



**Government Response to the House of Lords
European Union Committee Report HL 151 of
Session 2013-14
The Role of National Parliaments in the
European Union**

Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty

July 2014



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GOVERNMENT RESPONSE TO THE HOUSE OF LORDS EUROPEAN UNION COMMITTEE REPORT HL 151 OF SESSION 2013-14, *THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION*

The Government welcomes the European Union Committee's Inquiry into the Role of National Parliaments in the European Union. This valuable report adds credible and reasoned weight to national parliaments' calls for a greater role in the functioning of the EU.

The real source of democratic legitimacy in the EU lies with national parliaments and national governments. The Government is clear that people in Europe identify with their national parliaments more than with EU institutions. People understand how to make their voice heard through national parliaments. And those parliaments are closer to, and understand better, the concerns of citizens. This report clearly articulates the need to respond to this reality and also makes constructive suggestions for improvement.

The Government, working closely with our European partners, has given sustained priority to this agenda and will continue to do so. We look forward to continuing to work with Parliament on this important issue and also on any initiatives parliaments might collectively advance to secure the changes that they seek.

This paper sets out the Government's response to each of the Committee's conclusions and recommendations. The Committee's text is in bold, and the Government's response is in plain text. Paragraph numbers refer to the Committee's report.

Chapter 1: Introduction

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

The Government welcomes this report and the Committee's focus on the important issue of the role of national parliaments in the European Union. The Dutch subsidiarity review, contributions on the role of national parliaments from the Dutch *Tweede Kamer* and the Danish *Folketinget*, discussions at COSAC and the Conference of Speakers of EU Parliaments, at meetings of the European Council and Council and bilaterally between Member States all demonstrate a clear recognition that this issue needs to be addressed. This report is a constructive contribution to that ongoing debate and we support the Committee in its determination to use it to further conversations with other key partners.

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

The Government agrees that effective scrutiny of EU matters is important. It is national parliaments and national governments that are the main source of democratic legitimacy and accountability in the EU. The UK has a robust parliamentary scrutiny system and both the House of Lords European Union Committee and House of Commons European Scrutiny Committee are effective. At the same time, the Government is keen to work with Parliament to strengthen the system further, and looks forward to debating these important issues.

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

The Government agrees that many substantial improvements to the role of national parliaments in the EU can be achieved through political agreement now, and cemented in the Treaties in due course. National parliaments individually may choose to develop further the way in which they handle EU business domestically. The Government also agrees with the Committee's analysis that parliamentarians acting collectively have a critical role to play in securing the enhanced role that they seek in the EU's functioning. The Commission could, and should, make a political agreement to such improvements now. We support national parliaments in their efforts, for example through COSAC, to advance this agenda. With a new European Parliament and a new Commission, this year offers a clear opportunity for national parliaments to articulate their wish for an enhanced role in the functioning of the EU. The Government welcomes the emphasis in the conclusions of the June European Council on the value of closer involvement by national parliaments in the EU's functioning.

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

Given the significance of this work, it is important to devote sufficient resources to parliamentary scrutiny and involvement with other European Institutions. It is for the House to determine the level of resource it devotes to scrutiny and also the representation it has in the National Parliament Office in Brussels. The Government considers the House is well served by the National Parliament Office, but Parliament might consider the scale of its representation and the impact that this has on its

ability to engage as effectively as it might in the early stages of the legislative process. The Government sees the value of Parliament working closely with other national parliaments in the EU and supports opportunities for parliamentarians to meet formally and informally.

Chapter 2: National scrutiny

Effective national scrutiny

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

The Government agrees that parliamentary scrutiny is one strand of increasing accountability and visibility and should be core business for parliaments in all EU Member States.

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

The Government agrees that it is for individual national parliaments to consider the scrutiny system that best suits their context. This enables scrutiny to occur in a manner compatible with that Member State's political culture and lets national parliaments focus on those documents they consider to be of particular importance. The Government believes the current system of parliamentary scrutiny in the UK has a number of important strengths. For example, it ensures that Parliament is able to scrutinise an extensive range of EU decisions systematically and it promotes transparency by ensuring that relevant EU documents, explanatory memoranda and Committee reports are made public.

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

The Government agrees that the annual Commission work programme is a valuable tool for prioritising upcoming work and highlighting where concerns might arise or further consideration might be necessary, for instance on subsidiarity grounds. To this end, each year the Government sends a copy of the Commission work programme and an explanatory memorandum to the Scrutiny Committees, and this

year also to the Liaison Committee, to encourage engagement by Departmental Select Committees and other parliamentarians.

The Government welcomes the opportunity to discuss the outcomes of European Councils in the post European Council evidence sessions that the Minister for Europe already attends. This system has the advantage of allowing the full and public examination of positions taken by the Government and the conclusions reached. The Government also keeps the Committee abreast of emerging Council agendas, including through Written Ministerial Statements before sectoral Councils. In practice a pre-European Council session would be of limited value given that the Minister would be unable to disclose the details of UK negotiating aims publicly and that the agendas, and certainly the details, of such meetings are often finalised at the last minute.

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

It would be a positive step to see a wider range of interested Parliamentarians become more involved in the scrutiny of EU business. In particular, there is real scope to 'mainstream' the scrutiny of EU business, i.e. bring it within the purview of both Chambers' Select Committees, in order to make better use of expertise, interest and influence across Parliament. As the Minister for Europe noted in his written evidence to the Committee, this has proved very successful in the Dutch *Tweede Kamer*.

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

The Government takes its parliamentary scrutiny obligations very seriously and is pleased to hear that in general the current systems works well. In the past year a number of training and awareness raising initiatives have been organised to further develop scrutiny knowledge and expertise across Whitehall. These have included cross-Whitehall subsidiarity workshops attended by Clerks of both Committees, and the sharing of best practice between designated EU Scrutiny Co-ordinators in each

Government Department. The Government is determined to ensure training on parliamentary scrutiny reflects Parliament's feedback and welcomes any additional views or ideas from the Committee on how performance could be further improved.

Different systems

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

The Government agrees that it is important to have a document based system supported by continued Ministerial dialogue with the Committees, especially in relation to Committee inquiries and evidence sessions. The Minister for Europe was grateful to be invited to the tripartite meeting last year between the Lords European Union Committee, the Commons European Scrutiny Committee and MEPs. These links further enable Parliament to engage in the EU decision making process at an early stage. The Government takes the views of both Houses' Scrutiny Committees very seriously and factors them into UK negotiating positions.

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

The Government is keen to support parliamentarians in engaging more with the European institutions in Brussels and with national parliaments in other EU Member States. The Government has for example supported a series of visits for parliamentarians to Brussels and other key capitals, through which they have been able to explore key issues and strengthen networks across Europe. Parliament might wish to consider how to further promote opportunities for parliamentarians to engage with the European institutions, including British and other Members of the European Parliament, and with national parliamentarians in other EU Member States.

Practicalities of scrutiny work

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

The Government agrees and, as noted above, considers that the annual Commission work programme is a useful tool to facilitate this prioritisation. The Government is grateful to the Committee for the newsletter it produces in response to the Commission work programme highlighting where it might have subsidiarity concerns. This type of information provides further focus for Government departments when preparing explanatory memoranda subsidiarity assessments.

The Government also agrees with the Committee's analysis that each national chamber will have different policy areas which are of particular interest to it. This in itself can offer an opportunity for individual chambers or groups of chambers to take a lead on such issues, and is a further example of the benefit of increased coordination between parliaments. National parliaments may wish, for example, to consider collectively scrutinising the Commission work programme in order to prioritise dossiers to monitor in terms of subsidiarity and proportionality.

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

The Government understands that scrutiny can be resource intensive. The Government is keen to see additional streamlining of the current system in the UK so that the Committees are able to focus on the most significant items and the system is not swamped with documents of limited political or legal importance. The Government would support the introduction of a lighter touch process for less significant issues. A flexible approach to the deposit of certain categories of document already exists, and the Government considers there to be further items which should be either exempt from scrutiny or subject to shorter explanatory memorandums. The Government would be happy to work with the Committee on this issue were it to have the support of the Committee and the House.

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

The Government agrees with the Committee. The voice of national parliaments, as representatives of citizens' views and concerns, must have, and must be seen to have, an impact on EU policy. We appreciate the significant resources which parliaments dedicate to scrutinising EU policies and draft legislation, including in cases where subsidiarity concerns push parliaments to issue reasoned opinions. In all cases, it is imperative that parliaments can see the tangible impact of their work. For example, we support the Committee's suggestion that the impact of national parliaments' views expressed in political dialogue should be acknowledged in Commission consultation summary reports and in documentation relating to formal proposals including impact assessments and communications accompanying legislative proposals.

Of course, Select Committee views feed into UK negotiating positions and the UK scrutiny reserve impacts on the passage of EU legislation. However, we support national parliaments playing a direct role in the EU's functioning in addition to this. The Government's proposals for strengthening the role of national parliaments reflect the fact that more can be done. There is a strong case to be made that the Commission has failed to take sufficient note of the views of national parliaments as expressed in opinions and reasoned opinions, and has been slow in formally replying to national parliaments' communications. This is why the Government supports

national parliaments' calls to strengthen the card system provided for in Protocol 2 of the Treaty on the Functioning of the European Union.

Chapter 3: Dialogue with the European Commission

Engagement between national parliaments and the Commission

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

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

The Government notes the helpful suggestions here outlined and we respond substantively to each point below.

Early engagement with policy proposals

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

The Government supports effective early engagement by national parliaments in the development of EU legislative proposals and other policies, and agrees that national parliaments' engagement at an early stage offers a significant opportunity to make a distinctive contribution to the development of policy. We agree with the Committee that the Commission is likely to be more receptive to national parliaments' views on a particular policy area in advance of formally issuing a legislative proposal, by which

point it will have invested a significant amount of work in the proposal and will often have a keen interest in defending it.

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

The Government agrees with the Committee's argument and conclusion here. In order for democratic accountability to be upheld it is vital that the Commission fully engages and is seen to engage with the views put forward by national parliaments in both informal and formal political dialogue. And a crucial part of this is ensuring that national parliaments can see in concrete terms how their involvement has had an impact. The Government agrees that, where possible, it is advantageous for political dialogue to begin as early as possible. This could help the Commission to consistently bring forward high-quality proposals focused on the areas where collective action can add greatest value – and ensures that its proposals sufficiently take into account the likely impact in each Member State. It could also represent a more efficient use of resources, with the energy invested engaging the Commission early in the legislative process saving time at later stages. As outlined below, where early engagement is not sufficient to address subsidiarity or proportionality concerns, the Government supports enhancing the role of national parliaments in upholding the principle of subsidiarity through the reasoned opinion procedure, and greater use of that tool by parliaments.

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

The Government agrees that it is important to improve the transparency of Commission decision making, including in relation to how it has addressed the views of national parliaments, as set out above. When only 19 percent of people in the UK and 29 percent of people across Europe feel that their voice is heard in the EU it is critical that EU institutions are able to demonstrate that they have responded to citizens views, including as expressed through their national parliaments.

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

The Government agrees with the Committee. We note the incongruity between, for example, the tight eight week deadline that national parliaments have to work within in order to issue a reasoned opinion during the scrutiny process and the often much longer time the Commission takes to respond to national parliamentary contributions at different stages of the legislative process.

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

As above, the Government supports suggestions that improve the quality, impact and transparency of dialogue between national parliaments and the Commission. We support this recommendation.

Direct contact with Commissioners and officials

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

The Government agrees with this recommendation. To assist national parliaments to play a greater, positive role in developing EU policy and legislation there should be regular evidence sessions to parliaments from Commissioners. We note, like the Committee, that there are already many examples of good engagement by Commissioners, but that this engagement is not consistent. Within practical constraints, the Government supports the Committee's recommendation for a commitment that binds the whole College.

Making proposals: a Green Card?

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

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

The Government supports national parliaments’ desire to increase the constructive role that they play in shaping EU policy. We support the recommendation for a new green card for national parliaments collectively to make policy or legislative suggestions, and support an agreement from the Commission that it would propose new legislation, or review existing legislation – including to amend or repeal it – if national parliaments working together made a request to that effect. We agree with the Committee that this would not undermine the Commission’s formal right of initiative and note the read across to the similar power invested in the European Parliament by Article 225 of TFEU. We also note that other Chambers, including the Dutch *Tweede Kamer* and the Danish *Folketinget*, have made similar suggestions and that COSAC’s June 2013 Contributions requested that the Commission make a political commitment to respond to opinions or requests issued by more than a third of Chambers.

Chapter 4: The Reasoned Opinion procedure

Overview

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

The Government agrees with the Committee’s analysis. National parliaments have significant expertise to bring to the legislative process and work to ensure outcomes are relevant to the communities that they impact. Upstream engagement with the Commission is the crucial first element to this, but national parliaments also need to have clear authority to respond to legislative proposals that, for example, violate the subsidiarity principle. It is for this reason that the Treaty of Lisbon introduced the Protocol 2 provisions.

However, since 2009 only two yellow – and no orange – cards have been issued. Our assessment is that this is not because only two legislative proposals have raised subsidiarity concerns, but rather because the current elements of the procedure make it difficult for national parliaments to reach the required thresholds. The current reasoned opinion procedure, although a good first step, must be improved to enable parliamentarians to have a greater impact and the Government is committed to working with EU partners to help achieve this.

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

The Government welcomes the discussions on the role of national parliaments and on subsidiarity at the June and October 2013 COSAC meetings and the April 2014 Conference of Speakers of EU Parliaments. We agree with the Speakers’

conclusion that COSAC should explore how the subsidiarity checks could be used more efficiently. This is a particularly opportune moment, ahead of the appointment of the new Commission, for national parliaments, as well as national governments through the European Council, to set out their expectations of how their relationship with the new Commission should function going forward.

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

The Government agrees with the Committee's conclusion that changes could be made to the operation of the existing cards system right now, through political commitment. We note that a precedent exists for introducing changes to Commission-national parliament interaction without Treaty change. For example, in 2006, President Barroso launched the "Barroso initiative" under which the Commission transmitted all new proposals and consultation papers directly to national parliaments, and invited them to respond.

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

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

The Government notes these helpful suggestions and responds substantively to each point below. More broadly, the Government discusses these ideas regularly with other Member States at both Ministerial and official level. It is clear from these conversations that many agree on the importance of giving national parliaments a greater and more effective role in the EU's functioning. However, as noted above, national parliaments themselves have a crucial role to play in this process. We will be able to move further and faster the more that national parliaments themselves vocally call for a strengthened role.

Scope

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

The Government agrees with the Committee that it is not necessary to attempt a more precise definition of subsidiarity than that already set out in the EU Treaties. Article 5(3) of the TEU states that, in areas where it does not have exclusive competence, the EU should only act if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, at a central, regional or local level, but can be better achieved at EU level because of their scale or effects. We agree with the Committee that national parliaments are uniquely placed to judge whether a subsidiarity issue arises in a specific proposal and as such do not see the issuing of specific guidelines as necessary.

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

The Government welcomes this suggestion, and fully supports the principle of extending the scope of the reasoned opinion procedure. As the Minister for Europe set out in his oral evidence to the inquiry, the most obvious extension would be to incorporate proportionality as well as subsidiarity. That principle is written into the Treaties and is recognised by the European Court of Justice and by the constitutions and courts of a significant number of Member States. The Government agrees with the Committee that it should be open to national parliaments to decide that a proposal, even if it should be done at EU level, is disproportionate in terms of the objective it is designed to achieve.

There is potentially a number of different ways in which the scope could be expanded further. The Government welcomes the suggestion that this might encompass whether a proposal has been brought forward under an appropriate legal base. We agree that this is an important issue. For example, we must ensure that measures that relate to the Eurozone are not brought forward on single market legal bases, such as Article 114. We will consider the Committee's proposal carefully.

Deadline

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

The Government has taken note of the view of the Committee that the current time limit is too short, and should be extended. We note too that this is a view expressed by a number of parliaments, including as expressed in the conclusions of the April 2014 Conference of Speakers of EU Parliaments. We support the Committee's suggestion to extend the period.

Commission engagement

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

The Government agrees that it is the responsibility of the Commission to provide a comprehensive and convincing assessment explaining why and how each draft legislative proposal is in line with the principles of subsidiarity and proportionality. We encourage the Commission to ensure that its work in this area is consistently of a high quality.

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

The reasoned opinion procedure is one of the key ways for national parliaments to influence EU policy and engage with the Commission. The Government notes the significant effort and resource that national parliaments invest in preparing, debating and issuing a reasoned opinion and in discussing their concerns with counterparts in other national parliaments. We agree with the Committee that each reasoned opinion deserves a serious response that directly engages with the issues raised – irrespective of whether or not a yellow card has been triggered. And we share Parliament's concern that this is not currently happening. That is why, following the yellow card issued by national parliaments in response to the proposal to create a European Public Prosecutor's Office, the Minister for Europe intervened at the December 2013 General Affairs Council to express the UK's disappointment that the Commission, in responding in just three weeks and with no new evidence to support its view, had not taken seriously the concerns raised by national parliaments.

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

The Government welcomes this constructive suggestion and would encourage Parliament to take forward this discussion.

Effect

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

The Government agrees that the Commission must take the views of national parliaments expressed in the reasoned opinion procedure more seriously, and agrees that where a yellow card is triggered the proposal should be withdrawn or substantially amended in order to reflect the concerns raised.

In addition, the Government considers that national parliaments should have the power to allow them, working together, to block proposals through the introduction of a red card. This would mean that if a sufficient threshold of national parliaments find that a proposal violates the subsidiarity or proportionality principles, the Commission will withdraw the proposal. This offers the best way to ensure that, following the exhaustion of all opportunities for upstream engagement, when a proposal raises subsidiarity or proportionality concerns national parliaments can be assured that their position will have an impact. We should also explore whether such cards might be exercised in relation to existing legislation.

A red card would likely only be used very rarely, and we do not assess that this would impact negatively on the EU's legislative capacity. On the contrary, helping to ensure a much more rigorous application of the principle of subsidiarity and proportionality would contribute to improving the quality of EU legislation.

Threshold

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

The Government considers that the current threshold for triggering a yellow card is too high. The Commission's 2013 report on relations with national parliaments (predating the EPPO yellow card) showed that with the exception of Monti II, the two legislative proposals that secured the most reasoned opinion "votes" received only 7 votes out of the 19 necessary to trigger a yellow card. To reach a threshold of a third of votes for a yellow card or a simple majority to trigger an orange card, the average numbers of reasoned opinions issued on proposals would need to be multiplied several times. A lower threshold would better enable national parliaments to exercise their role in relation to subsidiarity as set out in the Treaties.

Timing

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

The Government welcomed the suggestion made by the Dutch *Tweede Kamer* to introduce a "late card" for national parliaments. Given that proposals are liable to evolve during the legislative process, the Government agrees that it is worth considering further whether the reasoned opinion procedure might be exercised later in the process.

Another aspect of the legislative procedure: first reading deals

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

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

The Government considers that first reading deals provide for an efficient legislative process. Dispensing with some steps of the lengthy co-decision process can be good for non-controversial legislation. However, we have noted the concern that bypassing all legislative stages after first reading might reduce the already tight timescales for national parliaments to contribute their views. The Government examined the scrutiny history and negotiating timetable for three first reading deals agreed at a Council of Ministers in June 2013. On average these agreements took two and a half years from date of publication to agreement. In light of this information, we do not think that this length of time impeded national parliaments' ability to scrutinise EU decision-making in these cases. Nonetheless, Government departments remain committed to updating Parliament at key points in negotiations, whether a proposal is agreed after all the stages of debate and negotiation, including trilogue, or after just a first reading deal. The Government agrees that it should provide a supplementary EM or ministerial letter should significant changes be made to a document subject to formal scrutiny during the progress of negotiations, including trilogue, even if a document has previously cleared scrutiny.

Chapter 5: Inter-parliamentary co-operation

Co-operation with the European Parliament

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

The Government agrees with the Committee's analysis that both the European Parliament and national parliaments have important roles to play in the EU. Members of the European Parliament are often expert and committed to their work. But because people do not sufficiently identify with the European Parliament, and because previous attempts to address the democratic deficit by strengthening its role have not worked, it is important to consider other ways to address the problem.

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

- **there could be more direct contact between committees of national parliaments and committees of the European Parliament;**
- **when national parliaments or their committees have a close interest in a particular legislative proposal, they should be encouraged to contact the relevant rapporteur and shadow rapporteur on the responsible committee of the European Parliament;**

- national parliaments and the European Parliament could reach agreement that EP rapporteurs could provide informal briefings to Members of national parliaments on the progress of trilogue negotiations;
- videoconferencing could be used to facilitate discussions between committees;
- a brief overview of comments by national parliaments might be included in reports prepared by European Parliament Committees. (Paragraph 109)

The Government welcomes the Committee's suggestions for greater co-operation with the European Parliament and its Committees and supports national parliaments in considering these ideas further. Since the European Parliament is co-legislator on approximately 80% of legislative proposals, enhancing this engagement is undoubtedly worthwhile.

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

COSAC is one of the longest-established mechanisms for engagement between national parliaments, as well as between EU institutions, particularly the European Parliament, and national parliaments. The Government supports national parliaments continuing this discussion in whatever forum they find most appropriate.

Forms of inter-parliamentary co-operation

208. It is vital that Members of the parliaments of the European Union establish the habit of co-operation on European matters. Communication between Members of national parliaments, and between Members of national parliaments and the European Parliament, is essential, to share information, to debate policies, and to reach common understandings. However, it must be recognised that parliamentarians have a limited amount of time, and conferences must offer clear 'added value' in order for Members to be able to prioritise participation at them. In the view of this Committee, the number of inter-parliamentary conferences must be kept within reasonable limits and where it is appropriate we should be willing to rationalise the conference framework. We must ensure that conferences have clear and well managed agendas; that they have clear intended outcomes; and above all that they encourage wide participation and lively debate as opposed to long set-piece speeches. (Paragraph 114)

The Government welcomes the Committee's appraisal of the value of inter-parliamentary co-operation and of the importance of ensuring conferences and their follow-up procedures 'add value' by delivering clear outcomes.

COSAC

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

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

The Government welcomes the Committee's thoughtful consideration of how COSAC's procedures might be improved and encourages national parliaments to further strengthen COSAC's functioning. Whilst acknowledging that it is for national parliaments themselves to consider how best COSAC might be strengthened, we would agree with the Committee's assessment that increasing the focus on a smaller number of specific debates would be beneficial. To this end, national parliaments may like to consider standing items on meeting agendas and annual debates arranged on issues of enduring interest such as the Commission's work programme and subsidiarity.

The Government also agrees that national parliaments with interests and/ or particular expertise in certain areas may wish to further utilise ad hoc working groups in between plenary meetings or to find other ways to increase their coordination. We took note that both yellow cards issued to date coincided with meetings of COSAC. Analysis by academics and others suggests that the yellow card issued in relation to the Monti II proposal was in part due to the role of "initiator" played by Denmark, during their chairmanship of COSAC. One way of ensuring that this level of coordination was achieved throughout the year might be for national parliaments to take on an informal role of "champion" for one or more policy areas in which they have a particular interest. They might then pay particularly close attention to any legislative proposals being issued in this area. And, by sharing their analysis with counterparts could, where necessary, alert other national parliaments to a subsidiarity concern and provide the same momentum for the issuing of reasoned opinions if that became necessary. The Government supports national parliaments in considering these and other more extensive reforms to COSAC's working methods.

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

Of the seven officials in COSAC's secretariat, only one is permanent and the others rotate in line with the Council Presidency Troika. This turnover can impact on continuity and lead to variation in capacity and familiarity with issues under consideration. As such, the Government agrees that consideration should be given

to COSAC's resources, and whether a larger and more permanent secretariat would allow COSAC to coordinate more effectively.

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

This is a suggestion for national parliaments to consider between themselves, but the Government supports the continued sharing of good practice.

Inter-parliamentary conference on economic and financial governance

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

The Government supports the Committee's conclusion that national parliaments from all 28 Member States should continue to be involved in discussions. This links to the Government's commitment to ensure that, as the eurozone integrates further, the interests of Member States both inside and outside the eurozone, as well as the integrity of the Single Market, are protected.

Direct contact between parliamentarians

213. It is important that Members of national parliaments forge their own contacts with Members of other parliaments, including of course the European Parliament. Particularly once good working relationships have been established, teleconferencing, videoconferencing and electronic communications should be used to full advantage, for quick exchanges of information and opinion. (Paragraph 135)

The Government agrees with the Committee's analysis and continues to support efforts to strengthen relations between national parliaments and parliamentarians. We will continue to make our embassy network available to support and facilitate visits to Brussels and other Member State capitals. We agree that electronic communications offer a cost-effective and timely way for national parliamentarians to communicate.

IPEX (Inter-parliamentary EU Information Exchange website)

214. It is important that the IPEX platform is easy to use, and that national parliaments upload information consistently and promptly. We note the potential burden that translating all parliamentary documents uploaded onto IPEX might place on national parliaments, and we suggest that the IPEX Board

consider whether a technological solution, such as automated translations, might be implemented in the future. (Paragraph 141)

The Government agrees with the Committee's analysis of the value of the IPEX website as a platform for national parliaments to exchange information and resources and supports all efforts to improve its accessibility, especially with regards to the translation of documents. A greater real-time flow of information would enhance national parliaments' abilities to co-ordinate during the scrutiny process, and offer less well-resourced parliaments access to the materials produced by their better-resourced counterparts. Improved use of the IPEX website offers the opportunity to systematically underpin the peer-to-peer exchange of views and information outlined above.

Chapter 6: Economic and financial governance

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

The Government is clear that the concerns of citizens must be respected in EU decision making and that the impact of EU decisions on the lives of citizens must be carefully considered. As such the Government agrees with the Committee's conclusion that as the eurozone continues to put in place the governance structures necessary to secure its long-term stability, due regard must be given to the democratic accountability of its decision-making process, including any impact this might have on those not part of the single currency. This is likely to necessitate an active role for national parliaments, in addition to that of national governments and the European Parliament.

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

The Government notes the Committee's conclusion that an asymmetry has arisen between the powers of some EU institutions and the ability of citizens to hold them to account. While the European Parliament may have a role in holding EU institutions to account on these issues, we reiterate that national governments and national parliaments are the main source of democratic legitimacy and accountability in the EU.

217. The proposal for a euro area Sub-Committee of the European Parliament would have significant negative consequences. First, it could undermine the unified structure of the European Parliament. Second, it risks losing the

perspective and expertise of parliamentarians from outside the eurozone. Third, it risks exacerbating divisions between eurozone and non-eurozone Member States, with the concomitant danger that those in one group propose policies that are not in the interests of those in the other. This is of particular concern for the UK. (Paragraph 165)

The Government takes note of the Committee's analysis. It remains the Government's position that the European Parliament is a parliament for the whole of the EU, and as is specified in the Treaties, that MEPs represent all EU citizens. Whatever new arrangements are established must therefore work for all 28 Member States, whether inside or outside the eurozone. There have been a number of different proposals for how a euro area sub-committee of the European Parliament might work. Our understanding is that the most recent of these would not bar UK MEPs from being members of the sub-committee, and that legislative proposals would continue to be dealt with by the full committee. It is unlikely that such a sub-committee would have any role in proposing policies. The Government agrees with the Committee that the unity of the European Parliament should be upheld and that the expertise of all its Members should be available to inform its work in this important area.

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

The Government is clear that it will not take part in measures for closer integration in the euro area. However, we agree with the Committee that the principle of democratic accountability can only be upheld if national parliaments also have an enhanced role in the EU. Where appropriate, the role of national parliaments should be carefully considered in any relevant proposals for Genuine Economic and Monetary Union that are brought forward.

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

The Government agrees that national parliaments have an important role to play in the European Semester process. In the UK that involves debates in Parliament, including explicit approval by both Houses of the information that is sent to the

Commission in the UK Convergence Programme (which sets out the UK's medium term fiscal plans). At the European level, we do not consider that there is a case for a stronger role for the European Parliament given that the focus of the European Semester is on the coordination of individual Member State's economic and fiscal policies. Responsibilities must remain with Member States, the Council and the Commission in line with the current, recently strengthened, framework of coordination.

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