (2.2.3). The issue of the Prime Ministers’ involvement is also considered (2.2.4).

### 2.2.1 Ex-ante debates on the European Council and the Euro summits

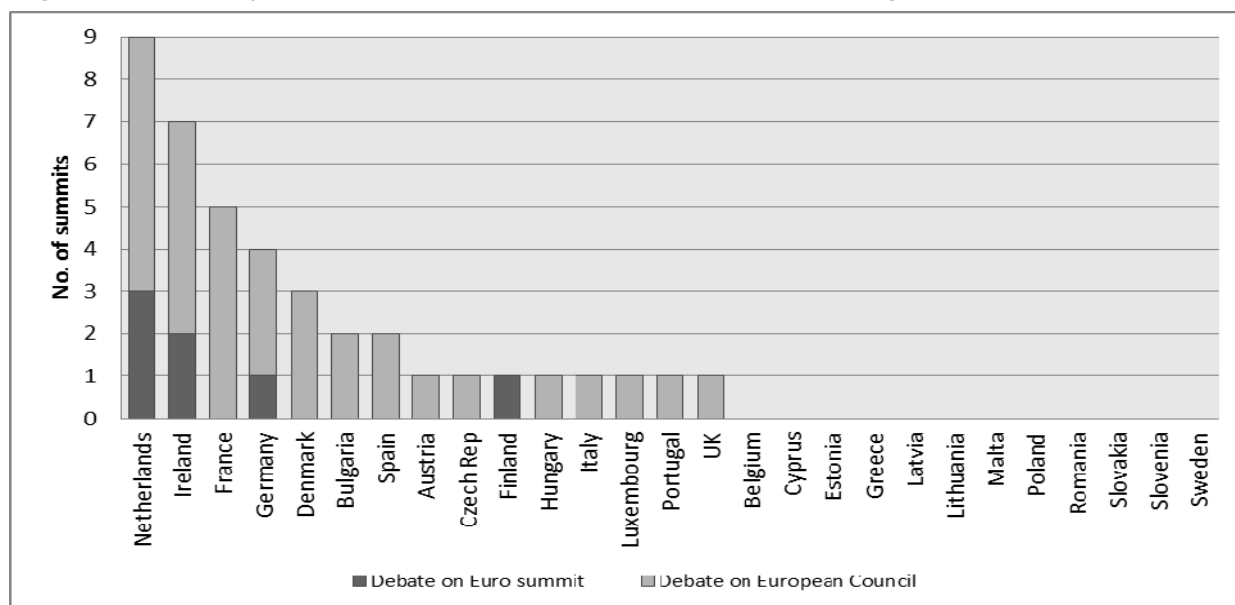
Generally speaking, parliaments that are active before European Council meetings are the ones who have obtained important prerogatives in EU affairs.<sup>15</sup> Indeed, **the correlation is high between the number of meetings before European Council meetings and the formal rights obtained by national chambers in general EU affairs**<sup>16</sup>. Yet, there are differences between ex-ante control based on the plenary or on committees. The following

<sup>15</sup> In addition to the explicit mention of the European Council meetings, there are in most national parliaments rules related to the control of the European institutions that include de facto the European Council meetings.

<sup>16</sup> If (Winzen 2012) ranking for formal rights is compared to the number of ex-ante floor or committee meetings from March 2011 to March 2012, the correlation is 0.46 (Person’s r).

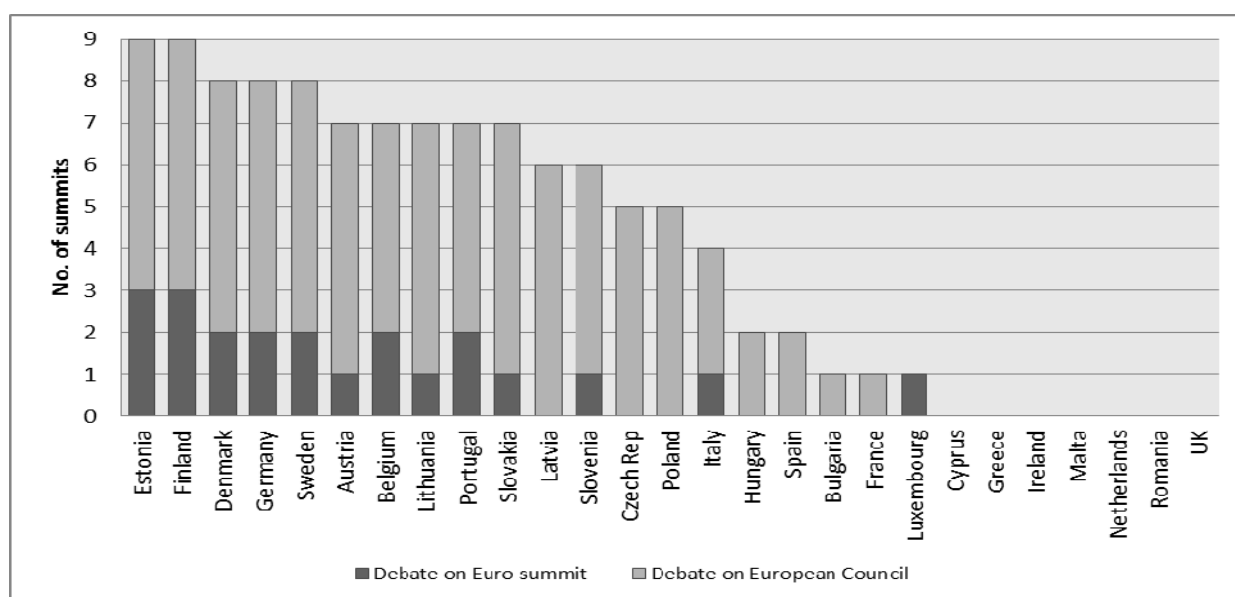
two graphs show the frequency of plenary and committee debates before the European Council and the Euro summits in all 27 Member States.

**Figure 9: Plenary debates before European Council meetings and Euro summits**



Source: Information from the questionnaires of the NPEC study.

**Figure 10: Committee debates before European Council meetings and Euro summits**



Source: Information from the questionnaires of the NPEC study.

The three countries with the highest frequency of ex-ante plenary debates, the Netherlands, Ireland, and France, do not hold committee debates before the summits though. On the other hand, in Estonia, Finland, Portugal<sup>17</sup>, Sweden, Belgium, Lithuania, Slovakia, Latvia and Italy the debates are held at committee level without regular

<sup>17</sup> In Portugal regular ex-ante involvement of the plenary is stipulated in the European Union Act since May 2012.



involvement of the plenary. In Denmark and Germany, there are both plenary debates and frequent debates in the committees in line with the model of “full parliamentarization”.

Despite the indication in the table on the lack of formal committee debates, in Hungary the European Consultation Body is regularly consulted before European Council meetings. The formally established European Consultation Body is composed of the Speaker of the parliament and the leaders of the parliamentary party group as well as the chair and vice-chairs of the European Affairs Committee and other relevant committees. The meetings are private. The Prime Minister has always participated in these meetings.

According to the information of this quantitative overview of the time period between March 2011 and March 2012, closest to the “traditional model” of parliamentary non-involvement in the preparation of European Council meetings are Romania, Malta, Greece and the UK.

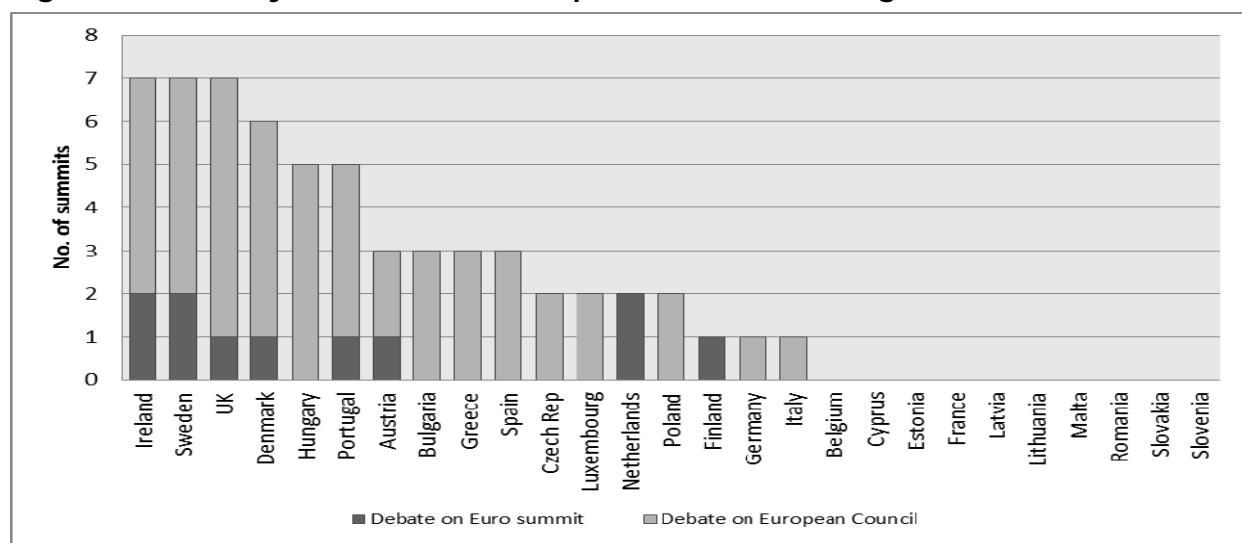
Regarding especially the committee meetings, in all cases, it is the European Affairs Committees, in their different variations, which hold the main responsibility for the control of the European Council at committee level. In several parliaments, the finance or budget committees have become increasingly involved since the Euro crisis. The Foreign Affairs Committees are often responsible for security issues of the European Council. Yet, EACs are the most active bodies – before and after European Council meetings.

### 2.2.2 Ex-post debates on the European Council and Euro summits

Whereas several parliaments have shifted their focus to the ex-ante control of European Council meetings in order to influence the government position prior to binding agreements by the Head of State or Government at the EU-level, the ex-post control serves the purpose of assuring that the government complied to its obligations and, for opposition parties, to voice criticisms.

**The overall frequency of plenary debates after a summit is higher than ex-ante.** Again there is no clear-cut model of common scrutiny standards in all parliaments but the procedures vary significantly. **A correlation between the ex-post involvement in the control of European Council meetings and the rights and/or activities of the houses regarding EU affairs in general is not noticeable<sup>18</sup>.** Clearly, the national parliaments willing to control their governments after a summit are not especially the most Europeanised ones.

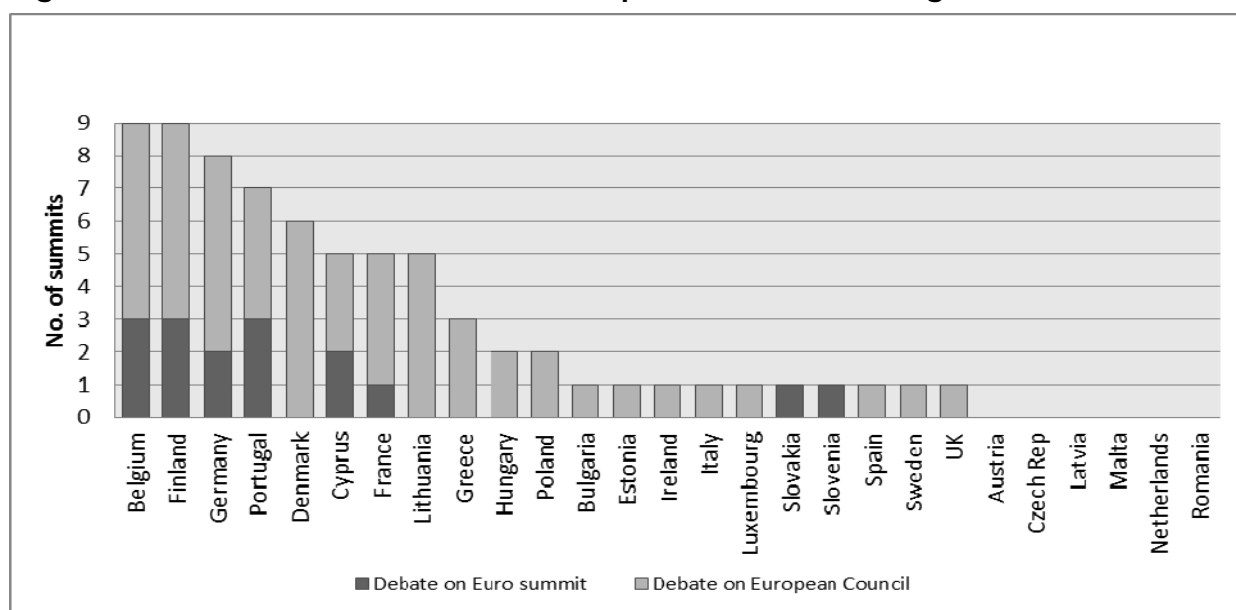
**Figure 11: Plenary debates after European Council meetings and Euro summits**



Source: Information from the questionnaires of the NPEC study.

<sup>18</sup> Pearson’s  $r = -0.05$ . See previous note.

**Figure 12: Committee debates after European Council meetings and Euro summits**



Source: Information from the questionnaires of the NPEC study.

Among the countries with a high frequency of plenary debates prior to European Council meetings, it is interesting to see that only Ireland and Denmark also hold regular ex-post plenary debates.

In France and Germany, ex-post debates are confined to the committee level. And the Netherlands only hold ex-post debates in exceptional cases. Within those three parliaments, the lack of public floor debate after the summits is undoubtedly a consequence of their frequency before – the time and energy of the MPs are limited as well as the free slots on the agenda.

Malta and Romania are the two Member States where not one single debate either at plenary or at committee level has been held in the lower house. This leaves Malta and Romania as the two countries where no control of government activities is provided through debates before or after the European Council meetings or Euro summits in the lower chamber.

### 2.2.3 Seven types of parliamentary control

The following table offers a synthesis of the data on the ex-post and ex-ante involvement in committees and in plenary. Each Member State has been located according to the number of meetings and plenary sessions held from March 2011 to March 2012. Following the seminal work by Auel (2007) that distinguishes types of parliamentary control of EU affairs according to their finality (policy-making vs. public debate), the location of each lower house in the table is associated with the definition of seven types of parliamentary control of European Council meetings and Euro summits.

**Table 5: Parliamentary body involved in ex-ante and ex-post scrutiny of the European Council<sup>19</sup>**

<b>Ex-ante</b> <b>Ex-post</b>	<b>Reduced involvement</b>	<b>Committee</b>	<b>Plenary</b>	<b>Involvement both in Committees and Plenary</b>
<b>Reduced involvement</b>	<b>TRADITIONAL MODEL</b> <i>Hungary</i> <i>Luxemburg</i> <i>Romania</i>	<b>"EUROPE AS USUAL"</b> <i>Czech Republic</i> <i>Estonia</i> <i>Italy</i> <i>Latvia</i> <i>Poland</i> <i>Slovakia</i>	<i>Netherlands</i>	
<b>Committee</b>	<i>Cyprus</i>	<b>EXPERT MODEL</b> <i>Belgium</i> <i>Finland</i> <i>Lithuania</i> <i>Slovenia</i>	<i>France</i>	<b>POLICY MAKER</b> <i>Germany</i>
<b>Plenary</b>	<b>GOVERNMENT ACCOUNTABILITY</b> <i>Bulgaria</i> <i>Malta</i> <i>Spain</i> <i>UK</i>	<i>Austria<sup>20</sup></i> <i>Sweden</i>	<b>PUBLIC FORUM</b> <i>Ireland</i>	
<b>Involvement both in Committees and Plenary</b>	<i>Greece</i>	<i>Portugal<sup>21</sup></i>		<b>FULL PARLIAMENTARISATION</b> <i>Denmark<sup>22</sup></i>

**Source:** Report on Democratic Control in the Member States of the European Council and the Euro zone summits.

<sup>19</sup> Explanation:

- Reduced involvement = less than 3 meetings in EACs and less than 3 sessions in plenary.
- Committee = 3 or more meetings in EACs and less than 3 sessions in plenary.
- Plenary = less than 3 meetings in EACs and 3 or more sessions in plenary.
- Involvement in both = 3 or more meetings in EACs and 3 or more sessions in plenary.

<sup>20</sup> In Austria the involvement of the plenary (usually) is rather limited (the financial crisis here is somewhat of an exception). Control is taking place mainly ex-ante in an EAC and monitoring ex-post is clearly less developed/institutionalised than ex-ante.

<sup>21</sup> In Portugal the European Scrutiny Act was amended in May 2012 with a shift from ex-post to ex-ante control. The data collection for this study does not show the implications of this new legal setting as it covers the time period from March 2011 to March 2012 only. Since May 2012 there are ex-ante plenary debates and ex-post committee debates. There might also be ex-post plenary debates initiated by the rules envisaged under the Rules of Procedures.

<sup>22</sup> Between March 2011 and March 2012 the issue of treaty change received a lot of attention (referral to the plenary). If looking at any other time period, Denmark would most likely be categorised as a 'policy-maker' since European matters are rarely referred to the plenary, and almost exclusively handled by the EAC.

Seven different models, as well as a few outliers, can be identified from this table:

4. In the **traditional model** the parliament is not active regarding European Council meetings either because the parliament has reduced rights in EU affairs in general (Luxembourg and Romania up to now) or the majorities in Parliament tend to consider that the European Council should remain the only prerogative of their Prime Minister (Hungary).
5. In the "**Europe as usual**" model, national parliaments tend to follow incrementally the path that was taken for EU legislation that is ex-ante control realised by a specialised committee. As a result, MPs are less interested in the outcomes of the Council and the involvement of the plenary is limited. The idea that this pattern of parliamentary control is rooted in the way those houses deal with ordinary draft EU legislation is confirmed by the fact that those parliaments are among the most Europeanised in terms of rights and/or EACs meetings as indicated in part 1.2. The fact that those parliaments are more active before European Council meetings than afterwards, actually explains why the correlation with the scrutiny strength of the parliament in EU affairs is high and positive ex-ante and insignificant ex-post.
6. In the **expert model**, European Affairs Committees are active both before and after the summits, but the involvement of the floor is reduced. This model is based on expertise, since specialised members are in charge of the control. Yet, expertise is not equivalent to closed-door discussions since many EACs meet in public when dealing with European Council meetings.
7. Opposed to the expert model is the **public forum** model with plenary sessions before and after EU summits. The Irish case is the only example for it, following a recent and informal commitment made by the Taoiseach. As illustrated by this example, a public discussion in a non-expert setting is also a strategy of self-promotion.
8. The **government accountability** model can be found when the involvement before a European Council meeting is limited and debates take place in the plenary afterwards. The main focus of the parliamentary involvement is to discuss the outcomes of the meeting and especially the line adopted by the Prime Minister. The opposition can particularly take the opportunity of those debates to voice concerns. Political systems that follow the Westminster model are well represented in this category. The fact that those last parliaments do not have strong mandating powers confirms that their main aim is politics rather than policy.
9. The **policy maker** model is rather opposite to the government accountability one since the main focus of the parliamentary activity is put on influencing the government before the summit rather than contesting its choice after. Both committee meetings and floor sessions can help for that purpose as indicated by the German example. Expert meetings are still needed after the summit in order to check the positions upheld by the Chancellor.
10. Finally, the Danish case illustrates perfectly the example of **full parliamentarization** presented in part 1.5.3. as it offers a mix of expertise and publicity, both before and after European Council meetings.

**There are a few Member States that can be regarded as intermediaries between these cases:**

- Austria and Sweden are indeed a mix of the accountability, public forum and expert model.
- Cyprus is all the more close to the traditional model in that the President chairing the national delegation is fully independent from the parliament.
- Greece and Portugal are close to the accountability pattern but the important level of involvement after a European Council meeting suggests that the parliament is a place for discussing the implementation of the decisions taken in a very difficult economic context.
- In the Netherlands and France, the focus put on floor debates before the summits tends to assimilate those cases to the policy maker pattern with some specificities: in the *Tweede Kamer*, debates aim at gathering commitments from the Prime Minister on “red lines”; in the *Assemblée nationale*, many majority MPs share the (questionable) idea that a floor debate will back their President in Brussels.

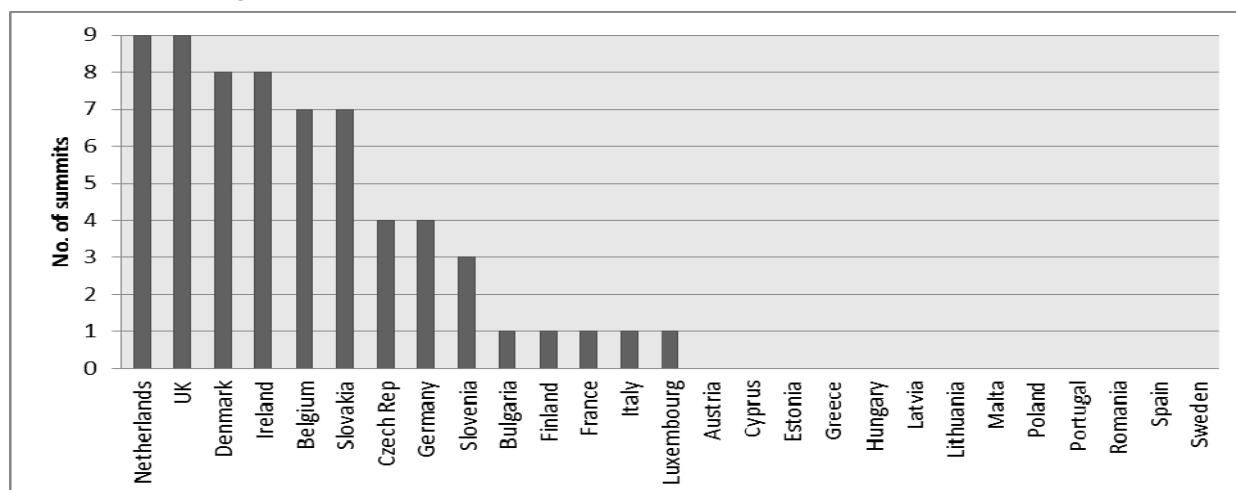
#### 2.2.4 A shared logic in Europe: the personal participation of the Prime Minister

**In 17 of the 27 EU Member States, it is the Prime Minister who gives a statement before a European Council meeting.** Such statement can take place in plenary or in committees. It can also take a written form as in the UK or in the Netherlands. The personal involvement of the Prime Minister in ex-ante or ex-post debates to European Council meetings often evolved as informal practice, rather than following formal prescriptions. The most telling cases are Italy and Ireland:

- In Italy, the combined effect of the Lisbon Treaty excluding Ministers of Foreign Affairs and the high political salience of the decisions met at the European Council triggered a change. The Prime Minister Mario Monti has made a declaration in parliament at several occasions when highly relevant decisions at the European Council meeting were to be adopted.
- In Ireland, the pre- and de-briefings of the parliament by the Taoiseach is common practice, since this personal involvement was part of election promises in 2011.
- The heads of government in Malta, Lithuania, the Netherlands, and Austria seem to also see an advantage in direct exchange with parliament around European Council meetings or use parliament as a forum for public communication. Despite a lack of formal rules, the Prime Ministers appear in the plenary or the EAC for a formal declaration.

On the selected period, formal statements, oral or written, were made by Prime Ministers before Council in 14 lower houses as indicated by the following graph:

**Figure 13: Formal declarations by the head of government before European Council meetings and Euro summits**



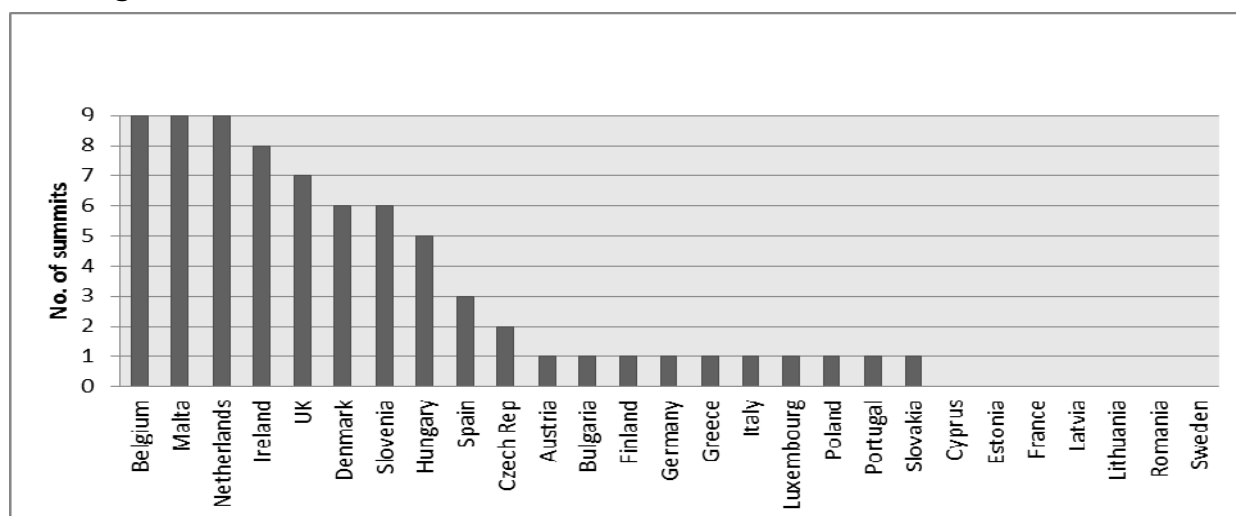
Source: Information from the questionnaires of the NPEC study.

There are several countries where **the statement** by a government representative (predominantly the Prime Minister, at least for highly salient issues) **does not take the form of a formal declaration** (and is therefore not listed in the graphs).

- In Sweden, the Prime Minister participates in committee debates ex-ante and explains the government position in an informal statement.
- In Austria, the Chancellor is present and participates in the debates at plenary sessions on the European Council. He also makes a statement at the beginning of the committee meetings on the summits, but not in form of a formal declaration.
- The Dutch and British Prime Ministers usually make a written statement only as formal declaration. They were included, yet those procedures contribute to the personal commitment of the Prime Ministers.

The following graph presents the number of formal declarations made by Prime Ministers after the summits.

**Figure 14: Formal declarations by the head of government after European Council meetings and Euro summits**



Source: Information from the questionnaires of the NPEC study.

Similar to the ex-ante control, the involvement of the head of government may take place through informal statements which are not listed in the figure 13. In Sweden, the Prime Minister reports to the plenary (or the EAC, if the plenary is not gathered) and answers questions by MPs after each European Council meeting.

With respect to the personal involvement of the Prime Minister, the correlation between the graphs on their ex-ante involvement and their ex-post involvement is high. This points to the conclusion that there are four groups of Member States:

**Table 6: Ex-ante involvement and ex-post involvement**

	Ex ante +	Ex ante -
Ex post +	Belgium, Netherlands, Ireland, UK, Denmark, Slovenia, Sweden	Malta, Hungary, Spain
Ex post -	Slovakia, Germany, Austria <sup>23</sup>	<i>the remaining 14 Member States</i>

Source: Jean Monnet Chair, University of Cologne / Notre Europe – Jacques Delors Institute.

1. Those with a high involvement of the head of government both ex-ante and ex-post. Both **fully Europeanised parliaments** (Denmark, the Netherlands<sup>24</sup>, Sweden<sup>25</sup>) and countries based on the **Westminster model** according to which speeches of the Prime Minister in parliament are essential for the management of the majority (UK, Ireland) are to be found.
2. Those with a participation of the Prime Minister before the summits. The specificity of the German case should be understood with the Chancellor's difficulty in convincing not only her own party but also to gain support by the opposition for her European policy during the chosen period when legal provisions prescribed a two-thirds majority on financial aid programmes or treaty change.
3. Those with a participation of the Prime Minister after the summits with, again, countries close to the Westminster tradition.
4. 14 Member States with low or no direct involvement of the head of government. As in many cases there are still many opportunities for informal statements, we can say that the shared model in European Parliaments **is to ask to the Prime Minister to participate in person in the parliamentary activities related to the European Council, whatever the form**. Yet, a few Member States can be regarded as outliers. The semi-presidential systems of France and Lithuania and the presidential system in Cyprus pose a specific problem for parliamentary control as it is never the President himself/herself (who participates at the European Council) who speaks in parliament before or after the summits.

The quantitative data collection on the time period from March 2011 to March 2012 does not allow conclusions to be drawn on a change over time. It gives an impression of the accountability of the Prime Minister to parliament in the recent activities of the European Council and Euro summits with the highly relevant decisions on the future of the Euro zone

<sup>23</sup> Even if there is no formal statement, in Austria the head of government usually participates in meetings of the European Affairs Committee. This is the reason why the country has been included in Table 6 as "ex-ante +".

<sup>24</sup> As described above, in the Netherlands ex-ante involvement is higher than ex-post.

<sup>25</sup> Involvement of the Prime Minister ex-ante and ex-post is informal and therefore not listed in figure 12 and 13. However, the head of government does report to parliament before and after each European Council meeting.

through the financial aid packages. However, the country experts indicated in their reports the frequency of the formal declarations of the head of government to parliament prior to the summits has increased in the past years. On the one hand, due to the Lisbon Treaty that excluded Ministers of Foreign Affairs from the European Council meetings, on the other hand, due to the increased salience of the decisions of this body of highest decision-makers.



### 3 FOUR SPECIFIC STAKES REGARDING THE PARLIAMENTARY CONTROL OF THE EUROPEAN COUNCIL

#### KEY FINDINGS

- Parliaments are generally **able to issue resolutions before European Council meetings** but, with two exceptions, **generally do not make use of their formal right**.
- Even if in some parliaments, these resolutions have legally binding power, the capacity of a parliament to instruct Prime Ministers is heavily influenced by **political considerations**.
- An **information gap** between the executive and the legislative branch at the national level is perceived as **visible and existing** with respect to European Council meetings and Euro summits. This gap is the least significant in Denmark and Finland, and the most significant in France.
- The **political salience** of this specific parliamentary control **shows a considerable degree of variation**. Yet, due to the tense events of the last months, **parliamentarians are waking up** in many countries and show greater interest in European issues.
- In terms of the issues that are debated during the control of European Council and Euro summits, **National parliaments' debates** are not specifically Eurosceptic but they **are mainly concerned by national interest and national politics** when they discuss European Council meetings.
- "Good – and bad – practices" of parliamentary control do exist and striking examples from different national contexts demonstrate the **liveliness of parliamentary control**.

In addition to part 2 which provided overview regarding the rules and practices for parliamentary control, four specific stakes were identified. They are related to the issues of parliamentary mandates (3.1.), information gap (3.2.), political salience (3.3.) and Euroscepticism (3.4). In order to provide an in-depth analysis of those issues, national experts from 12 Member States were invited to write country reports (which can be found in Annex 2 to this study). The sample of 12 Member States (Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Poland, Portugal, Slovakia and the United Kingdom) provides a well-balanced sample of cases.<sup>26</sup>

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<sup>26</sup> This sample was established in order to be representative in terms of: a. size of the Member States (with five of the "biggest" included); b. geographic location; c. years of membership (with countries for each wave of accession); d. political systems with so-called majority and consensus systems. More specifically to the present study, the sample has been built in order to include: a. countries famous for the involvement of their parliament in EU affairs (such as Denmark, Germany, Finland and the Netherlands); b. most of the Euro zone members as the democratic control of the Euro summits constitutes a major stake of the study – yet three other countries willing (Poland), hesitating (Denmark) or refusing (UK) to join have also been included; c. members experiencing serious financial problems and therefore 'under programme' with the EFSF and the IMF (Greece, Portugal, Ireland); d. and a country represented in European Council meetings by a Head of State rather than Prime Minister (France) and a country in which it used to be so (Finland).

### 3.1 Is it possible for national parliaments to instruct Prime Ministers before European Council meetings?

Some national parliaments were given the right to issue binding instructions regarding the ordinary European legislative process. As indicated by Karlas (2012), the Danish and Austrian systems are the most developed with the obligation made to the government to consult with the parliament if it cannot follow the parliament's opinion. There is a second set of Member States with a less strict system according to which "if the parliament's opinion is not considered and represented by the government, this divergence is reported and justified in front of the parliament" (Karlas 2012: 1101). The parliaments of Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia and Sweden are in this situation. As mentioned in part 1.3, **the formal prerogatives obtained by national parliaments should be considered cautiously since their implementation depends on the political context**. For instance, the minority basis of the government, frequent in Denmark and Sweden, forces the cabinet to secure support in Parliament.

#### 3.1.1 Parliamentary instructions before European Council meetings

It seems *a priori* more difficult to implement binding practices for the European Council given the openness of the agenda of such meetings, the scarcity of draft texts circulated in advance and the pressure put regularly on the shoulders of the Heads of State and Government by their peers. Yet, national parliaments generally have the possibility to state their opinion before a European Council meeting. **Except for Bulgaria, Ireland, Malta, and the UK, all national parliaments formally have the possibility to draft an official resolution before a European Council meeting in one form or another.**

The bindingness of the parliamentary position and the use of this formal procedure vary significantly among these parliaments, though. In the following table, we have distinguished politically binding opinions when the government may be challenged if the parliamentary resolutions are not followed, to legally binding positions when there are official prescriptions for instructing Prime Ministers.

**Table 7: Right to state parliamentary position before/after European Council meetings**

Ex-ante influence of parliament	Country <sup>27</sup>
No expression of an opinion	Bulgaria, Ireland, Malta, UK
Non-binding recommendation	France, Greece, Hungary, Italy, Luxembourg, Poland, Portugal, Romania <sup>28</sup> , Spain
Politically binding position	Denmark, Finland, Netherlands, Sweden
Legally binding position	Estonia, Germany, Slovenia <sup>29</sup> , Slovakia, Austria <sup>30</sup> , Latvia, Lithuania

**Source:** Information from the questionnaires of the NPEC study.

<sup>27</sup> Not all 27 Member States are included in this table.

<sup>28</sup> Romania is categorized in this Table 3 not according to its current provisions but in anticipation of the new "Law on the cooperation between the Parliament and the Government in EU Affairs" from 25 June 2012 which will come into force after the judgement of the Constitutional Court on 19 September 2012.

<sup>29</sup> Silent approval is possible: If the Slovenian parliament does not reject the draft of the government position before a European Council within a certain time frame, it is officially confirmed.

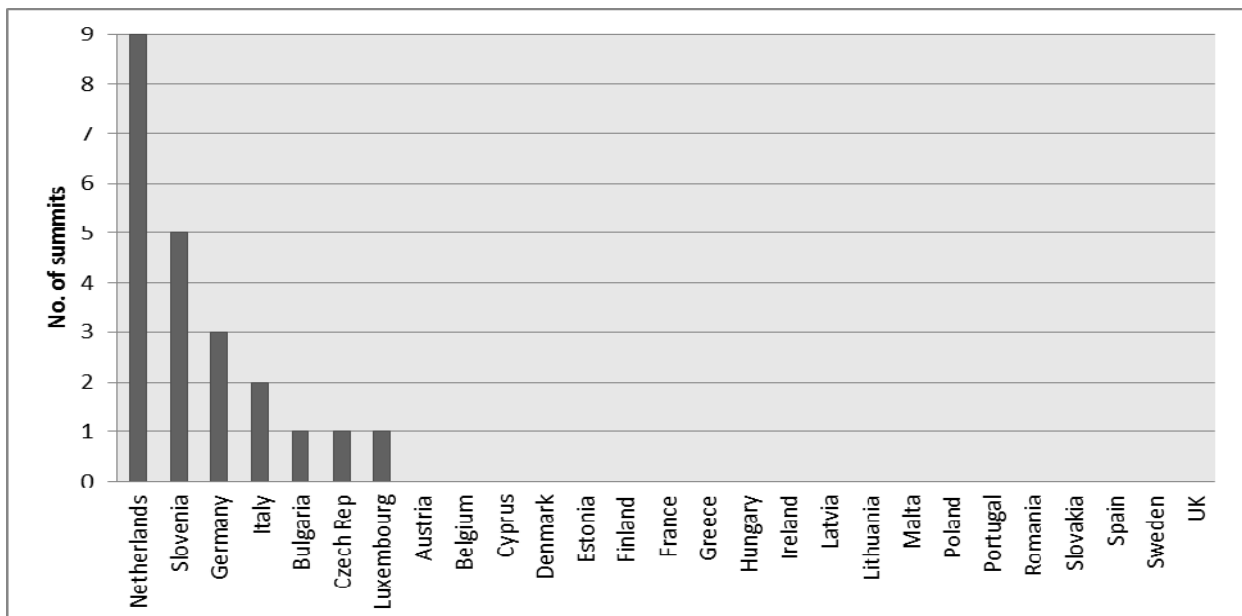
<sup>30</sup> In Austria, the parliamentary mandate is legally binding and parliament needs to be consulted before but the government may deviate from a mandate "for imperative reasons of foreign or integrative policy".

The lack of information on the government position before the European Council meetings in Malta and Bulgaria goes along with the absence of the right to state parliament's opinion even as a non-binding recommendation. In view of the formal rules, the set-up in these two countries is closest to the "traditional model" of executive dominance in the European Council and Euro summits.

**Countries which have been identified in the literature as mandating-systems with a strong position in relation to the executive do possess this ability in regard to negotiations in the European Council as well.** In Denmark, however, the opinions from the Folketing are not mandatory when it comes to European Council meetings, and are only used when major treaty changes are on the table. In most of the Member States where the parliament has the right to issue binding mandates, there are provisions explaining that deviation is possible if justified afterwards. It is only in Latvia and Lithuania where this precision is not mentioned and therefore the rules are, in theory, the strictest.

How are these rules applied? The only two countries with frequent use of formal resolutions prior to European Council meetings are the Netherlands (9 of 9) and Slovenia (5 of 9) as the following graph illustrates.

**Figure 15: Number of resolutions before the nine European Council meetings or Euro summits in the time period from March 2011 to March 2012**



Source: Information from the questionnaires of the NPEC study.

**Despite the fact that the possibility for a vote before a European Council meeting or Euro summit is available in most EU Member States, only a few parliaments make use of this instrument.** However, mandates can be expressed in an **informal way** which does not appear in the graph. In Sweden and Finland, 'mandates' in the form of an oral summary of the position of the majority in the European Affairs Committees by the committee chair serve the purpose of a politically binding mandate. Similarly, the government positions in Latvia and Lithuania on the matters of agenda of the European Council meetings are usually confirmed by the European Affairs Committee of the respective parliament. These approvals, do either not take the form of a vote (decision by consensus) or, do not have the quality of a formal resolution.

In the **Netherlands**, parliamentary reserves amount to a government practice of acting in an anticipatory way and increasing its room for manoeuvre, whilst remaining careful to ask for mandates. As indicated in the in-depth report:

"For example, on March 17 2011 the Chamber adopted a resolution [...] that requested the Cabinet to 'firmly distance itself from any movement towards a more political union' [...]. In subsequent debates the Cabinet had to come back to this resolution, and it had to reassure the Chamber that the resolution was not transgressed by the measures decided upon in Brussels. The Cabinet did so in a way that preserved the spirit of the resolution, but not the literal meaning, because otherwise it could not have progressed on issues such as the fiscal pact. In explaining how the resolution had been respected, the Cabinet stated that Member States would assess each other, but not prescribe measures to one another. In this way the Cabinet was able to create room for manoeuvre without having to admit that it would breach the resolution.<sup>31</sup>

The informal European Council of 30 January 2012 is the one in which the highest number of (ex-ante) votes by national parliaments were issued stemming from Luxembourg, Bulgaria, Netherlands, Slovenia and the Czech Republic. This can easily be explained by the fact that this was the European Council at which 25 of the EU Heads of State or Government (all except the Czech Republic and the United Kingdom) agreed on the "Treaty on Stability, Coordination and Governance" (TSCG) and endorsed the agreement between the 17 Member States on the "Treaty establishing the European Stability Mechanism", to be signed by the euro group.

Bulgaria and the Czech Republic were legally required to vote prior to the EU treaty changes through the simplified treaty revision procedure. Two of the three votes in Germany can be explained by the legal provision of a mandatory vote before certain decisions at the European Council (before the use of the EFSF). This leaves only the parliaments of the Netherlands and Slovenia with frequent use of opinions on the government position before a European Council meeting. It must be noted, however, that these opinions for both cases do not oblige the government to strictly follow the parliament's position, but do leave a certain **room for manoeuvre**.

Votes after a European Council meeting or Euro summit are even less frequent. The rare exceptions of one or two resolutions ex-post from March 2011 to March 2012 were Luxembourg (2 votes), the Netherlands (2), Portugal (2), Austria (1), Slovenia (1) and Denmark (1). In those cases, votes are used in order to agree to the position taken by the Prime Ministers and to the outcome of the Council.<sup>32</sup>

Two interesting practices can be noted regarding the issue of mandates. First, in some Member States, like Finland, Sweden or Slovakia operates a system where the Prime Minister can be in contact with the chairman of the relevant parliamentary committee or the committee as such "to discuss these questions **during the meeting**"<sup>33</sup>. Second, the Netherlands have developed a **system of follow-up** from one Council meeting to another. After each summit, the government reports in a written document to the committees in charge and the results are taken up as arguments for the next preparatory debate.<sup>34</sup>

### 3.1.2 Actions in case of failed follow-up

But the legal or political mandating of the government by parliaments raises the issue of what could happen if a Prime Minister or Head of State did **not follow the lines defined by the parliament** and/or if the **decisions** he/she took during the European Council were **rejected in parliament**.

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<sup>31</sup> I.Ebben/A.Schout/J.M.Wiersma, Report on the Netherlands.

<sup>32</sup> These votes are sometimes also initiated, if MPs have questions concerning the national position.

<sup>33</sup> A.Figulova, Report on Slovakia.

<sup>34</sup> Despite the systems that exist, there is still room for improvements in the Netherlands in terms of a tighter follow-up of the past resolutions.

The first answer that can be given is that **the situation is rarely as clear as that**. Usually, both the Prime Ministers and the parliamentary majority agree that it is in their interest not to define too strict instructions before the summits. As **the Dutch example** shows, a common practice is rather to agree on, more or less formal, red lines that the Prime Minister should respect. Therefore, the discussions over the outcomes of a European Council meeting are a matter of interpretation over the decisions taken.

The second point is that **parliaments are hardly ever in a position where they know exactly what the position of their Prime Ministers was** during the bargains. Even if the main aspects of the bargains are known, there is still room for manoeuvre for the head of the executive power to argue that he/she did not exactly behave in such or such a way. Revealingly, the controversy over the Dutch Prime minister in the summer of 2011 was focussed on a press conference he made after the summit rather than on his position during it.

The last observation is that a parliament willing to blame a Prime Minister for his/her position adopted during the European Council meeting only has **a nuclear weapon at its disposal: the censure**. Of course, the Prime Minister can be criticized during floor or committee debates and may have a very hard time in defending him/herself. Yet, apart from the censure, there are no formal tools for penalizing the government for having adopted such or such a position. During the debates, the Prime Minister may have to apologize but such an apology cannot be regarded as a formal procedure. This derives from the very notion of political confidence within parliamentary systems: confidence can be given or recovered but there is no intermediary within such an alternative. As for nuclear weapons in international relations, this means that parliamentary parties do not censure a Prime Minister the day after a European Council summit. If a few governments have failed over European issues over the last years, it did not happen just after a summit and was rather provoked by a more global assessment of the EU policy of the government.

The **Finnish example** provides a good example for this last observation. The decision of the European Council / Euro zone summit that the ESM could make decisions on financial assistance with a majority of 85% of the votes cast – instead of unanimity (emergency procedure under Article 4(4) ESM Treaty) – was severely criticized in the parliament, including by majority MPs. The different weight of the 17 Euro zone countries according to their financial contribution means that larger Member States have a veto right in this emergency procedure (like Germany with 27% of the votes), but smaller Member States have not (Finland: 1.8%). Both the Prime minister and the Finance minister had to explain their position in parliament and to hear complaints from all benches of the parliament. But in the end, the controversy did not have more consequences than that.

**In conclusion, it can be said that parliamentary opinions or mandates are, with the exception of the Netherlands and Slovenia, not instruments which are frequently used in regard to European Council or Euro summits.** This result illustrates the fact that the system to associate national parliaments to the EU was designed for legislation. When parliaments are allowed to express their views on written EU texts only, it is more difficult for them to issue a resolution before a European Council that will put different items on its agenda. The lack of resolutions also illustrates Prime Ministers' willingness to avoid formal instructions from their parliament. Last, but not least, **the capacity of the parliament to instruct their representative in European Council summits rests on political considerations rather than formal instruments.** Thus, the British report indicates that Prime Minister Cameron's decision not to sign the TSCG can be partly explained by the earlier vote of a resolution about the organization of a referendum on Britain's participation to the EU. Even if this motion was not

directly related to the Council agenda and to the TSCG, the support for it from many backbench Conservative MPs contributed seemingly to Cameron's decision.<sup>35</sup>

## 3.2 Do national parliaments suffer from an information gap?

The second cluster of key elements for parliamentary control addresses the **notion of an information gap between the executive and legislative** branches that has often been mentioned in the literature. According to the delegation chain model (Strøm/Müller/Bergman 2003), national governments would hide some key elements of the EU bargain from their assemblies for strategic or practical reasons. If there are reasons to think that it is true for the control of the legislative process, would this also be the case regarding the European Council: Is there an "information gap" to the detriment of national parliaments regarding the European Council and Euro summits?

The main result from the in-depth reports concerning the information gap is that the control of European Council and Euro summits suffers from exactly such a gap between the executive branch and the legislative branch of the national political system of the respective Member States. This gap is the least significant in Denmark and Finland, and the most significant in France.

### 3.2.1 Existence of the information gap and hiding strategic information

Across all national reports, **with the notable exceptions of Denmark and Finland, the information gap is perceived as existing**. The Finnish report mentions the "strong information rights vis-à-vis the government"<sup>36</sup>, in Denmark the information gap is "not perceived as a fundamental democratic problem"<sup>37</sup>. In Italy the gap seems to be filled slowly. German MPs have complained about insufficient information despite legal and constitutional provisions, the Greek parliament can be characterized as "weak"<sup>38</sup>. In the United Kingdom, there is a long tradition of Prime Ministers who "say one thing on leaving a summit and another when inside the room"<sup>39</sup>. Finally, the Portuguese parliament rather faces a problem of resources than an information deficit, since it faces an "avalanche" of EU-related information: "the 'deficit of information' that used to hamper scrutiny has now turned into a sort of 'deficit of resources' to process the avalanche of EU-related information that MPs have at their disposal."<sup>40</sup>

Nevertheless, not a single national report denies the possibility that **governments can hide strategic information**. For Denmark, the comparison with the period when the country held the Council Presidency is particularly striking: The government itself was better informed, and could consequently give more and better information to its parliament: "[The] Danish government seemed much better informed when it held the EU Presidency"<sup>41</sup>. In the Finnish case, the report underlines that the Prime Minister is in contact with the Committee during the summit: "If needed, the Prime Minister and the government are [...] in contact with the Grand Committee during the actual European Council meetings."<sup>42</sup>

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<sup>35</sup> A.Huff/J.Smith, Report on the United Kingdom.

<sup>36</sup> T.Raunio, Report on Finland.

<sup>37</sup> M.B.Christensen, Report on Denmark.

<sup>38</sup> K.Iliopoulos/A.Vallianatou, Report on Greece.

<sup>39</sup> A.Huff/J.Smith, Report on the United Kingdom.

<sup>40</sup> D.Jancic, Report on Portugal.

<sup>41</sup> M.B.Christensen, Report on Denmark.

<sup>42</sup> T.Raunio, Report on Finland.



The information gap and the possibility for the government to hide strategic information are at the heart of a judgment of the **German Federal Constitutional Court** made in June 2012. To quote the national report on **Germany**:

"Article 23 (2) of the German Basic Law (Grundgesetz, GG) stipulates that the Bundestag shall 'participate in matters concerning the European Union'. The BVerfG clarified that 'European matters' do not only refer to EU legislative proposals but can as well apply to treaties under international law. The government had argued that the ESM and the Euro-Plus Pact were not 'European matters' as in the sense of Article 23 (2) GG and would therefore not fall under the 'Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union' (EUZBBG). The BVerfG rejected this reasoning since both treaties make use of EU institutions and show sufficient proximity to EU law."<sup>43</sup>

### 3.2.2 Discrepancies in discourses and giving evidence to parliament

Two reports address discrepancies between the discourses in Brussels and at home in detail – the national experts were invited to **compare press conferences during or after the summits with statements in national parliaments**, if this seemed relevant. In the Netherlands the press conference of the Prime Minister after the July 2012 Euro summit sparked wide-spread attention: the figures given by the Dutch Prime Minister at the press conference diverged from all other official statements made that day and were wrong. This eventually led to a "procedure of Written Discussions" and a plenary debate during the summer break of the national parliament. The report on **France** highlights the changes in setting and timing, but also the type of authority that delivers (President in the one case, Prime Minister or Foreign Minister in the other) and looks at these discrepancies in detail:

"First, it seems more logical that Presidents are more inclined to defend themselves as they are directly and personally involved in the bargains. Second, Presidents do not face a parliamentary assembly with a potentially powerful and hostile opposition, but hold press conferences where they give a statement and can try to select journalists who ask questions. Third, press conferences are held during or just after the summit with very little preparation - and sometimes with less self-control from tired leaders. By contrast, statements made by the Prime Minister and ministers on the floor are cautiously prepared by advisors and top civil servants. This last aspect is probably central to the fact that those speeches are both more technical and accurate. Thus, some of the differences between the speeches given in Brussels and in the Parliament are more linked to changes in the setting and the timing than to the changes of the types of authority delivering the speeches. If the President made a report in the assemblies, it is conceivable that his/her speech would be also more technical than the press conference in Brussels. Yet, what can be regarded as worrying from a democratic standpoint is first the fact that a President can make over-statements without being contradicted, and secondly the parliamentary debates are lacking political salience."<sup>44</sup>

The **use of written or oral evidence** varies widely, as shown by the examples of Finland, Germany and the United Kingdom: the Finnish parliament receives written reports before and after the summits, the German government infringed upon the rights of the Bundestag by not providing information on documents during the negotiations that led to the ESM Treaty and the Euro Plus Pact<sup>45</sup>, the British government writes to the European Scrutiny Committee which itself has no ability to influence the government and whose discussions

<sup>43</sup> C.Heffler / O.Höing, Report on Germany.

<sup>44</sup> V.Kreilinger / O.Rozenberg / K.Perepechay, Report on France.

<sup>45</sup> See section 3.1.1 of this study.

take place in private – the information provided is a “general statement [...] usually only a few paragraphs long and [...] quite vague, re-stating general positions without going into much detail.”<sup>46</sup> It is also interesting to see how governments deliberately avoid producing written evidence, as described by the report on Portugal: “[T]he Government only discloses its negotiating lines to MPs during ex-ante hearings and this is only done orally and not in writing.”<sup>47</sup>

**In summary, the information gap between the executive branch (the national government) and the legislative branch (the national parliament) is visible and exists with respect to European Council and Euro summits. The country reports show that this gap is the least significant in Denmark and Finland, and the most significant in France, where the President participates in the summit, but does not appear before parliament.** The issue of providing information has also been the subject of a recent judgement of the German Federal Constitutional Court. If minority governments face strong parliaments, as has been the case in Denmark and the Netherlands, the combination of granting mandates and receiving information opens the door for strong parliaments.

### 3.3 Is the control over European Council politically salient?

The third cluster of key elements for the parliamentary control concerns the political salience of the democratic control of European Council and Euro summits which could be affected by a general motivational problem of national parliaments as far as Europe is concerned. In several Member States, parliaments do have enough prerogatives at their disposal, but not enough MPs willing to make use of them. Is this paradox, observed for the control of EU legislation at the national level, valid for European summits? What is the political salience of the control of the European Council and Euro summits in parliaments?

**In the 12 country reports this is assessed differently: while in some countries the political salience of the control has been high (Denmark, Portugal), in others it has increased only recently (Ireland, Italy, Netherlands) and in a third group of countries the experts judged the control as not salient (France, Slovakia, United Kingdom). Even if there are indeed some parliaments where debates are poorly attended, the significance of the European Council summits since 2008 has generally contributed to awaken the interest for the European debate throughout Europe.**

This section examines the impact of the control on the stability of the government, the acknowledgment and domestic enforcement of decisions taken at the European summits, and their relevance for electoral campaigns.

#### 3.3.1 Resignations of governments, cabinet survival, coalition management

During the sovereign debt crisis, **the resignation of a certain number of national governments was linked to action that had taken place at the EU level, in particular at European Council meetings** – imposing austerity measures on or agreeing to give guarantees to countries in difficulties. The most obvious link is made in the **Italian report**:

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<sup>46</sup> A.Huff/J.Smith, Report on the United Kingdom.

<sup>47</sup> D.Jancic, Report on Portugal.



"[T]he Berlusconi III government (2008-2011) fell over EU issues, [...] could not respond adequately to the requests coming from the EU and particularly from France and Germany and from the financial markets. The increasingly visible isolation that Berlusconi faced at the European Council meetings was an important factor for domestic politics."<sup>48</sup>

In the case of **Greece**,

"[t]he bailout packages [...] and the reaction of the Greek people as well as of the opposition parties was the main reason for the resignation of the George Papandreou on the 9th of November 2011 and of the formation of the coalition government of Lucas Papademos."<sup>49</sup>

The situation is not as clear-cut for Ireland, where "no individual decision [at a European summit can be identified] as a causal factor"<sup>50</sup>, but the fall of the government in 2011 is broadly associated with the EU, and for Portugal, where:

"the Socialist Government of José Socrates fell on 23 March 2011 [...]. The direct cause was the Assembly's rejection of the Government's austerity programme [...]. Only indirectly could one infer a link with the European Council, insofar as this Government Programme was drawn up within the framework of the 'European Semester'."<sup>51</sup>

In Slovakia, the fall of the Government of Iveta Radicova is due to the "financial crisis and decision[s] at EU level"<sup>52</sup> which refers to the vote on the second bailout for Greece (in the national parliament of Slovakia) that had been agreed at the European Council. When the Dutch government resigned in April 2012, however, this happened due to resistance against budget cuts which were demanded by the European Commission (though not yet explicitly). The report on the Netherlands describes the situation: "The government recently fell over a European issue, but not one that was linked to decisions taken in the European Council".<sup>53</sup>

The **threats to cabinet survival and the effect on the coalition management** are diverse. In Finland, "the government has survived the turmoil and the votes of confidence"<sup>54</sup>; for the temporary technocratic governments of Greece and Italy, the reports recall that "the negotiation of the new bailout package was [...] the task of the [Papademos] coalition government and the end point of its trajectory"<sup>55</sup> and that "the current Monti government[...] [is] supported by the three main political parties of Italy"<sup>56</sup>. The **Slovak case** is the most striking example of the consequences that can arise from a European Council:

"[O]ne of the coalition members, [...] SaS was against EFSF 2.0 [...] Prime Minister Iveta Radičová [...] announced connection of the vote for EFSF 2.0 and vote on confidence to her Government. This vote failed. NC SR approved the "bailout" in a repeated vote two days later, with the votes of opposition party SMER- SD and in exchange for early elections."<sup>57</sup>

In Britain, the differences are more fundamental: the EU itself is a source of division within the coalition.

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<sup>48</sup> M.Comelli, Report on Italy.

<sup>49</sup> K.Iliopoulos/A.Vallianatou, Report on Greece.

<sup>50</sup> G.Barrett, Report on Ireland.

<sup>51</sup> D.Jancic, Report on Portugal.

<sup>52</sup> A.Figulova, Report on Slovakia.

<sup>53</sup> I.Ebben/A.Schout/J.M.Wiersma, Report on the Netherlands.

<sup>54</sup> T.Raunio, Report on Finland.

<sup>55</sup> K.Iliopoulos/A.Vallianatou, Report on Greece.

<sup>56</sup> M.Comelli, Report on Italy.

<sup>57</sup> A.Figulova, Report on Slovakia.

### 3.3.2 Characteristics and effects of the parliamentary control

The relation between the control in parliament and the **domestic enforcement of the decisions**, and whether a **better acknowledgement of the decisions** does result from **the parliamentary debates**, are both difficult to judge. It is, however, interesting to see how there is a paradox effect in the **Portuguese parliament**:

"It could be argued that a more effective scrutiny over European Council meetings and Euro zone summits facilitates the domestic enforcement and transposition of their decisions, although this cannot be a straightforward claim.

Namely, prior scrutiny of European summits aids the handling of the dossier in question due to the MPs' familiarity with the topic and the contentious issues that arise therefrom. Both the European Affairs Committee and the specialised parliamentary committees gain knowledge of the matters discussed or decided at European Council meetings. Having studied the agenda of the forthcoming European Council, MPs have a prior awareness of the weak points and problems that might jeopardise Portugal's interests. Because of this, once a decision that was before the European Council comes to Parliament, the implementation might be carried out more smoothly and more efficiently.

However, it also happens in practice that MPs resist or delay the implementation of a European Council decision precisely because they know about the pitfalls of the decisions, which they have detected during ex ante scrutiny. In this event, the opposition parties mostly spark the debate giving the same arguments against the decision and blaming the Government for agreeing to such a decision."<sup>58</sup>

In **Finland**, one can observe

"that the Euro zone crisis has at least partially changed the consensual mode of decision-making in the Grand Committee. Voting has become more common in the Grand Committee, with the votes reproducing the government-opposition cleavage characterizing plenary decision-making."<sup>59</sup>

The Netherlands have had a minority government since October 2010 and two debates after European summits provided a forum that was able to facilitate the enforcement of decisions taken at European summits. Only the Danish report observes that it is "fair to say that there is a close relation"<sup>60</sup> between the control in parliament and the domestic enforcement of the decisions.

The **degree and regularity of Prime Ministerial involvement varies largely**. The reports on Denmark, Ireland, and the Netherlands have put a special emphasis on the high degree of involvement of the Prime Minister: The Prime Minister "orally presents the government position to the EAC before a European Council meeting"<sup>61</sup> in Denmark, "[t]he commitment of the Taoiseach to these [ex-ante and ex-post] briefings is notable"<sup>62</sup> in Ireland, and the Dutch report takes note of the high personal involvement of the Prime Minister who is "present in all debates preparing the European Council".<sup>63</sup> The German and Italian reports point to particular cases where the Prime Minister's involvement has played an important role: Before the European Affairs Committee in March 2011 the German chancellor stayed discreet about informal meetings of the Euro group that "would not fall

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<sup>58</sup> D.Jancic, Report on Portugal.

<sup>59</sup> T.Raunio, Report on Finland.

<sup>60</sup> M.B.Christensen, Report on Denmark.

<sup>61</sup> M.B.Christensen, Report on Denmark.

<sup>62</sup> G.Barrett, Report on Ireland.

<sup>63</sup> I.Ebben/A.Schout/J.M.Wiersma, Report on the Netherlands.

under the government's obligation to inform the Bundestag."<sup>64</sup> This later led to a judgement of the Federal Constitutional Court that sanctioned this view. Interventions of the Italian Prime Minister are linked to the importance of the summit: "In cases when the European Council and Euro summits are deemed to be particularly important, the Prime Minister himself intervenes. This has happened frequently as of late."<sup>65</sup> In **France**, the presidential system leads to a specific situation:

"[T]he President cannot be directly controlled by the Parliament. The Parliament cannot remove him/her or even hear him/her (except if the President asks to make a formal speech in front of both assemblies). Therefore the President is only indirectly controlled through the Prime Minister and ministers being heard in both houses. This is a general issue for the French parliament participation in EU affairs, but it is even more of a problem regarding European Council meetings as the President in person is leading the French delegation."<sup>66</sup>

### 3.3.3 Relevance for electoral campaigns

In three Member States (Finland, France, Greece) a high **relevance of European issues that are closely linked to the European Council in the national electoral campaigns** was observed by the experts. Greece is an obvious case: "[T]he relevance of the major topics and the decisions by the European Council for electoral campaigns [...] was high". In **Finland**,

"Europe, or more precisely the euro stabilization measures and Finland's participation in the bail-outs, became the main theme of the [2011] elections. The debates benefited the entire opposition but most of all The Finns[.]"<sup>67</sup>

During the electoral campaign for the **French Presidential elections**, the renegotiation of the TSCG was a central topic for François Hollande. Once he was elected President in May 2012, he had to deliver at the June 2012 European Council and the "floor debates on the results of the [June 2012 European] Council in the National Assembly took place just after the legislative elections".

In addition to the relevance for the electoral campaigns in these three Member States, the national report on Italy predicts that "the next electoral campaign for the general elections, due to take place in spring 2013, will see a dramatic increase in the saliency and relevance of EU and Euro issues."<sup>68</sup> In the United Kingdom the role played by Europe will be even more fundamental, with the issue of EU membership as a very likely topic of the campaign for the parliamentary elections.

**Ireland** provides maybe the most interesting analysis of the **connection between the electoral system for the national parliaments and the relevance of Europe** (or, to be more precise, of European summits) for electoral campaigns:

"National parliaments generally suffer from a motivational problem as far as Europe is concerned and Ireland is no exception in this regard – indeed, it is probably a particularly strong example of this phenomenon, thanks to a combination of Irish political culture (in which politicians are prized above all else for the constituency work they do, rather than for their engagement in parliamentary activities) and the ruthlessly fair electoral system of proportional representation by single transferable vote in multi-seat constituencies, which means that elections can turn on very few

<sup>64</sup> C.Heffler / O.Höing, Report on Germany.

<sup>65</sup> M.Comelli, Report on Italy.

<sup>66</sup> V.Kreilinger/ O.Rozenberg / K.Perepechay, Report on France.

<sup>67</sup> T.Raunio, Report on Finland.

<sup>68</sup> M.Comelli, Report on Italy.

votes. The result is that any Irish parliamentarian prioritises engagement with parliamentary affairs over constituency work at considerable peril to his place in parliament. Engagement in European affairs - notwithstanding the fact that these are of great consequence - is paradoxically (but from a trans-European perspective, not unusually) of very little political value in terms of getting any politician re-elected. The results of this are seen in sparsely-attended plenary debates on European Council meetings and Euro summits and poorly-attended meetings of the Joint Oireachtas Committee on European Union Affairs (in which business is invariably conducted by a small but dedicated minority of the membership - although frequently dedicated only in a fashion which tends to involve little time commitment beyond that spent in the meetings themselves, which, however, do take place very frequently).<sup>69</sup>

The very same electoral system that is often seen as ideal to stimulate the interest of citizens in European Parliament elections (and which could have positive effects for these elections and the connection between MEPs and citizens) creates, logically, the opposite effect when national MPs should engage with European issues at the national level.

To sum up on the **political salience of parliamentary control**, the picture shows a **considerable degree of variation**. The country reports assess the political salience as high for Denmark and Portugal, as increasing for Ireland, Italy and the Netherlands, and as less salient for the other countries. Linking resignations of governments, cabinet survival, and difficulties in coalition management to European summits is more delicate. For Italy and Greece the situation is clear (Prime Ministers were replaced), in Slovakia an early election was called, but in the cases of Ireland, Portugal and the Netherlands the reports are more cautious and avoid drawing a direct line.

It is interesting to see that the **degree and the regularity of Prime Ministerial involvement vary largely** (high in Denmark, Ireland, and the Netherlands). For the relevance of European issues that are closely linked to the European Council in the national electoral campaigns, the reports on Finland, France and Greece describe such effects. The general pattern is as follows: if a country is more affected by the crisis in one way or another, action which is decided at a European summit (and to which the respective Head of State or Government consents) is more likely to have an effect on this Prime Minister's government.

In the end, two conclusions can be pointed to:

- First, despite strong variations, there is generally a **growing interest for EU issues within national parliaments** – the parliamentary control over the European Council bringing specific incentives for MPs to scrutinize both EU decisions and their government European policy.
- Second, the **overall political salience of the democratic control is mostly** (maybe even exclusively) **linked to direct Prime Ministerial involvement** on the floor or in a committee of the national parliament.

### 3.4 Are national parliaments Eurosceptic when they debate?

Finally, the last – rather politically incorrect – issue of the parliamentary control of European Council and Euro summits concerns the level of Euroscepticism of national MPs. If past studies have shown that national MPs were not particularly against the idea of integrating Europe (Katz/Wessels 1999), we still find – especially among practitioners – the idea that debates in national assemblies are mainly an opportunity to voice criticisms about the EU and concerns for the national interest only. Therefore, it is interesting to analyse

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<sup>69</sup> G.Barrett, Report on Ireland.

### which issues national parliaments choose for debate when they discuss the European Council summits.

This section analyses whether these parliamentary debates are a critical moment for “framing Europe”, the mobilisation of Eurosceptic MPs, and possible references to the European Parliament during these debates.

#### 3.4.1 Are these debates critical for “framing Europe”?

Many of the debates in national parliaments addressed the treaties which were agreed and signed at the European summits in 2011 and 2012 (**TSCG, MES, modification of Article 136 TFEU**). The Danish report says that these debates cannot alone be seen as critical for framing Europe, but “when major treaty changes are on the agenda, the story is somewhat different”<sup>70</sup>. For some countries an increase in the importance of these debates can be observed, even if the debates are not related to new treaties: In Italy “the ratification of these new treaties [...] was basically ignored by the media that [...] are covering more the parliamentary debates on the European Council.”<sup>71</sup> A higher proportion of the parliamentary debates in Finland now takes place in the plenary which forces the government “to justify and defend its EU policies to the public”<sup>72</sup>. In Portugal “the mobilization of all political parties is evident”<sup>73</sup>. The **German report** analyses the Bundestag plenary debates in detail:

“Common action at the EU-level can be justified by either value-oriented or interest-based arguments. [...] [N]o fundamental change in the framing of Europe (EU as a whole) can be observed. There are value-oriented arguments referring to the EU as a community of shared values created after the devastating experience of Second World War to preserve peace in the future. At the same time there are interest-oriented arguments in favour of the European Union as a ‘global actor’ which protects the nation states from fierce global competition. [...] However, a major issue in the speeches at plenary sessions of the BT is the definition of Germany’s role in the EU and Germany’s relation to other Member States, especially to the recipient states of financial aid. [...]. Here, interest-oriented arguments [...] outweigh value-oriented arguments”.<sup>74</sup>

#### 3.4.2 Mobilization of Eurosceptic MPs

In general, Eurosceptic parties and MPs are highly mobilized and in some cases, even more than a couple of years ago. An example of this is Finland, where “when the opposition has attacked the Cabinet publicly over the handling of EU matters”<sup>75</sup> for the first time. It is true to say that **Eurosceptics are highly mobilized across Europe** – in Denmark, Finland, France, Greece, Ireland, Italy and Portugal; **no report denies their mobilization**. Some reports refer to particular Eurosceptic parties: the Italian government “faces a strong parliamentary opposition on EU and Euro-related issues, in particular from the Northern League members of parliament”<sup>76</sup>, in Ireland this role is held by Sinn Féin and independent members who “tend on the whole to be strongly Eurosceptical”<sup>77</sup>. French Euroscepticism is some kind of “follow-up of the French sovereignist movement of the nineties”<sup>78</sup>. Finally, the

<sup>70</sup> M.B.Christensen, Report on Denmark.

<sup>71</sup> M.Comelli, Report on Italy.

<sup>72</sup> T.Raunio, Report on Finland.

<sup>73</sup> D.Jancic, Report on Portugal.

<sup>74</sup> C.Heffler/O.Höing, Report on Germany.

<sup>75</sup> T.Raunio, Report on Finland.

<sup>76</sup> M.Comelli, Report on Italy.

<sup>77</sup> G.Barrett, Report on Ireland.

<sup>78</sup> V.Kreilinger/ O.Rozenberg / K.Perepechay, Report on France.

German report diverges from the European mainstream: it notes that "Eurosceptic arguments do not take a more prominent role in 2012 than in 2010."<sup>79</sup>

### 3.4.3 References to the European Parliament

Some debates in the national parliaments also address the European Parliament, but these references are rare. Italy can be seen to be the exception, where even the Prime Minister (Mario Monti) referred to the European Parliament in the debate on the June 2012 European Council. **The Italian parliament also organised a videoconference with the three MEPs who participated in the working group which elaborated the TSCG in January 2012.** The report on Italy notes: "The hearing of the Brok, Gualtieri and Verhofstadt constitutes a *unicum* within the national parliaments of the EU Member States."<sup>80</sup> Debates in the Greek parliament have given "special attention [...] to the European Parliament discussions"<sup>81</sup> and also to the COSAC meeting in Warsaw in October 2011. In France, the national parliament is not so much interested in the European Parliament, but rather obsessed by itself: "the French parliament is obsessed by... the French parliament"<sup>82</sup>. This idea to strengthen the role of national parliaments is, however, "usually not perceived as opposed to the empowerment of the European Parliament."<sup>83</sup>

In the cases of **Ireland and Portugal**, the individual country reports also chose to address the issue. It is interesting to see that in Ireland the European Parliament "does not get much mention in debates concerning the European Council"<sup>84</sup> and that in Portugal "references to the European Parliament [...] are sporadic and negligible"<sup>85</sup>, but that Portuguese MPs sometimes express their support for certain positions or resolutions of the European Parliament.

In conclusion, the analysis of the issues debated in national parliaments leads to two contrasted points:

- First, **debates in national parliaments cannot be categorised, as a whole, as Eurosceptic.** As said, Eurosceptic MPs take the opportunity of the control over the European Council to voice their concerns and critics. Yet, the debates on the floor or on committees are also an opportunity for governing parties to explain and justify their European policy. Those MPs and ministers frame what could be called a national pedagogy of EU decisions that cannot be regarded as mere Eurosceptic claims.
- Yet, and this is the second point, **national debates in parliaments about European Council meetings appear to be framed... nationally.** With respect to the issues debated, the reports reflect the diversity, if not the parochialism, of the debates within the twelve lower houses. **National parliaments' debates are not specifically Eurosceptic but they are mainly concerned by national interest and politics when they discuss European Council meetings.**

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<sup>79</sup> C.Heftler/O.Höing, Report on Germany.

<sup>80</sup> M.Comelli, Report on Italy.

<sup>81</sup> K.Iliopoulos/A.Vallianatou, Report on Greece.

<sup>82</sup> V.Kreilinger/ O.Rozenberg / K.Perepechay, Report on France.

<sup>83</sup> V.Kreilinger/ O.Rozenberg / K.Perepechay, Report on France.

<sup>84</sup> G.Barrett, Report on Ireland.

<sup>85</sup> D.Jancic, Report on Portugal.



## 4 CONCLUSIONS AND RECOMMENDATIONS

### 4.1 Conclusion

Two major conclusions can be drawn from this report.

- First, beyond the diversity of the practices within national democracies, models of parliamentary control of European Council meetings and Euro zone summits are emerging. **Seven types of control have indeed been identified: the traditional model, “Europe as usual”, the expert model, the public forum, the government accountability model, the policy maker and the full parliamentarization model.** Those models are endogenous rather than exogenous: they are rooted in national political cultures rather than the country’s specific relation to the EU. Their principles are based on **divergent visions of what should be the legislatures’ role in a democracy**: checking the government or influencing it, granting expertise or talking to citizens, attacking opponents or seeking consensus... Those conceptions are not only divergent but also complementary since a normative claim could support that national parliaments should ideally fit all those purposes – as it is largely the case in Denmark.
- Second, **beyond the traditional motivational issue faced when trying to involve MPs in EU affairs, “something is happening” in national parliaments in relation to European Council meetings.** Whereas many previous studies on national parliaments in the EU concluded that there were rules that were not used, we have stated that there are numerous and diverse practices of control that are actually pursued throughout Europe. If we take the period of March 2011 – March 2012 that was selected for this study, no less than 109 debates were organised on the floor of the 27 lower houses as well as 180 meetings in committees. Of course, the level of activity is greater in Denmark, Germany, the Netherlands, Portugal, Sweden and Ireland than in Cyprus, Greece, Italy, Latvia, Romania and Slovakia. Of course, the context of sovereign debt crisis was very specific to that period. Yet, **there are some signs that parliaments are starting to wake up to the European governance and that, after years of false promises, they may eventually “learn to fight back”** (Raunio / Hix 2000).

Apart from those two general conclusions, four other lessons can be pointed to:

1. One lesson to be drawn from the data collected is that, besides the possible awakening of national parliament, only a few of them use their formal opportunities to a larger degree. As identified by the literature, one of the major questions is about **MPs’ motivations and incentives to use existing channels more intensively.** One aspect of the question is that majority parliamentarians have alternative forms of contact and dialogue with the heads of government. Another is that they feel the limits of the impact of their activities. For their personal careers, in view of time constraints and resources, the political return of investing in parliamentary debates is seen to be too low. Therefore, existing and future parliamentary procedures should not be evaluated only according to their technical aspects (do they provide full information? are they transparent enough? is the timing good?) but also according to what can be called their “motivational potential”: are they attractive enough regarding voting, policy or office seeking MPs?

2. Another lesson from the comparison between the 27 Member States is the incremental and **path-dependent type of adaptation to the EU**. Even if European Council meetings have become major events in recent years, many parliamentary chambers still look at them through their old glasses. Debates on the floor or in committees will be organized depending on whether parliamentary activities are traditionally floor or committee oriented. Also, as seen on several occasions, the control of the European Council suffers from the fact that the Europeanisation process within national legislatures was historically designed for ordinary draft legislation. The expert style of scrutinizing EU draft directives through specialised and obscure committees generally does not fit with a governance system based on "last-chance" summits.
3. Thirdly, **ex-ante and ex-post control are both significant**. As said, national parliaments do not only differ in terms of amount of attention devoted to European Council meetings but also regarding the purpose of such activity. Ex-ante control is generally associated with the willingness to influence EU outputs, through forcing publicly the Prime Ministers to take commitments and/or through backing the governmental position in the context of diplomatic bargains. We have seen that several parliaments, like the Tweede Kamer, moved from ex-post to ex-ante control in order to weigh more heavily on the official positions. By contrast, ex-post control is rather associated with public debates and Prime Ministers' accountability. It is both a way for the government to claim credits for the European Council's positive decisions, and for the opposition to blame the Prime Minister. In a highly tense political context where many heads of government had to resign and coalitions were broken, this last dimension is called to play an increasingly important role. Ironically, despite the traditional legitimating function associated with parliaments within the European governance, national parliaments have been, in several recent occasions, places for de-legitimizing heads of government by challenging their decisions or even by censuring them.
4. Last lesson: **the world of parliamentary control of European Council is organised within domestic frontiers and there are - so far – very limited efforts of cooperation between Member States**. There are some signs that parliamentary cooperation is currently experiencing a turning point in Europe with the implementation of the early warning system for ordinary legislation, a greater cooperation between national parliaments and the European Parliament, or with the permanent presence of clerks in Brussels. Clearly, the control of European Council meetings remains exterior to that trend. It seems that, because national interest - and sometimes even the survival of the Prime Minister - is at stake, there is little room for cooperating and defending common positions between parliamentary assemblies in the European Union. Furthermore: there are few incentives for MPs and MEPs to spend their time on a dialogue which has no binding impact. Whether a collective form of parliamentary control is possible at all, remains an open question that has been tentatively addressed in the final recommendations.

## 4.2 Recommendations

From the best practices derived from the present study, a list of policy recommendations has been formulated. The list is extensive and not all recommendations point in exactly the same direction. The general approach is to **stimulate the Europeanisation of national**



**parliaments, meaning an increased awareness in national parliaments of both the issues at stake and of the way the European Council negotiates, thus allowing some room for manoeuvre for their Prime Minister, combined with deeply informed oversight.** Based on this approach, the recommendations are clustered into three groups and directed at the level of national parliaments (A), national governments vis-à-vis their parliaments (B), and at the multi-parliamentary level – the interaction between the national parliaments and the European Parliament (C).

Considering that:

1. Rules and practices regarding national parliaments' involvement in EU affairs are a matter of national sovereignty and of specific patterns of parliamentary involvement. Therefore, one should bear in mind that most of **the implementation of the recommendations listed here would generally require the mutual support of national governments and parliaments** in order to be achievable.
2. One of the main observations from this report was the high degree of variation of national legislatures' practices both in procedural and functional terms. Especially, it appears that some legislatures are oriented towards policy-making and others towards public debate. The diversity in orientation is rooted in the divergences between national political systems and it would not make any sense to give priority to one kind of practice over another or to consider a harmonisation of practices. Many examples of institutional transfers, regarding parliamentary reserves for instance, indicate that **the importation of a single procedure into a different domestic context simply would not work.**
3. Many of the traditional claims made regarding national parliaments' role in the EU should be questioned, in particular the view that the "full parliamentarization" model is the best possible option for the EU. **Maximal involvement of national parliaments could lead to binding mandates for heads of government and/or force them to make use of a parliamentary reserve. The capacity of the European Council to make decisions would soon be severely reduced under such conditions.** In other words, there are trade-offs between input legitimacy (in parliaments oversight) and output legitimacy (in Council decisions). It is, therefore, essential that the members of the European Council enjoy a certain degree of autonomy from their national parliament.
4. Likewise, regarding the information provided to national parliaments, the view that they should benefit from complete information can be questioned for several reasons. From the national parliaments' perspective, **legislatures could suffer from an information overload** given their limited bureaucratic capacity. From the European Council's perspective, there is no doubt that a **full-transparency of the official meetings of the summits would inevitably lead to an increased practice of secretive bargains** in the lobby, which not only reduces transparency as a whole but also adds to the complexity of the negotiations and the tendency to focus on agreements between large Member States. The quality of the information provided as well as a certain selection is therefore essential.
5. The following recommendations have been focused on the parliamentary control over European Council meetings and Euro summits given the scope of this study. Yet, there exist **other possible improvements** regarding national parliaments that are not linked to activities related to European Council meetings. For instance, the

statutes of the European Affairs Committees (EACs) are crucial (sub-committee or standing committee, exclusive belongings or not). It has also been stated in several cases that parliaments do not need new rights, but rather, MPs willing to make use of them. Enhancing deeply the role of national parliaments would require reinforcing the MPs incentives regarding EU activities.

6. The following recommendations are supported by the authors of this study and do not necessarily commit all experts who have been involved in this study.

**The following recommendations have been formulated:**

A. Regarding the activities within national parliaments

1. **Ensure transparency and openness of parliamentary meetings (including EACs) and increase the awareness of their activities.**

As there are strong justifications for the confidentiality of European Council meetings, the transparency of the national parliaments' activities appears as a way to counter-balance the secrecy of the European Council meetings. Granting access to the EACs meetings in person and via the internet would open up the meetings of national parliamentary oversight of the European Council and Euro summits and increase the interest of the general public and the media. The example of the public meetings of the European Affairs committee of the Danish parliament underlines the fact that publicity is also an incentive for MPs to engage in European activities, given the possible press coverage.

2. **Oblige Prime Ministers to be present – after or before the debates on the summits, be they ordinary or extraordinary.**

The survey has confirmed that the physical involvement of the Prime Minister, as in the Netherlands, enhances the political salience of the debates. The holding of the debates on the floor or in committees appears to be less crucial in that perspective than the Prime Minister's presence - if they are public. Yet, this solution is not sufficient in itself as there are three Member States represented by their heads of state in the European Council. The Irish case also offers an example where parliamentary meetings are poorly attended despite the Taoiseach's involvement.

3. **Provide for the government to respond to MPs during parliamentary debates – and not just to deliver a speech.**

Parliamentary debates fulfil both praising and blaming functions. It is important for the accountability process that Prime Ministers do not just enjoy the first aspect without enduring the second one. A few case studies show that the salience of the debate suffers from the fact that some Prime Ministers leave the debate after having delivered their speech. In that respect, a procedure of questions and answers based on the question time pattern appears to be particularly efficient.

4. **Guarantee and protect a specific role for the opposition.**

A privileged role could be given to parliamentary opposition during debates, by giving disproportional speaking time and/or by allowing opposition leaders to speak first after the government representative. The recommendation is based on negative examples, like France, where opposition leaders take the floor after no less than one hour of speeches, once the Prime Minister, Committees' chairs and majority leaders have spoken. A more diverse speaking order could lead to a more politicized debate.

B. Regarding national governments practices

5. **Transmit all EU draft texts before the summits, including draft versions of the conclusions but also other types of official texts.**

Given the recent tendency towards the participation of the European Council in the EU legislative process, it is a democratic requisite that national parliaments can consult the draft texts under discussions. This does not mean, of course, that any kind of papers should be sent to them as the bargaining requires a certain degree of discretion. As, since the entry-into-force of the Lisbon Treaty, European Commission documents are directly sent to national parliaments without the intermediary of governmental administrations, a similar system could be imagined for the European Council with the General Secretariat of the Council sending some documents directly to all national parliaments or contributing to a website like IPEX where the documents are available (within a restricted section of the website).

6. **Notify European Affairs Committees about developments during the last days before the summits.**

The study demonstrates that the timing issue is crucial for ex-ante control of the European Council. A session organised too early (more than ten days before a Council) is often irrelevant due to the lack of accuracy of the information and the lack of interest from journalists. Yet, it is often difficult to organise a session of control just before a Council. As the last days are generally crucial for preparing a European Council, informal practices of communication between national government and parliament should be developed to overcome this problem of planning the formal agendas.

7. **Secure parliamentary information and consultation when new treaties are under preparation.**

Information and consultation mentioned in point 5 and 6 should especially apply when European Council meetings are discussing new treaties like the EFSF Treaty, the ESM Treaty and the TSCG that have all been concluded outside the framework of the EU treaties. Instead of reducing the role of national parliaments to giving their consent once the treaty is to be ratified according to national constitutional requirements, national parliaments could be kept informed following the practice established in Germany by the recent judgment of the German Federal Constitutional Court on the ESM Treaty negotiations in June 2012 (BVerfG, 2 BvE 4/11) which, essentially says, that the same

information obligations apply to these treaties as to any treaty modification of the EU treaties<sup>86</sup>.

8. **Allow the chair of the EU Affairs committee to participate in internal governmental meetings preparing a session of the European Council (with no official role and with the obligation of confidentiality).**

The difficulty for national governments to integrate the views and priorities of their parliament partly derives from the fact they are first concerned with finding a common position between the different ministerial departments. Therefore, the presence of MPs in ministerial internal meetings could be decisive. Of course, such a procedure does not mean that MPs should take decisions, like defining the national position before a Council which is a unique prerogative of the national government in most of the Member States. Yet, one can expect anticipatory effects from the parliamentary presence in governmental meetings and therefore a better concern for parliamentary views. In return, a better understanding of the governmental viewpoints can result from such cooperation on the side of the parliament. Regarding the obligation of confidentiality, existing systems of confidential association of the parliament are working efficiently both at national and European level for the control over secret services or military interventions.

9. **Invite the chair of the EU Affairs committee to participate in the national delegation during the European Council (with no official role and with the obligation of confidentiality)**

This recommendation, which was originally formulated by the Commissioner Michel Barnier, is close to the previous one and shares the same objectives: informal influence and learning process. Such a practice is already followed, both at national and EU level, for many international negotiations, with for instance MEPs joining the European Commission delegation to international trade rounds. Given the problem of motivations within many parliaments, enabling some MPs to join a national delegation could also be understood as an incentive for them to engage in EU affairs.

### C. Regarding multilevel parliamentary cooperation

This section calls for a specific introduction since **Article 13 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union** signed on 2 March 2012 does put forward a **conference of representatives of the relevant committees of both the European Parliament and national parliaments in order to discuss budgetary policies and other issues covered by this Treaty**. The transnational multilevel cooperation is a major desideratum to prevent national parliaments from discussing European issues on the agenda of the European Council just in the perspective of their own interest and perceptions. To have 27 parochial debates will lead to a destructive fragmentation of the Union's political space.

Several procedures and structures for parliamentary coordination, both between national parliaments and between the European Parliament and national ones, already exist (see part 1.5). Others have been under discussion like: a. the European Congress made up of both MEPs and MPs proposed during the European Convention by President Giscard

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<sup>86</sup> The judgment defines the document-types for transmission to the Bundestag, insists on written evidence, and mentions the relevance of the timing and the continuity of information provided by the government (see part 3.2).

d'Estaing; b. the creation of a third chamber at the European level made up of representatives from national parliaments. Yet, both ideas have faced strong reservations from many actors arguing that there could be a risk of increasing complexity rather than legitimacy in the EU. Concerning especially the third chamber, critical views point to the risk of duplicating the Council.

Whatever the desirable structure, **parliamentary cooperation faces huge challenges**. The utility of a weak system of coordination could always be questioned, particularly in times of public-spending cuts. On the other hand, **some national parliaments have traditionally opposed a strong system of coordination**, because of their fear of being committed as an institution by an inter-parliamentary body. Additionally, **the appetite for treaty change is limited**. Any modification (even if done by means of a convention, as some politicians, mainly from Germany, have started to advocate) would not reopen all issues and the "masters of the treaty" - **governments** - are likely to be **hesitant with respect to a new institution that would control them**. For those reasons, there is no proposal for any kind of "big bang" in terms of parliamentary cooperation but rather: a deepening of the link between national parliaments and the EP (recommendation 9) and within European political parties (11) as well as a specific forum for budgetary and economic issues (10).

#### **10. Deepen the link between national parliaments and the European Parliament.**

Representatives of national parliaments could be invited by the European Parliament to participate in EP plenary debates before and after European Council meetings. Likewise, national parliaments - or at least those who do not do it already - could invite Members of the European Parliament to participate in the national debates that take place around European Council meetings. Beyond the sending of invitations, both the EP and national parliaments could be invited to modify their rules of procedure to allow/encourage parliamentarians from the other assembly to participate in their own debates related to European Council meetings. As already some opportunities exist, national parliaments need to pursue an active strategy of inviting colleagues from other Member states.

#### **11. Create a specialised parliamentary conference on budgetary/fiscal policies.**

On the basis of Article 13 of the TSCG, an Inter-Parliamentary Conference for budgetary and economic issues could be created on the model of the Inter-Parliamentary Conference for CFSP and CSDP<sup>87</sup> but, with the notable difference that this body would meet just before the two European Council meetings of June and December<sup>88</sup>.

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<sup>87</sup> The newly created Inter-Parliamentary Conference for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP) is composed of 6 members per National Parliament and 16 MEPs, for a total number of 178 parliamentarians (see part 1.4).

<sup>88</sup> It seems better to fix the conference prior to those European Council meetings rather than Euro-summits for two reasons. First, Euro-summit has lately only taken place linked to European Council meetings (single Euro summits have not yet taken place in 2012). Second, the "governance part" of the TSCG does not define clear prescriptions regarding the format of the future summits. Article 12(3) stipulates: "The Heads of State or Government of the Contracting Parties other than those whose currency is the euro, which have ratified this Treaty, shall participate in discussions of Euro Summit meetings concerning competitiveness for the Contracting Parties, the modification of the global architecture of the euro area and the fundamental rules that will apply to it in the future, as well as, when appropriate and at least once a year, in discussions on specific issues of implementation of this Treaty on Stability, Coordination and Governance in the Economic and Monetary Union."

As for the Inter-Parliamentary Conference for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP) it could be imagined that the Conference's secretariat will be provided by the Member State holding the Presidency, in cooperation with the European Parliament, and the President of the Euro Group will be invited to attend meetings "in order to set out the outlines and strategies of the budgetary and economic issues of the European Union."

The Inter-Parliamentary Conference would be able to adopt non-binding conclusions by consensus but will meet directly before European Council meetings to allow the Conference to give input on the agenda of the summits.

The national parliamentary delegation for the conference would be composed proportionally to political composition of the assemblies and would systematically include, both the Chairs of the EACs and of the Budget and/or Finance Committees.

The Member States that did not sign the TSCG would logically not be full-members of that conference, but observers. Regarding MPs belonging to TSCG contracting parties, no differences should be made between national and European parliamentarians originating from the Euro zone or not.

An alternative proposal for the budgetary conference would have been to create a small working group made of one or two MPs per Member State (logically Budget Committees Chairs) and several MEPs. Even if such groups could be more efficient and reactive, it seems important to keep a parliamentary form to interparliamentary cooperation, especially since it enables opposition MPs to be involved. Otherwise, there is a risk of creating a new structure involving only a few expert MPs with no further contacts with their parliaments and citizens.

## **12. Deepen the relations within European Political Parties.**

The pre-summit meetings of the European Political Parties could have a specific parliamentary dimension, for instance through the Chairs of EACs or of Budget committees from the same political family. As this report stated that the parliamentary control of the European Council was organised according to a national logic only – each parliament controls its government rather than the Council globally – those kinds of meetings could help national MPs to adopt a broader perspective.

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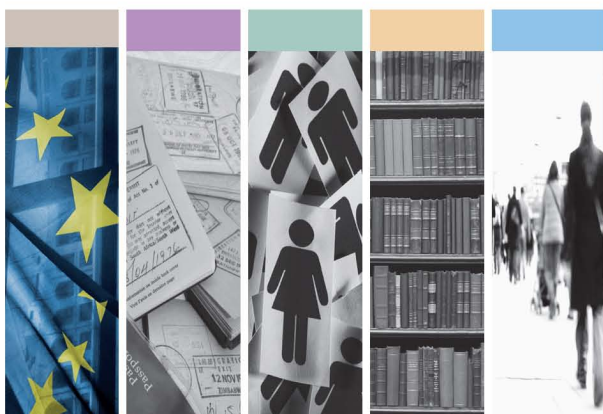
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