

**NATIONAL PARLIAMENTARY INVOLVEMENT IN EU POLICY-MAKING:  
QUESTIONS, RESOLUTIONS, AND TRANSPOSITION**

by

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Submitted to the Graduate Faculty of  
the Kenneth P. Dietrich School of Arts and Sciences in partial fulfillment  
of the requirements for the degree of  
Doctor of Philosophy

University of Pittsburgh

2016

UNIVERSITY OF PITTSBURGH  
KENNETH P. DIETRICH SCHOOL OF ARTS AND SCIENCES

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# **NATIONAL PARLIAMENTARY INVOLVEMENT IN EU POLICY-MAKING: QUESTIONS, RESOLUTIONS, AND TRANSPOSITION**

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University of Pittsburgh, 2016

This dissertation analyzes how and why national parliaments get involved in policy-making at the EU level. It uses mixed methods to study which tools parliaments use to affect EU policies in certain situations and how these patterns vary across parliaments. I conceive of parliaments and their members as having a ‘parliamentary toolbox’, which contains the different methods of influence that parliaments have over their ministers, national legislation, and now European policy-making. Parliaments vary in the strength of each of the tools available to them and in the political context and situations they face. I show that these differences lead different parliaments to use different tools and strategies to gain influence. In particular, I argue that there are three main characteristics that distinguish one parliamentary tool from another. These are how institutionalized and formal it is, how public it is, and the number or type of actors required to use it. For example, involvement in transposition is much more institutionalized and formal than the subject matter of questions or resolutions, so parliaments that are relatively strong as compared to their governments and are in a better position to push for procedural changes are the ones that are most likely to use this tool. Resolutions and questions are more public, so they are more likely to be used in situations where there is high public Euroskepticism. Since questions are an individual tool, they are more likely to be used when parties are internally divided about EU politics.

## TABLE OF CONTENTS

<b>PREFACE.....</b>	<b>XI</b>
<b>1.0 INTRODUCTION.....</b>	<b>1</b>
<b>1.1 PARLIAMENTARY TOOLS FOR INVOLVEMENT AT THE EU LEVEL</b> .....	<b>7</b>
<b>1.2 THE IMPORTANCE OF THE RESEARCH QUESTION.....</b>	<b>9</b>
<b>1.3 OUTLINE OF THE DISSERTATION.....</b>	<b>11</b>
<b>2.0 A PARLIAMENTARY TOOLS CONCEPTION OF INVOLVEMENT IN</b> <b>EUROPEAN AFFAIRS.....</b>	<b>12</b>
<b>2.1.1 Stage 1 of parliamentary involvement: disinterest and non-involvement</b>	<b>14</b>
<b>2.1.2 Stage 2 of parliamentary involvement: fight for information and early</b> <b>participation .....</b>	<b>14</b>
<b>2.1.3 Stage 3 of parliamentary involvement: national parliaments as a solution</b> <b>to the democratic deficit .....</b>	<b>16</b>
<b>2.1.4 Procedural challenges to national parliamentary involvement.....</b>	<b>19</b>
<b>2.1.5 Ideological and normative challenges to parliamentary involvement .....</b>	<b>20</b>
<b>2.1.6 Challenges to national parliamentary cooperation with the European</b> <b>Parliament.....</b>	<b>21</b>
<b>2.1.7 Electoral challenges to parliamentary involvement .....</b>	<b>22</b>

2.1.8	Party challenges to parliamentary involvement .....	24
2.1.9	European complexity as a challenge to national parliamentary involvement.....	26
2.2	THE PURPOSE OF INVOLVEMENT IN EU AFFAIRS.....	27
2.2.1	Influence on European policies .....	27
2.2.2	Deliberation.....	30
2.2.3	Government oversight.....	31
2.2.4	Communication.....	31
2.2.5	Representation .....	32
2.3	CHARACTERISTICS OF PARLIAMENTARY TOOLS .....	33
2.4	TOOLS FOR EU INVOLVEMENT.....	44
2.4.1	European Affairs Committees and scrutiny systems .....	44
2.4.2	Basic legislative tools, repurposed.....	49
2.4.3	Transposition .....	54
2.4.4	Communication with the Commission.....	56
2.4.5	Tools for interparliamentary cooperation and coordination .....	58
2.4.6	Other possible tools for the future .....	60
2.5	CONCLUSION .....	61
2.6	CAUSES OF PARLIAMENTARY INVOLVEMENT IN EU AFFAIRS: WHAT WE KNOW.....	62
2.7	HYPOTHESES .....	71
2.8	RESEARCH DESIGN.....	74
2.8.1	Qualitative methodology .....	74

2.8.2	Quantitative methodology .....	79
3.0	QUESTIONING EUROPE: EXPLAINING THE VARIATION IN EU-RELATED QUESTIONS.....	82
3.1	INTRODUCTION .....	82
3.2	THE TOOL OF PARLIAMENTARY QUESTIONS .....	85
3.3	HYPOTHESES .....	92
3.4	DATA AND MODEL .....	95
3.5	RESULTS .....	101
4.0	RESOLVING EUROPE: EXPLAINING THE VARIATION IN EU-RELATED PARLIAMENTARY RESOLUTIONS AND OPINIONS IN EUROPE’S NATIONAL PARLIAMENTS .....	105
4.1	INTRODUCTION .....	105
4.2	INFORMATION RIGHTS, THE POLITICAL DIALOGUE, AND THE EARLY WARNING SYSTEM .....	107
4.2.1	Increased information rights and information exchange .....	110
4.2.2	Political dialogue.....	112
4.2.3	Reasoned opinions and the early warning system .....	115
4.3	HOW OPINIONS ARE USED .....	125
4.4	HYPOTHESES .....	127
4.5	DATA AND MODEL .....	130
4.6	RESULTS .....	135
4.7	CONCLUSION .....	141

<b>5.0</b>	<b>TRANSPOSING EUROPE: EXPLAINING THE VARIATION IN PARLIAMENTARY INVOLVEMENT IN THE TRANSPOSITION OF EU LAWS .....</b>	<b>144</b>
<b>5.1</b>	<b>INTRODUCTION .....</b>	<b>144</b>
<b>5.2</b>	<b>DIRECTIVES AND THE TRANSPOSITION PROCESS.....</b>	<b>147</b>
<b>5.3</b>	<b>NATIONAL PARLIAMENTARY INVOLVEMENT AND THE CHOICE OF LEGAL INSTRUMENT .....</b>	<b>152</b>
<b>5.4</b>	<b>WHAT DELAYS AND INFRINGEMENTS CAN TELL US ABOUT PARLIAMENTARY INVOLVEMENT .....</b>	<b>160</b>
<b>5.5</b>	<b>EXPLAINING PARLIAMENTARY INVOLVEMENT IN TRANSPOSITION .....</b>	<b>166</b>
<b>5.5.1</b>	<b>Intra-coalition monitoring .....</b>	<b>167</b>
<b>5.5.2</b>	<b>Parliamentary and executive strength .....</b>	<b>170</b>
<b>5.6</b>	<b>HYPOTHESES .....</b>	<b>171</b>
<b>5.7</b>	<b>DATA AND METHODS .....</b>	<b>173</b>
<b>5.8</b>	<b>RESULTS .....</b>	<b>179</b>
<b>5.9</b>	<b>CONCLUSION .....</b>	<b>183</b>
<b>6.0</b>	<b>CONCLUSION.....</b>	<b>185</b>
<b>6.1</b>	<b>PARLIAMENTARY TOOLS.....</b>	<b>185</b>
<b>6.1.1</b>	<b>Institutionalization.....</b>	<b>186</b>
<b>6.1.2</b>	<b>Types and quantity of actors necessary to use a tool.....</b>	<b>189</b>
<b>6.1.3</b>	<b>Publicity .....</b>	<b>191</b>
<b>6.2</b>	<b>MP INTEREST IN EU AFFAIRS AND POSSIBLE PATHS FORWARD</b>	<b>193</b>
<b>6.3</b>	<b>FUTURE RESEARCH.....</b>	<b>197</b>



<b>BIBLIOGRAPHY .....</b>	<b>199</b>
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## **LIST OF TABLES**

Table 1. Determinants of EU Questions .....	104
Table 2. Determinants of EU Opinions.....	136
Table 3. Determinants of EU Opinions, Without EU Staff Variable.....	137
Table 4. Determinants of Parliamentary Involvement in Transposition.....	180

## **PREFACE**

I owe sincere thanks and gratitude to many people for their help and support, both during the completion of this dissertation and during the academic process that led me here. I will endeavor to acknowledge many of them here, but will inevitably leave out many others. To all of you who have helped me along this path, I sincerely thank you for your advice, encouragement, and support.

First and foremost, I would like to thank my advisor, Guy Peters. In early classes, he helped guide me through the fundamentals of institutionalism, comparative and European politics, and qualitative and mixed methods research. While we both traveled the world (he more broadly than I), he has remained exceptionally accessible and responsive. He has consistently been willing to comment on paper drafts or fellowship proposals, often within the tight time frames that I have too often made necessary. He has proved an important sounding board, guiding me in my career and research while still allowing me to follow my own path and engage in the research I wanted to do. Both this project and my scholarly training are much better for his involvement than they would have been without it.

I would also like to sincerely thank the members of my committee for their support throughout this process. Scott Morgenstern and Jude Hays both provided valuable training and mentorship in classes, providing fundamental preparation in legislatures and methodology. Their comments and participation throughout this process have been immensely helpful, from

comments on drafts to meetings on fieldwork methodology or research design. Their help in preparing for the job market was also invaluable. Scott's organization of the Comparative Politics Research Group, as well as all of its participants, provided many valuable lessons in comparative research theory and design. I would particularly like to thank those who attended the workshop at which I presented a version of the parliamentary questions chapter. Some of your comments have contributed to the improvement of this chapter and many others have led to valuable ideas that I plan to work on in the future. I would like to thank Jonathan Slapin for his expert views on European Union politics and parliaments during the early drafts of this project. They helped me refine the fundamental question and argument of the dissertation. I would also like to thank John Keeler for his willingness to step in toward the end of the project and contribute his considerable expertise to the final product. Finally, I would like to thank all of my committee members for their flexibility in regard to the tight timeline toward the end of the project.

The European Studies Center at the University of Pittsburgh was an integral part of this research. Most of the fieldwork and many of the conferences that I attended during my time at the University of Pittsburgh would not have been possible without generous funding through the center. The center was one of the main reasons that I chose Pitt and the rich variety of programming and support it provided did not disappoint. I would like to thank its director, Ron Linden, for his leadership of the center as well as his personal support and training that he provided in class and the mentorship he provided outside of it. I would also like to extend sincere thanks to Allyson Delnore, who helped and supported me through various projects and hurdles. Additional thanks go to Eleni Valliant, Kate Bowersox, and other members of staff in the center for their support throughout my time at Pitt. Through the EU Centers, I was able to

attend multiple valuable professionalization and training workshops, including the two Graduate Student Western Workshops on the European Union. I thank all of the participants, but especially James Caporaso, Cliff Carubba, and Joe Jupille, for their invaluable contributions on this project. Through the EU Center, I also received assistance from the European Union for this dissertation. The Russian and East European Center, the University Center for International Studies, the Political Science Department, and the College of Arts and Sciences all provided valuable fellowships that further contributed to this study. However, all work remains my own and can in no way be taken to represent the views of the European Union or any of the other funding sources.

The training for this dissertation and academic career began at Syosset High School, which provided me with a better head start into the academic world than many could hope for. The foundation of academic inquiry, writing, and research skills gave me an important advantage moving forward. In particular, Lorene Bossong, Stephanie Chipetine, and Andrew Manzo have served as valuable mentors in terms of teaching and improved my writing at an early age. At Bucknell University, Scott Meinke helped introduce me to the world of quantitative and empirical political science, as well as to the study of legislatures. Doug Hecock developed my fascination in the importance of comparative institutions and was the key turning point in my conversion from an inherent Americanist to a Comparativist. In addition to the other members of the political science department, the history department also developed my love for research and encouraged me to consider a pathway forward in academia. Leslie Patrick and John Enyeart were particularly instrumental in encouraging me to continue down this path, even if I chose political science over history. The education department at Bucknell, especially Sara Fry, helped train me as a teacher and to understand the importance of reaching every individual student.

Their training remains invaluable today as I embark on an academic career. The professors from my semester abroad in Florence, Italy - Cathleen Compton, Natalia Piombino, and Debora Spini - helped first spark my interest in the European Union.

James Madison University's Master's degree program in European Union Policy Studies in Florence, Italy was the next key step that set me on the research I do today. Laura Buonanno, Alessandro Gentili, Chiara Martinelli, and Caterina Paolucci all enriched this experience in their own ways. Mama's Bakery also helped, providing something akin to the New York bagels I require for sustenance. Alexandre Stuzmann and Silvio Gonzato, as well as the many speakers who came to the *Palazzo* or who graciously agreed to meet with us in Brussels and Strasbourg, provided a unique view into the actual practice of the European Union. Too often scholarly work becomes separated from practice, and they helped us retain this essential link. My colleagues in this program, especially Aimee Bateas, Jeffrey Burtner, Elizabeth Duda, Janessa Muraco, Sarah Raimondo, and Sam Wechsler, helped encourage my interest in the European Union, both as an object of study and as an area to explore and experience. The director of the program, John Scherpereel, has been an invaluable mentor to me. He provided instrumental guidance during the writing of my master's thesis and provided support on the job market. His mentorship since my graduation from the master's program has been essential to my professionalization into the discipline. We have now written two articles for publication and my career will forever be indebted to his help introducing me to the publication process, as well as the profession in general.

At the University of Pittsburgh, my academic career was further advanced by political science training and classes led by, among others, Chris Bonneau, Steve Finkel, Jon Harris, Kristen Kanthak, George Krause, Jennifer Victor, and Jon Woon. They have all helped me

become the political scientist that I am today. While I did not have the opportunity to have them in class, Despina Alexiadou and Anibal Perez-Linan have also provided valuable training and advice for my career. Additional thanks go out to the instructors of the Summer Language Institute, both in Pittsburgh and Krakow, as well as Oscar Swan, for their valuable Polish language training. This training greatly enhanced my ability to do fieldwork in Poland. I would also like to thank Nancy Matrozza, Kimberly Thomas, Marsha Tsouris, and Katie Winkler for their help navigating the bureaucracy at the University of Pittsburgh, meeting deadlines, and receiving grants.

A sincere thank you goes out to Andrea Aldrich and Will Daniel, who were my predecessors in so many ways. Their advice on how to navigate the study of European parliaments at Pitt, on fieldwork in these parliaments, on getting IRB approval and grants to do so, and so many other things was essential to my success. They were also both valuable friends who provided comments on my research and its drafts throughout the project. Andrea was a roommate during our fieldwork in Brussels and an essential work partner throughout the dissertation process, helping me keep the larger project in perspective and to stay on target. Sarah Cormack Patton read drafts of many papers and chapters throughout the last few years, and set a clear example for how to negotiate the graduate and post-doc experience. I would also like to thank Eric Loepp, Leslie Marhsall, Shawna Metzger, and Sofia Vera Rojas, as well as other colleagues at the University of Pittsburgh, who provided valuable feedback during the development of this project and whose brainstorming and support helped produce a better final product.

I cannot understate the contribution of the unattributed almost two hundred people with whom I spoke at national parliaments and the European Parliament. While they go unnamed,

they were an essential part of this process, from pre-dissertation work that helped me determine what the interesting questions were to interviews that helped me truly understand the situation “on the ground”. In addition to those who I formally interviewed, many of whom are mentioned (anonymously) in the text, I also owe thanks to their staff and the parliamentary staff and security who helped me get to my appointments or who patiently answered questions.

Finally, I would like to thank essential friends and family who have helped me throughout this long journey. Many friends, especially Susan Anderson and Alexandra Campbell-Ferrari, have encouraged me in my academic pursuits and have been there every step of the way, always willing to talk through ideas, proofread drafts even when they no longer understood what I was writing about, and blow off steam when that was what I needed instead. Kaitlin Nelson has been the partner in crime (travel?) and sister I always wished I had, and has supported me through every step of this. David Sheldon has been an essential partner in the last few months of this process, acting as a support system, motivator, and foundation, even when I started to doubt myself. His help removing as much stress as possible during this final stretch, including well more than half the move, helped me finish the project. Dan Perez has been supportive of his sister throughout, and has once in a while let on that what I do might be interesting. His support means more than he probably realizes.

My parents, Lisa and Tony Perez, and my grandparents, Lucille and John Schmalenberger and Terry and Tony Perez, have been essential in cultivating my interest in knowledge and academia. My grandparents all invested a thirst for reading and knowledge in my parents, which they passed onto me. I cannot express how much this has improved my life, and I hope to pass this interest on to others. Your help – financial, emotional, academic, and in so many other ways – has gotten me to where I am today. Thank you.



## **1.0 INTRODUCTION**

European integration has substantially changed policy-making in Europe by consistently shifting power and policy competences from the national level to the supranational level. The first predecessor of today's European Union (EU) was the European Coal and Steel Community, founded in 1952 in the aftermath of World War II, which brought the production and marketing of two major commodities necessary for war under common management. It was "a first step in the federation of Europe."<sup>1</sup> The six founding countries then joined together to create the European Economic Community, a customs union, which began spreading supranational governance to additional market sectors and steadily removed internal barriers to trade. They develop a Common Agricultural Policy, a joint foreign aid program, policies to help develop poorer regions within the EU, environmental policies, and research and development programs. During the 1980s, they continued development of a true single market through the reduction and harmonization of additional non-tariff barriers. During the 1990s, they begin to work on developing common foreign and security policies, common defense policies, and common justice and home affairs policies. Most countries also joined the open border zone of Schengen, ceding control of their internal borders. By 2002, most states adopted the single currency of the Union, shifting control of monetary policy to the European Union. In response to the Eurozone

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<sup>1</sup> Robert Schuman, in a speech known as The Schuman Declaration, given on 9 May 1950.

Crisis at the end of the decade, countries have now also started shifting some influence over fiscal policy to the EU level.

Since all European Union (EU) member states are parliamentary democracies, this inevitably changes the landscape in which Europe's national parliaments operate. Some Members of Parliament have noted a "proliferation of European legislation" and that "slowly, national legislative activity is disappearing."<sup>2</sup> There is substantial variation in how these parliaments have responded to such changes, with some parliaments being much more involved and influential on European matters than other parliaments. One example of an involved parliament is the Danish *Folketing*, which brings all of its ministers into a European Affairs Committee meeting before they go to meetings of the Council of Ministers at the EU level to hear about the position they plan to take and to ask them questions about it and the upcoming meeting. Once they are satisfied with the minister's plan, they give her a mandate to take that position, and only that position, during the Council meeting. This is different from Denmark's normal parliamentary control over foreign affairs, for which the government can make a decision, then consult the parliament, and as long as a majority does not object, then the government can go ahead with their initial decision. However, since so many competences have been given to the EU, they developed the special procedure that requires an actual mandate of approval for EU matters.<sup>3</sup> They have also developed a whole list of recommendations of how the national parliaments could be more involved in the EU policy-making process (European Affairs Committee of the Danish Parliament 2014).

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<sup>2</sup> Member of Parliament. Personal Interview. September 11, 2014. Polish *Senat*, Warsaw.

<sup>3</sup> Member of Parliament. Personal Interview. October 28, 2014. Danish *Folketing*, Copenhagen.

In contrast, the Belgian parliament only brings ministers in after meetings have already happened or “where there’s not a rush”.<sup>4</sup> Often, they only bring in the Prime Minister after European Council meetings, rather than other ministers after the more regular Council of Ministers meetings. The general sense among MPs, as articulated by one, is that there is “practically, a quite limited role for the National Parliament, not because the EU level forbids it, but because our parliament has not changed the way that it works sufficiently.” They are able to talk about EU issues, but they have no mandate or decision power, and they would need to reorganize so that they are involved earlier in the process in order to be able to shape the position of the government for Council negotiations.<sup>5</sup> The Belgian Parliament and the Danish Parliament clearly have disparate levels of involvement in EU policy-making, despite MPs in both countries discussing the need for national parliamentary involvement. This dissertation explores why certain parliaments are more likely to get involved in certain ways and examines which explanatory factors matter most for different types of involvement.

Faced with a changing policy-making environment as the EU has gained more powers, parliaments needed to find ways to adapt or else they were going to have to accept a weakening position and the infringement of parliamentary sovereignty and rights. Early on, parliaments were either not adapting or were slow to do so, resulting in a loss of power to their executives. This led scholars to begin speaking of a general process of deparliamentarization, since the European Parliament was not able to replace the role of national parliaments at the European level (O’ Brennan and Raunio 2007). A similar argument is that integration led to an executive

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<sup>4</sup> Member of Parliament. Personal Interview. June 5, 2013. Belgian *Chambre des Représentants*, Brussels.

<sup>5</sup> Member of Parliament. Personal Interview. June 6, 2013. Belgian *Chambre des Représentants*, Brussels.

bias, since parties and parliaments must delegate substantial discretion to ministers so that they can successfully negotiate at the European level. However, doing so makes it difficult for the parliaments to control ministerial actions, either through ex ante or ex post controls. Additionally, the ministers have the most knowledge about legislation at the European level, since they are there on a regular basis, creating an information asymmetry between the executive and the legislature (Marks, et al. 2002). The general process of presidentialization, which refers to the growing dominance of presidents and prime ministers as media influence becomes more important and foreign affairs becomes more dominant, further exacerbates deparliamentarization caused by European integration (Poguntke and Webb 2007).

However, other authors have argued that these processes and their effects are overstated, and that parliaments have found ways to regain some of the influence that they are losing (Raunio and Hix 2000). Some such changes have occurred across all EU parliaments, helping to bring all of them back into the process. Over time, every parliament developed a European Union Affairs committee to deal with European business. The treaties have begun to recognize a role for national parliaments and have given them formal rights, such as the right to information about EU legislation. The Treaty of Lisbon in 2009 also gave them the right to object to proposed legislation on the grounds that it breaches the principle of subsidiarity, which is the idea that all decisions should be taken at the closest possible level to the citizen. There has also been increased cooperation among the national parliaments, with their representatives to the EU meeting frequently and having biannual meetings of COSAC, the Conference of Parliamentary Committees for Union Affairs. All of the national parliaments now have permanent representatives in Brussels who are “on the ground” to gather information and to communicate with both the EU institutions and representatives of other national parliaments.

Beyond these common adaptations, there is quite a bit of variation in how the national parliaments have adapted to the changing political environment and have tried to overcome the executive bias and the process of deparliamentarization (Raunio 1999). Some of the European Affairs committees are substantially stronger than others, such as those that have the power to mandate what their governments do at the EU level. Other committees have variations on this right. For example, both houses of the British parliament have what is known as the “scrutiny reserve,” by which the government will not agree to EU policies until both houses have completed their scrutiny of that policy. Some parliaments have turned to more effective scrutiny of the government and have improved their access to information. However, ministers may still override the scrutiny reserve if the Council needs to act quickly, which is not entirely infrequent.<sup>6</sup> Other committees have no such mechanism, beyond the ability to bring ministers in for questioning, which they may not make use of regularly. As is clear from these examples, various parliaments also have different levels and methods of control over their ministers, although these do not always coincide perfectly with committee power. For example, some parliaments regularly ask their governments questions about EU affairs, hold plenary debates on the EU, or pass EU-related resolutions. Some bring the Prime Minister into the plenary before or after European Council meetings, and others do not. One Polish Senator pointed out that they can propose or suggest things, but that “the ministers have no obligation to listen,”<sup>7</sup> which is not an opinion that members of the Danish *Folketing* would be likely to share. Members of

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<sup>6</sup> In the second half of 2015, the UK government overrode the scrutiny reserve in one or both houses on 54 out of 434 occasions (12.4%). Almost all of these were by the Foreign and Commonwealth Office, which is the norm. This information comes from the response of Baroness Anelay of St Johns to Lord Boswell of Aynho’s written question about the frequency of such overrides, answered on the 15 February 2016 (HL5654).

<sup>7</sup> Member of Parliament. Personal Interview. September 24, 2014. Polish *Senat*, Warsaw.

Parliament (MPs) certainly do vary in their level of interest and sense of efficacy in European affairs. Some MPs felt “frustrated”<sup>8</sup> or “uninformed,”<sup>9</sup> while others felt that they were “very involved,”<sup>10</sup> and that MPs collectively had “an increased consciousness on the EU, an increased willingness to engage on the EU, an increased commitment to it, and an increased awareness.”<sup>11</sup> While there is certainly variation among MPs within parliaments, there are also general differences across parliaments. I examine this variation and analyze the explanations for it.

This project aims to understand the relative involvement in European Union policy-making among Europe’s national parliaments, and to examine how and why such involvement varies across parliaments and across policy areas. Why do some of the national parliaments exert more influence in EU policy-making, while others delegate more to their executives? Why have some gained more power over time, while others have not? Why do some of the parliaments choose to focus on certain strategies for involvement, such as scrutiny, direct involvement at the EU level, or transposition? Do parliaments substitute one type of behavior for another or use them additively?

In order to answer these questions, I first explore the use of parliamentary questions as a means of parliamentary scrutiny. Some of the main tasks of parliaments are to hold their executives accountable and to communicate with the public, both of which MPs can accomplish through public questions to ministers. It is therefore important to understand whether MPs perform these tasks in relation to Europe, how often they do so, and what types of policy they focus on when doing so.

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<sup>8</sup> Member of Parliament. Personal Interview. June 6, 2013. Belgian *Chambre des Représentants*, Brussels.

<sup>9</sup> Member of Parliament. Personal Interview. September 9, 2014. Polish *Sejm*, Warsaw.

<sup>10</sup> Member of Parliament. Personal Interview. October 8, 2014. German *Bundestag*, Berlin.

<sup>11</sup> Member of Parliament. Personal Interview. October 22, 2014. German *Bundestag*, Berlin.

## **1.1 PARLIAMENTARY TOOLS FOR INVOLVEMENT AT THE EU LEVEL**

I conceive of parliaments and their members as having a ‘parliamentary toolbox’, which contains the different methods of influence that parliaments have over their ministers, national legislation, and now European policy-making. Some of these tools exist in every parliament’s toolbox, such as questions to ministers or the European Affairs committee. However, even when a tool is available to every parliament, it may be of differing quality or strength. For example, the Danish EU committee is considered to be one of the strongest in the parliament, whereas some members of the Belgian parliament did not know that their parliament had an EU committee. Other tools may only be available to only a few of the national parliaments. One such tool is the ability to mandate the position that ministers may take in Council meetings, which is only available to a select few parliaments. The choice of how to get involved in EU affairs will depend both on the type and strength of the tools available to them, as well as on the type of influence they are trying to have. Just as a hammer is better used on a nail than a screw, certain parliamentary tools are better suited to certain situations. I argue that there are three main characteristics that distinguish one parliamentary tool from another. These are how institutionalized and formal it is, how public it is, and the number or type of actors required to use it.

Many of the studies that try to explain differences in national parliamentary involvement in EU affairs tend to focus on institutionalized patterns of involvement, such as the European Affairs committees or their involvement in transposition. Given the formal powers necessary for these types of involvement, it is not surprising that some of the factors they have found to be most influential relate to the general relationship between the parliament and the executive (Raunio 1999, Franchino and Hoyland 2009). In order for a parliament to gain these types of formal and institutionalized powers, it will often need to have had enough power at the domestic

level to bargain for such powers in European matters. My transposition chapter will ask a similar question, although it looks at actual practice in addition to formal powers and expands the scope of countries under consideration. In contrast, the other two quantitative chapters examine practices that are much less institutionalized or formal, so the general domestic relationship between the parliaments and their governments is a much less important factor in explaining parliamentary involvement.

In addition to how institutionalized the powers are, the number and type of actors involved also influences how useful a tool may be in a given situation. Proposing a resolution or asking parliamentary questions about EU legislation does not always require a parliamentary majority (although passing a resolution does). This also affects what variables are important for explaining variation in the use of these tools, increasing the importance of less institutional variables. For example, higher levels of public Euroskepticism have the greatest effect on parliamentary questions, since parties and individual MPs that disagree with the government's position can implement these on their own. Similarly, when there is more ideological diversity within parliament (or parties), these types of actions that do not require cross-party cooperation are more useful.

The third main factor that affects the usefulness of certain tools in certain situations is how apparent their use is to the public and the media. Questions, which set up a potentially dramatic confrontation between MPs and ministers may be regularly observed by the media and are easy to advertise to the press or interested stakeholders, especially in the case of an embarrassing answer. Opinions or resolutions (and the debates that accompany them), as well as questions, are important tools for communication with the public, in ways that transposition or committee meetings (especially closed meetings) are not. Therefore, in situations when public



Euroskepticism rises and MPs can appeal to the electorate by taking a stand against Europe, there is more use of oral questions and resolutions.

Comparing how often and under what conditions parliaments are more likely to use each of these three parliamentary tools – questions, resolutions, and transposition – allows me to examine what differences exist across different types of parliamentary actions. Different factors are more important for different types of actions. For example, some types of parliaments, particularly more majoritarian ones, may not be able to gather enough votes to pass resolutions and send opinions. These parliaments would then be more likely to focus on questions as a means of gaining influence over EU policy.

## **1.2 THE IMPORTANCE OF THE RESEARCH QUESTION**

Understanding when, why, and how different parliaments involve themselves in EU affairs is important at both the national level and the EU level. Recent debates about the EU's democratic deficit have argued that a potential way to make the EU more democratic and accountable is through an increased role for the national parliaments. This was a key motivation for introducing the subsidiarity role for the parliaments into the Treaty of Lisbon. However, it is not yet clear to what extent they are able to fulfill this task. If they are not, then other solutions to the democratic deficit must be found. If they are able to help establish a democratic link, then efforts to involve them should be increased. However, if some are able to do so and others are not, then such attempts may create an asymmetric democratic deficit, leaving some European citizens with less of a democratic connection to the EU than others. This dissertation therefore

has implications for both the broad policy decisions about how to deal with the democratic deficit, as well as for the academic literature about its causes and potential solutions.

This research also has implications for the national level, since it seeks explanations for the domestic balance of power between the government and parliament in EU affairs. As such, it speaks to the literature on comparative legislative-executive relationships. It will test whether some of the factors that we know are important for determining the balance of power for domestic policy are the same for European policy, as well as incorporating some new ones. European policy-making provides a nice way to examine legislative involvement on the same pieces of legislation across multiple countries, thereby controlling for an important source of variation that confronts comparative studies of legislative-executive relationships and would limit our ability to study it at the level of individual pieces of legislation.

While the impact of the EU itself is not generalizable outside of Europe, the presidentialization thesis (Poguntke and Webb 2007) does suggest that a similar deparliamentarization process may be happening to other legislatures around the world and is likely to continue. While the EU is the most integrated regional or world organization, many others are developing and globalization is requiring more international decisions. Many of the factors that explain the legislative-executive relationship in EU affairs may provide us with evidence about what will matter for other legislatures and executives around the world as they make decisions at the international or supranational levels.

### **1.3 OUTLINE OF THE DISSERTATION**

In the next chapter, I develop a theory about why parliaments will choose certain types of parliamentary tools in certain circumstances. I advance the argument about how institutionalization, publicity, and the type/number of actors required affect the usefulness of different parliamentary tools in various situations. I then turn to some of the variables that determine which situations the parliament finds itself in and attempting to address with some of the tools at its disposal. This leads to some general hypotheses about the factors that make parliaments more likely to use a certain tool under various circumstances.

In the following three chapters, I empirically test this theory and the general hypotheses for three parliamentary tools – questions, resolutions or opinions, and involvement in transposition. Each of these chapters discusses the use of that tool in more detail and reviews the expectations for when national parliaments are most likely to use that tool. I use both qualitative and quantitative data to test these expectations. The qualitative data come from over 170 personal interviews with members of parliament and their staff in five countries: Belgium, Denmark, Germany, Poland, and the United Kingdom. The original datasets include quantitative data on how often national parliaments have used each of these three tools. The final chapter concludes and draws general conclusions based on the three empirical chapters.

## **2.0 A PARLIAMENTARY TOOLS CONCEPTION OF INVOLVEMENT IN EUROPEAN AFFAIRS**

One of the major foundational issues facing the European Union today is the democratic deficit. Citizens across Europe do not feel that they are adequately represented or connected to the European institutions. There is a lack of democratic accountability and legitimacy. This issue is only becoming more problematic as the EU gains more power, including competences that are redistributive in nature, rather than just regulatory. Since such policies produce clear “winners” and “losers,” if the losers do not feel that they can have a say in the policy process, they are more likely to become discontented with the entire European project. The major crises of the past few years have only served to make this problem even more apparent. On the whole, only about 42% of Europeans are satisfied with the way democracy works in the European Union, while 48% were dissatisfied.<sup>12</sup> One possible solution to this problem is to increase the connection between citizens and the European Parliament. However, despite efforts during the most recent election cycle to increase interest in the elections and give them more weight by tying the selection of

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<sup>12</sup> Based on Eurobarometer Survey results from May of 2016, in response to the question “On the whole, are you very satisfied, fairly satisfied, not very satisfied, or not at all satisfied with... the way democracy works in the European Union?” 11% of respondents answered that they did not know. Eurobarometer surveys are available from the European Commission’s website at: <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/>.

Commission President to the outcome,<sup>13</sup> turnout for the elections was the lowest it has ever been. Turnout has consistently fallen in every European election, and was only at 42% in 2014, which is quite low in comparison to most national elections in Europe. European elections also tend to focus on national issues, decreasing the extent to which citizens are informed about the EU and the EP. Only about 40% of Europeans tend to trust the EP.<sup>14</sup>

If the European Parliament is not going to be a sufficient democratic link, at least on its own or in the short term, then another possible solution to the democratic deficit is to bring the national parliaments into the process. These institutions tend to be seen as bastions of democracy and are more well-known by their citizens. More citizens trust these parliaments than the EP, with 65% of citizens saying that they trust their national parliament.<sup>15</sup> The democratic legitimacy of these institutions has generally been long established, and they are seen as key features of democratic systems. However, this need was not recognized early on during the integration process, and attempts to bring the national parliaments into the process have been rather slow and incoherent. These efforts have been met with a variety of challenges, including political, procedural, institutional, and ideological ones. For example, opinion is not necessarily united on *whether* the national parliaments should be involved, and it is certainly not unanimous

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<sup>13</sup> Each of the main European parties nominated candidates (*“spitzenkandidaten”*) for European Commission President ahead of the elections, and there was general agreement that the candidate of whichever party did the best in the elections would be nominated for the presidency.

<sup>14</sup> Also based on Eurobarometer Survey results from May of 2016, available from the same website as above. This question was one in a series about various institutions, that asked, “And, for each of them, please tell me if you tend to trust it or tend not to trust it.” 46% answered that they distrusted the EP, while 14% answered that they did not know.

<sup>15</sup> Based on Eurobarometer Survey results of May 2016, available at the above website. The question reads, “I would like to ask you a question about how much trust you have in certain institutions. For each of the following institutions, please tell me if you tend to trust it or tend not to trust it? The (NATIONALITY) Parliament.” 28% of citizens said they tended not to trust it, and 7% said they did not know.

on *how* national parliaments should get more involved. More on these challenges is discussed below.

### **2.1.1 Stage 1 of parliamentary involvement: disinterest and non-involvement**

Despite these challenges, the role for national parliaments in the European Union has changed substantially over the course of the EU's development. Norton (1996) identifies three main historical phases. The first phase, which lasted from the 1950s to the mid 1980s, was one of parliamentary non-involvement and a lack of interest in being involved. Public opinion was generally in favor of the European project, the European footprint on policy was still relatively small, and there was general unconcern with allowing the government to make all decisions regarding 'Europe.' The Belgian *Chambre des Représentants* did set up a committee to focus on the European Communities in 1962, but it was not particularly active nor effective, and was abolished in 1979 (De Winter and Laurent 1996). The only other committees dedicated to Europe that were set up were in the generally less powerful upper chambers of places like Italy, the Netherlands, and Germany, and they were not particularly influential (Norton 1996).

### **2.1.2 Stage 2 of parliamentary involvement: fight for information and early participation**

The next phase that Norton (1996) identifies consisted of a fight for more information, the founding of committees, the establishment of procedures to process information, and participation via their governments and oversight over those governments. The change starts in 1973, with the accession of Denmark and the United Kingdom. Both of these parliaments wanted to ensure more of a role for themselves in European policy-making than the founding

member states' parliaments had, and so they set up committees dedicated to European Affairs. The Irish, who acceded at the same time, also set up a committee, but most Irish MPs saw it as a "complete backwater," because "its impact was very limited and its work was generally far in arrears" (O'Halpin 1996, 128-9). As the Irish example demonstrates, not all parliaments immediately followed in the footsteps of the Danish and British, but a series of changes in the 1980s increased their interest. One key change was the Single European Act, which meant a substantial increase in the scope and volume of European legislation. These new policies began encroaching on territory that used to be the purview of national parliaments. It also introduced changes to Europe's institutional rules, such as the introduction of qualified majority voting in the Council. This change meant that governments in the Council were no longer guaranteed a veto and could no longer protect the national interests as absolutely. The European Parliament, which had been directly elected since 1979, also gained some more institutional power during this period, but many national parliaments felt that it was not a sufficient replacement for their loss of parliamentary control. There was also a broader change of mindset as the world began to change in 1989, with the collapse of the Berlin Wall and the beginning of the end of Communism. Before that, "it was an easier discussion, since there was not much doubt about where you belong. There was still a 'never again' reminder".<sup>16</sup> However, that ideological purpose began to be less consistent, making it easier to question the European project.

These changes led the national parliaments to engage in greater specialization, greater activity, and some attempts to integrate Members of the European Parliament (MEPs) into their activities. Most national parliaments pursued greater specialization by setting up dedicated European Affairs committees during the 1980s, so that they were the norm by the 1990s. These

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<sup>16</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, May 21, 2013.

committees helped them engage in greater activity, particularly by devoting more time to scrutinizing EU-level documents and/or the implementation of European directives. There was also more involvement at the plenary level, such as through increased debates. Their attempts to integrate MEPs into their activities took different forms, such as including them on committees or allowing them to participate at their meetings, through meetings between MPs and MEPs, and through intra-party contacts. In conjunction with European Affairs committees that were separate from Foreign Affairs committees, there were also broader moves to treat EU politics as something separate from foreign affairs. This change often meant more rights for parliaments, which have often played a smaller role in foreign affairs. For example, this type of change allowed the French National Assembly to start passing resolutions on European Affairs. However, despite these types of changes, country-specific variation continued to limit there from being a uniform response by National Parliaments. There were also different interpretations as to what the problem of the democratic deficit was, and therefore what the best possible solutions to it might be. Therefore, Norton (1996) thought that these factors combined to “demonstrate that national parliaments not only remain marginalised within EC/EU law-making, but are increasingly marginalised” (182).

### **2.1.3 Stage 3 of parliamentary involvement: national parliaments as a solution to the democratic deficit**

Norton’s (1996) third phase consists of an attempt to solve this problem and address the democratic deficit. Many politicians, policy-makers, and academics believe that national parliaments are a crucial link in the democratic process and that they can provide a unique link between the citizens and the European Union. For example, Neyer (2012) draws on an idea of



legitimacy that is based in justification, such that all those whose freedoms are restricted have a right to have those decisions explained with good reasons. He argues that national parliaments are the only ones that combine a close attachment to the citizens with formal powers in the European political system. He therefore thinks that it is particularly important that they be involved in the constitutional and treaty processes. As another example, one MEP spoke about the necessity of giving the national parliaments a role, so that they could help people feel connected and “act as a bridge in a runaway world, since they are the ones close to the people.”<sup>17</sup>

Influence for national parliaments could potentially happen individually, with each national parliament taking a more active role scrutinizing its government, or collectively, with them collaborating and working together – or both (Norton 1996). Efforts to do both began with the Treaty of Maastricht and the Treaty of Amsterdam, before the introduction of more formal roles in the failed Constitutional Treaty and the Treaty of Lisbon. The Treaty of Maastricht gave a nod to the importance of parliaments, without clear rights or “teeth.” Speaking broadly, Declaration Number 13 states that it is “important to encourage involvement of national parliaments in the activities of the European Union.” In terms of individual involvement, it requires that “the governments of the Member States will ensure, inter alia, that national parliaments receive Commission proposals for legislation in good time for information or possible examination,” although it provides no clear instructions on how or when that must happen. It also took the first step toward collective action by parliaments. In Declaration Number 14, the Treaty “invites the European Parliament and the national parliaments to meet as

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<sup>17</sup> Member of the European Parliament, Personal Interview, *Espace Léopold*, Brussels, June 5, 2013.

necessary as a Conference of the Parliaments” that would receive a statement on the “state of the Union” and would be “consulted on the main features of the European Union.”

The Treaty of Amsterdam, through the Protocol on the Role of National Parliaments in the European Union, made some of these changes legally binding, but it still lacked many real rights or teeth. For example, it gave national parliaments the right to receive all European documents, including pre-legislative documents, but just says that each member state should make sure that its parliament receives the proposals “as appropriate,” rather than clearly specifying what responsibilities governments had. It did set out a six-week window between the issuance of a legislative proposal and its discussion/adoption in the Council to provide time for national parliaments to discuss it. It also recognized the role of COSAC and invited it to send communications on legislation to the EU institutions. The Treaty of Lisbon finally made these rights more tangible by having the Commission send all of the information directly to the national parliaments, rather than depending on governments to forward these documents. It also formally created the Early Warning System and political dialogue, which allow the national parliaments to communicate their views on policy proposals directly to the European Commission and gives them a possibility to delay or block legislation on certain grounds.

If national parliaments can use these tools, as well as individual tools at the national level to oversee their governments, then national parliaments may now be thought of as being involved in two of three of the chains of representation between citizens and the EU. The first chain, which national parliaments are not involved in, is a supranational chain that links citizens to the European Parliament. The second chain is a link from the national parliaments to the Council, through their governments. This chain is somewhat indirect, but it uses standard oversight tools that parliaments have at their disposal. The third chain is more direct, from the

people, through national parliaments, to the EU institutions, via the direct engagement with the European Commission that are part of the political dialogue and the Early Warning System (Cooper 2012).

#### **2.1.4 Procedural challenges to national parliamentary involvement**

However, a handful of challenges remain, which bring into question whether the national parliaments will be able to develop in this role and fulfill this role as democratic anchors of the European system. The first set of challenges are procedural (Norton 1996). As this project will explore, there is a lot of variation across parliaments in terms of the powers, institutions, procedures, and capabilities of legislatures. This is a problem for some of the individual parliaments, in that they do not have the power or capacity to fulfill this role, or can do so only partially. Some parliaments do not have the institutional capacity to keep up with the increasing workload from the EU, or may be less able to influence their governments. It is also problematic more broadly, in terms of collaboration between parliaments and their ability to function cooperatively. For example, a European Affairs Committee in one parliament may be very different from one in another parliament, which may make it difficult for them to understand the workings, potential, or purpose of another committee when attempting to work together. In terms of collaboration between MPs and MEPs, overlapping schedules and travel issues may make it difficult for them to find time to meet, and certainly can pose problems in terms of attending committee meetings or plenary sessions at the other institution.

Some parliaments also have existing institutions and norms that may constrain their ability to get involved or to collaborate. For example, one of the national parliamentary representatives serving in Brussels, while speaking about her ability to disseminate information

back to her national parliament, referred to the hierarchical structure of the secretariat, which meant that she was only allowed to send information to two people. This limits her ability both to get and give information. This issue is also mirrored on the political level. The European Parliament tries to communicate with her national parliament, but no one has a clear right to engage with representatives from the European Parliament. She mentioned that the Speaker of the parliament might have that right, but that he does not have the time to engage, and no one else is authorized to do so.<sup>18</sup>

### **2.1.5 Ideological and normative challenges to parliamentary involvement**

Another set of challenges with getting involved is ideological or normative, particularly in terms of what role national parliaments should play within the European system. First, although there may be some increasing disaffection, most elites are still pro-European. Since they tend to think that national parliamentary involvement is effectively negative involvement, they may not see this as a positive (Norton 1996). Some of them also believe that the European Parliament is the proper institution for parliamentary control of European policy-making. Other parliaments believe that their main concern should be monitoring whether European legislation complies with the principle of subsidiarity.<sup>19</sup> Other parliaments take a very formal view and consider that it is not part of their role to speak to other institutions directly, but should speak to them through their government. One such parliament is even hesitant to meet with lobby groups, even though

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<sup>18</sup> National Parliamentary Representative, Personal Interview, *Espace Léopold*, Brussels, June 4, 2013.

<sup>19</sup> National Parliamentary Representative, Personal Interview, *Espace Léopold*, Brussels, May 30, 2013.

they can be a good source of information and are frequent visitors to many legislatures around the world.<sup>20</sup>

### **2.1.6 Challenges to national parliamentary cooperation with the European Parliament**

Another potential barrier to further parliamentary cooperation is distrust or a sense of disconnect between the MPs and MEPs. Some of this is essentially a disconnect between the two groups. For example, one MP explained, “each group feel that the other doesn’t really care about the things they’re working on or that the other group is discussing things at a weird time when they are not relevant.”<sup>21</sup> These types of missed communications issues are relatively innocuous, and could potentially be overcome with better communication or other solutions. However, other issues may run deeper, including a sense by each group that their territory is being encroached on, leading them to not want to work together. A survey of German MEPs in the late 1980s showed that almost half of the respondents felt that their national counterparts had very little interest in collaborating with them, and about three-quarters thought this was due, at least in part, to a sense of rivalry that German MPs felt toward them (survey by Hrbek and Swchweitzer 1989, cited in Saalfeld 1993). There is also some evidence that national MPs may resent the lifestyle and posturing of MEPs, while MEPs resent that MPs do not take them seriously or properly credit the work that they do (Dinan 1994, Norton 1996). Issues like these might be more difficult to overcome, but could also potentially change over time.

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<sup>20</sup> National Parliamentary Representative, Personal Interview, *Espace Léopold*, Brussels, June 5, 2013.

<sup>21</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, May 21, 2013.

At a more institutional level, Winzen et al. (2015) look at the idea of coevolution between the European Parliament and the national parliaments. They find that where parties are culturally liberal, open to the idea of a European demos and political community, they tend to have a pro-EP attitude and will not tend to view the EP's development as competition. In contrast, culturally conservative parties that have "strong national identities and cultural demarcation preferences" and tend to be "critical of supranational parliamentarization" (90) are more likely to see the EP as competition. They also find that parliaments where the latter group of parties is stronger are the ones that tend to make reforms to strengthen themselves and give themselves the potential to be more involved in European affairs. For example, the Danish *Folketing*, which has more conservative parties, was already considered to be one of the stronger parliaments in relation to EU affairs and then made considerable reforms in the mid-2000s to strengthen itself further. In contrast, the German Bundestag, which has more liberal and pro-EP parties, made more minimalist changes. While this finding does not necessarily bode well for both collaboration and national parliamentary involvement, it does suggest that there may be two different paths for parliaments to take.

### **2.1.7 Electoral challenges to parliamentary involvement**

A larger and more fundamental challenge to national parliamentary involvement is an electoral one. Voters simply do not tend to care that much about the EU, so if we think that legislators are primarily "single minded seekers of reelection" (Mayhew 1974, 5), then we should not expect MPs to care much about the EU either. "For the people, it's hard to feel connected to the EU and

to realize how important the EU is, so it is hard for the MPs too.”<sup>22</sup> There is a large body of literature that discusses the second-order nature of elections to the European Parliament, meaning that even though these elections are about filling seats at the European level, the campaigns and votes are still based primarily on national issues (Reif and Schmitt 1980, de Vreese, et al. 2006, Bellucci, et al. 2012). If European elections are run on national issues, why should we expect national elections to be any different? If MPs cannot win votes for themselves or their parties by getting involved on EU issues, then they are very likely to lack the incentive to get involved at all. As one Danish MP said, “EU legislation is quite technical and it isn’t that close to the current debate in Danish politics; the people don’t care anyway, so it is not really a part of party strategy.”<sup>23</sup>

An additional electoral reason for MPs and parties to be reluctant about raising European issues is that most politicians and their parties, especially the main center parties, tend to be more pro-European than the public. For example, one Euroskeptic MP spoke about how European cooperation is good, but it has its limits, especially when it comes to the idea of a federal state. However, he said that they do not talk about that or have that debate in Denmark, because the pro-EU parties are “hiding that conversation.”<sup>24</sup> When parties positions do not align with their electorate, there is an electoral disincentive to show that to their voters or to bring up issues that might make voters aware of the divergence.

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<sup>22</sup> Member of Parliament, Personal Interview, Belgian *Chambre des Représentants*, Brussels, June 6, 2013.

<sup>23</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, May 22, 2013.

<sup>24</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, May 23, 2013.

### 2.1.8 Party challenges to parliamentary involvement

Another major challenge is that many political parties are also internally divided about European issues, which is another reason to avoid raising European issues. Edwards (2009) argues that these internal divisions are rooted in social cleavages (Lipset and Rokkan 1967). For example, the class cleavage led to the creation of social democratic parties, which tend to favor social equality and a more generous welfare state. However, EU integration goes against these on the one hand, by pushing for things like “increased capital mobility, pressure for greater labour flexibility, and heightened labour substitutability across countries,” which “diminish the bargaining power of labour” (Edwards 2009, 5). However, it also allows for continental regulation, at a time when national regulations may not be providing sufficient protection in the view of many of these parties. This is especially problematic in areas with strong welfare states and powerful labor organizations, like Scandinavia. For conservative parties, the opposite is essentially the case: EU integration is beneficial in that it gets the nation state out of the economy and clears barriers to trade and national regulations, but it risks replacing these with supranational regulations. These pros and cons tend to lead some members of each type of party to support integration and others to oppose it, depending largely on what issues are most important to them.

This type of intra-party dissent causes a number of more specific issues for parties. First, it makes it harder for them to strategically use EU issue salience (Steenbergen and Scott 2005, Netjes and Binnema 2007). Second, it makes it harder for voters to take cues from parties and to know how to feel about the EU or how to vote on EU related issues, such as referenda (Ray 2003, Gabel and Scheve 2007, Steenbergen, et al. 2007). One example was during the campaign and vote in the French referendum on the Constitutional Treaty. The *Parti Socialiste* was



initially unsure about what position to take, so it held an internal vote on the issue, which came out with 59% in favor of the Treaty. However, sentiment seemed to shift away from this conclusion throughout the campaign, leaving voters confused (Edwards 2009). A similar issue was apparent in the recent UK Brexit referendum, where the leadership of both main parties was formally for “remain,” but neither party seemed firmly in that camp. Such dissent clearly can cause outcomes in referenda that differ from what the parties want, but internal dissent can also hurt parties electorally in terms of general elections (Ferrara and Weishaupt 2004). Additionally, just as parties have tended to form along the left-right dimension, party competition has generally been structured along the left-right dimension. Raising issues of European policy, especially if multiple parties are internally divided on the issue, may make it difficult for a party to “score” points against the other parties or to win votes by doing so. For all of these reasons, political parties have tended to avoid politicizing integration (Ray 1997, Hooghe and Marks 2009). Without it being politicized, there is less reason for politicians to get involved.

Miklin (2014) argues that in order for parliaments to really get involved in European policy-making, “Europe” or European issues would need to be politicized domestically through policy proposals that polarize parties along the main left-right dimension, especially ones that separate the center-left and the center-right. If party politics became more central and relevant to European issues, parliaments would be likely to pay more attention to legislative proposals, leading to better scrutiny of the governments or direct involvement at the EU level.

### **2.1.9 European complexity as a challenge to national parliamentary involvement**

Finally, the length and complexity of the EU legislative process is itself a disincentive for national parliaments and MPs to get involved. It is a long process, which usually takes multiple years. It is also a complicated process, without clear points of influence or clear wins. Even if MPs do choose to get involved, the process can take so long and there are so many actors involved, that it may be hard to point to specific things that an individual influenced (Auel 2006). This means that even if an MP did think that she could gain electoral or party selection benefits from participating in EU affairs, it may be difficult to claim credit for any specific actions and reap those electoral benefits (Mayhew 1974).

However, despite all of these challenges, we do still see MPs and national parliaments getting involved in European affairs and doing so increasingly. Given all of the challenges outlined above, even any level of involvement might be more than we would initially expect. It suggests that they may see some amount of electoral benefit, even if it is small, or that they are protected enough by party selection that they can engage in other motivations than simply seeking reelection. It is interesting to note that of the parliaments I visited, the UK House of Commons, which uses a first past the post electoral system, was the only one for which the European Affairs Committee was a significantly Euroskeptic outlier. It was the MPs who were Euroskeptic, and who might have been able to gain votes campaigning against the EU, who joined the committee and were most involved in EU affairs.

## **2.2 THE PURPOSE OF INVOLVEMENT IN EU AFFAIRS**

### **2.2.1 Influence on European policies**

Given these various challenges to parliamentary involvement in European policy-making, why might parliaments choose to get involved? One of the goals of parliamentary involvement in European affairs is to influence policy-making. At the maximum, there is some evidence that parliaments think they have changed the position of both their governments and the overall outcome at the EU level. A Danish MP spoke about one of the directives on car emissions, for which the initial Commission proposal had standards that were not as strict as those currently in place in California. The Social Democrats, the Social Liberal Party, and the Socialist People's Party were able to get a majority coalition against the government, arguing that they needed to fight for the same level of standards that California had. The government, despite its subsequent efforts, had to go along with the parliament's position. Denmark's vote then became key to the decision in the Council, so they had to put the legislation on hold. During EP elections the following year, the emissions became a big issue, and in the end they were able to get standards that were almost as high as those in California.<sup>25</sup> In order for a national parliament to have this amount of influence, a number of factors have to combine, including the fact that Denmark's vote was key in the Council. It is not the level of influence one should expect to see on a normal basis, but it is an example of how much influence a parliament can have under the right circumstances.

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<sup>25</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, November 5, 2014.

Additionally, some of this may have been possible because of another factor working in the parliament's favor – a minister who agreed with them more than the cabinet or her party. A former Danish minister spoke about how she wanted a different emissions cap than her party did, so she used the pressure from the parliament to put pressure on her own party and as a bargaining chip.<sup>26</sup> In this way, parliaments can have more influence if there is a split in the cabinet or party.

For another example of national parliaments believing they have successfully changed their government's opinion on EU legislation, if not the final outcome of EU legislation, one can look at the British government's position on the Human Trafficking Directive. The British initially exercised their opt-out of this directive. However, one British MP spoke about how they “began by forcing the Government to sign up to the human trafficking directive when they seemed reluctant to do so” and about how he was “the person who forced the Prime Minister eventually to sign up to the directive on human trafficking, which he had refused to do for several months, during which he wiggled and wiggled.”<sup>27</sup> In the end, the UK applied to opt-in to the Directive, which it did in October 2011.

Despite these examples that demonstrate that it is possible for parliaments to substantially change overall positions of their governments or the final legislation, this is not the bar that we should expect national parliaments to achieve on a regular basis. Even at the national level, most European parliaments are policy-influencing bodies rather than policy-making ones, meaning that they can “modify or reject measures brought forward by the executive but cannot formulate and substitute policies of their own” (Norton 1994, 19). We should not expect them to do more than this at the European or international levels, and should probably not expect them to do as

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<sup>26</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, May 21, 2013.

<sup>27</sup> Michael Connarty, MP for Linlithgow and East Falkirk (Labour). Hansard, 17 March 2015, Column 691 and Column 669.

much, since they are less central players. At the least, even an individual parliament that had perfect control over its government could not reject EU legislation on its own, except in cases where the Council decides by unanimity, which is a consistently decreasing share of all decisions. Parliaments operating with less than perfect control of their executives and in a system of qualified majority voting in the Council are likely to have to consider smaller policy modifications as successful influence.

National parliamentary involvement in European policy-making, especially in terms of direct influence at the European level, is still something new. Especially considering the generally low level of parliamentary involvement in international negotiations, we should not expect too much too soon. If we expect to see too much influence on legislation, we may be disappointed. For example, the Early Warning System, discussed below, allows national parliaments to write reasoned opinions that notify the Commission when they think that legislation should be dealt with at the national level, rather than the EU level (according to what is known as the subsidiarity principle). Collectively, they can force the Commission to reevaluate the proposal. This instrument is one of the strongest, most direct tools that national parliaments have, but the common expectation and observation after a few years is that actual influence is minimal. As a parliamentary staff member noted, “you are only a small voice in the Brussels sea.”<sup>28</sup> Academics have also doubted the actual influence that parliaments can gain through this type of subsidiarity control (Kiiver 2008, Raunio 2010).

The actions of the national parliaments may also have a differential impact based on the way that parliaments use the tools at their disposal and on what they are seen to signify by other

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<sup>28</sup> Unit for European Affairs Staff Member, Personal Interview, Permanent Representation of the State of Hessen at the Federal Government, Berlin, October 21, 2014.

actors. The German *Bundesrat* generally passes many more reasoned opinions than the Bundestag. As one staff member for a Land representation explained, this is because the governing coalition of the Bundestag generally thinks “it’s the job of the federal government, so they will only pass these if the federal government encourages it.”<sup>29</sup> Recognizing this, when the Bundestag did recently issue a reasoned opinion, the Commission apparently called them right away since it took the opinion to mean that the German federal government was also against the proposal.

### **2.2.2 Deliberation**

Even if national parliaments cannot be expected to regularly and profoundly sway outcomes at the European level, there are other objectives that they may be able to achieve. Auel (2013) argues that the deparliamentarization thesis is most valid if you focus on policy-making, but that there are other important things that parliaments do. One such task is deliberation. Much of parliamentary debate and speech has been disregarded as cheap talk that is essentially party showmanship, aimed at making one’s own party look more attractive to voters and making other parties look less attractive. However, there is also evidence that “legislative speech can be deliberative, i.e. reasoned, respectful, informed, and oriented toward finding agreement” (Bächtiger 2014, 145). “Deliberation should generate decisions that are better reasoned and informed, more public-orientated and consensual, and consequently more legitimate and effective” (149). The fact that European issues may be less useful electorally may decrease the usefulness of party cheap talk, thereby opening the door for more actual deliberation, either on

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<sup>29</sup> Unit for European Affairs Staff Member, Personal Interview, Permanent Representation of the State of Hessen at the Federal Government, Berlin, October 21, 2014.

the plenary floor during debates or in committee meetings. Cooper (2012) also argues that there is now some deliberation occurring among national parliaments, through increased political cooperation, and with the Commission, through the political dialogue.

### **2.2.3 Government oversight**

National parliaments could also choose to focus primarily on oversight of their governments. The oversight function of parliaments treats parliaments as a principal, who has the democratic legitimacy to be in charge of policy-making, but who sometimes chooses to delegate this task to another actor who may have more expertise or as a way of reducing the principal's workload. This fits particularly well with the idea of an information asymmetry, in which the agent is more informed about the policy area or the effects the policy will have on the world, which is the primary incentive for delegation. Under this logic, it makes sense for parliaments to delegate much of European policy-making to their governments. However, the tradeoff is that the principal loses some control over the policy, which may result in policy drift away from the principal's preferences. This leads to oversight efforts, so that the principal can monitor what the agent is doing. Most of the tools described below can be used for oversight, but having ministers come to committee meetings or the plenary to report on Council meetings and/or answer questions are some of the clearest oversight mechanisms.

### **2.2.4 Communication**

Parliaments also may be able to communicate with their publics about the EU by getting involved. Parliamentary debates and other public speech about the EU can help express the pros

and cons of different issues and package those ideas together, allowing for justification and politicization of European issues (Auel 2013). This type of communication function is potentially crucial to the ability of the national parliaments to play a role in diminishing the democratic deficit, since if national parliaments are not engaging with their publics on EU issues then they cannot help bring the publics into the EU process (Auel and Raunio 2014b). However, there is some evidence that parliaments, or at least the Austrian parliament, may not be very interested in fulfilling this role. Pollak and Slominski (2014) looked at three recent treaty revisions (the Treaty of Nice, the Constitutional Treaty, and the Treaty of Lisbon), which are some of the major European “constitutional moments” when one might expect the people and parliaments to be most interested. They found that the Austrian parliament and parties engaged in relatively modest efforts to inform Austrian citizens. They also found that individual MPs were reluctant to communicate with their constituents, because they did not feel rewarded by voters or the party for doing so. All communication efforts were top down and did not engage citizens in a deliberate way.

### **2.2.5 Representation**

Communication efforts may be an important component to the final, and possibly most important, role that parliaments could play in relation to European affairs – representation. The democratic deficit is fundamentally about a disconnect between the citizens and the European institutions. It is one of the main motivations for trying to increase the role of national parliaments in the European Union, since they have such a direct connection to the citizens. As mentioned above, they are an integral link in the chain of representation that links their governments (as Council actors) to their citizens, and through the Early Warning System and



political dialogue, they are now also a direct link between the Commission and their citizens (Cooper 2012). Academics have tended to have a more positive view about parliaments' ability to matter in this regard, particularly through the Early Warning System (Barrett 2008, Dougan 2008, Louis 2008, Maurer 2008, Piris 2010), but some have also been concerned that it might have a negative effect (Fraga 2005, Kiiver 2006, Raunio 2007). There have not yet been many attempts to empirically determine whether the national parliaments are really fulfilling a representative function.

### **2.3 CHARACTERISTICS OF PARLIAMENTARY TOOLS**

If parliaments are going to achieve any of these goals, they will need to make use of the various tools at their disposal. I contend that a greater focus on these tools, especially on three key characteristics of these tools, will allow us to gain a more nuanced understanding of the circumstances under which parliaments will use each of these tools to get involved in EU policy-making. As I will detail below, most of the early literature that endeavored to explain national parliamentary involvement focused on the types of formal and institutionalized oversight rights that parliaments had. They generally did not focus on the extent to which they actually used these tools or on other types of tools. They found that the institutional strength of the parliament and the levels of public Euroskepticism were the consistent factors that explained these rights. Some of the more recent literature has examined a greater variety of tools and their use during the crisis period, although results thus far have been largely inconsistent. Most of this work has not explicitly considered how the type of tool under consideration matters for explaining its use. I argue that it is essential to consider these differences and that there are systematic

considerations that help us understand why certain tools are used in certain situations and for certain purposes. I therefore consider three main characteristics for each tool. The first is how formal or institutionalized it is, in terms of how much institutions must be changed to repurpose it for use in European affairs, to strengthen it, or to increase its use. The second is what type of actor it is available to, such as whether it is something that individual MPs can use, party or majority support is required, or the opposition can use it. The third is how public it is, in terms of its visibility to the media and citizens.

Every parliament has a set of tools, or a toolbox, at its disposal. Some of these tools are available to every parliament, although even these may vary in quality. For example, all of the parliaments under examination here have a European Affairs Committee. However, they vary in size (number of members), which may impact their capacity to process information and conduct business. The EU Select Committee in the House of Lords has six subcommittees with over seventy members. By comparison, the European Union Affairs Committee in the Polish *Sejm*, which is the largest committee in that chamber, only has about forty-five members. These committees also vary in terms of prestige, supporting staff, institutional powers, and level of activity. Despite these differences, the committees will always be more or less useful than other tools in certain situations. For example, committees are always going to be more useful for the detailed work of deciding which dossiers from the Commission are worthy of further attention than some other tools, such as a debates. On the other hand, if a parliament is trying to communicate with its public about the EU, debates are much more likely to be useful than committee work. If one is trying to hammer a nail, even a poor quality hammer is going to be more useful than a screwdriver.

However, if one knows that one has a poor quality hammer, then there are certain situations where switching to using a screw and screwdriver might be more effective than using a hammer and a nail. For example, a parliament that has a relatively weak European Affairs Committee and wants to control what its government does in the Council might be better off turning to the public as a form of control. In this case, they will want to use a more public tool, such as parliamentary questions or debates.

In another example, some parliaments like the Swedish *Riksdag* and Danish *Folketing* have strong mandating power over the positions their governments can take in the Council. At times, these parliaments have decided to focus on consultative, pre-legislative documents when communicating directly with the Commission about the documents it sends them, rather than on legislative proposals (Commission of the European Communities 2009). Since they are able to participate in legislative proposals by monitoring their government's position in the Council, they generally do not use the tool of opinions for the same purposes. Instead, they reserve that tool for consultation documents, where they do not have an alternative tool.

Parliaments can classically be divided into “talking shops” and “working parliaments,” based largely on the strength of certain sets of tools and a focus on these tools. Some parliaments, like the British House of Commons, focus largely on questions and debates, and are considered largely talking shops. Others, like the German *Bundestag*, focus more on shaping policy directly, often through the committee system. Questions tend to be more important in talking parliaments, like the UK, whereas more tends to get done through closed-door cooperation with the government in working parliaments like the German *Bundestag* (Rozenberg, et al. 2011). Wessels (2005, 462-463) finds that: “working parliaments – those where the governance function is obviously dominant – regard themselves as powerful enough to

play the European policy game in direct contact with the government, informal coordination and bargaining. ... Parliaments that serve more as houses of deliberation, [in contrast] use articulation and voice as the way to react to European policy-making.” These tendencies are part of why research on national parliaments has tended to find that patterns of behavior have tended to follow over from domestic affairs into EU affairs, and then into EU crisis activity. These patterns of behavior might also be considered to be parliamentary strength, particularly if one only considers certain tools. Since some measures of ‘parliamentary strength’ also include the strength of some of these tools or related tools, it is less surprising that they then predict stronger tools or increased use of them.

A similar conception of tools and a “toolkit” has been developed for governments, which have “a set of basic tools or instruments which have to be continually drawn upon, combined in varying mixes and applied to the staggering multiplicity of tasks which modern government is (or feels) called upon to undertake” (Hood 1983, xi). These tools can be divided into detectors, which governments use to take in information, and effectors, which governments use to try to change the world around them. This classification can be applied to the second and third phases of national parliamentary involvement described above. Much of the second phase involved strengthening parliamentary detector tools, which allowed them to gain more information about what policies were being proposed and passed at the EU level and their governments were doing at the EU level. Once they had this information, they could begin to strengthen their effector tools, primarily through oversight of their governments. During the third phase, they continued to strengthen the detector tools, while focusing more on improvements to the effector tools, especially through direct involvement with the Commission and attempts to work collectively.

Hood develops what he calls the NATO scheme, which has no relation to the North Atlantic Treaty Organization, but rather refers to the four basic resources that governments have that allow them to make use of their tools. These are: nodality, or being at the center of the system with access to a variety of information; treasure, which includes both money and other fungible resources; authority, or the possession of official power; and organization, which in this case means “the possession of a stock of people with whatever skills they may have (soldiers, workers, bureaucrats), land, buildings, materials and equipment” (6). These resources provide governments with several basic types of tools, from which many other hybrid tools can be developed. Parliaments generally have all of these resources, although to a lesser extent than their governments. Their sense of nodality is particularly limited in terms of the EU, and we can see the strengthening of their detector tools as an effort to increase this resource. They also have less authority at the EU level than their governments do, but it is important to consider an extension of authority that comes from democratic legitimacy. This type of authority is where parliaments may be stronger than their governments and it is what may be so crucial to addressing the democratic deficit.

An extension on governmental tools looks at the tools of third party government (Salamon 2002). This work sets out four main dimensions on which to compare this set of tools. The first is the degree of coerciveness, based on how much it actually restricts behavior, rather than simply incentivizing or disincentivizing it. The second is directness, which measures how much delegation is involved. The third is automaticity, which measures the extent to which a tool uses the existing “administrative structure,” rather than creating its own (32). The fourth is visibility, which measures the extent to which the tool shows up in the normal budgetary process.

The first two characteristics do not apply to the theory of parliamentary tools developed here. The second two can be loosely related. Automaticity can be compared to how formal or institutionalized a tool is, particularly in terms of to what extent changes to institutions were required to make it a useful tool for European affairs. Do rules and procedures need to be changed to use that tool for EU affairs? If so, can the parliament make those changes on their own, or does the government need to be involved? Under this conception, an institutionalized or formal tool is one that is non-automatic. Existing institutions must be adapted or new ones developed in order for that tool to be useful in EU affairs. In contrast, less institutionalized or formal tools are ones that are automatic – the existing institutions can be more automatically used to help parliaments become involved in European policy-making.

This level of institutionalization and automaticity is the first of the main characteristics that I argue is important when comparing parliamentary tools. For example, the European Affairs committees are quite institutionalized or non-automatic. While committee systems existed, committees tend to show a fair amount of stability over time and to an extent across parliaments. Most parliaments have a committee on foreign affairs, a committee on the environment, etc. Creating a new committee, and particularly creating a new committee with prestige, staff, (strong) powers of oversight, and potentially special prerogatives, such as mandating the government or being able to make decisions on behalf of the plenary, requires the development of a new institution or the adaptation of existing institutions. It is generally much easier to use an existing institution, even if using it for a different purpose, than it is to adapt or create institutions. Changing or creating institutions is also more likely to be conditional upon the existing institutions, as these have a tendency to path-dependent.

Transposition is also institutionalized or non-automatic. Every parliament has some sort of arrangement with its government about what types of legislation are considered primary legislation and what is secondary or delegated legislation, as well as what procedures surround each type of legislation. Many of the parliaments and their governments have since come to agreements about how this applies to the transposition of EU laws, and changing these requires a change to the existing laws, procedures, or other institutions. In contrast, an MP can automatically use parliamentary questions to ask about European matters without having to adjust the institution. This tool is a key example of a less institutionalized, or more automatic, parliamentary tool.

Various other tools require different levels of institutional change in order to adapt them for use in EU affairs or to strengthen them. For example, in 2013, the UK House of Commons “indicated it was in negotiations with the Government” to change the institutions surrounding various elements of its scrutiny procedure, “including: whether the Explanatory Memorandum (supplied by UK ministries on Commission proposals) should contain a detailed statement on subsidiarity scrutiny... [and] strengthening co-ordination with other national parliaments,” among others (COSAC 2013a). The House of Commons can write reasoned opinions whether or not the Explanatory Memorandum includes a detailed statement on subsidiarity, so this type of change does not preclude them from writing reasoned opinions. However, they believe that it would strengthen this tool. As a legal council for the Commons’ European Scrutiny Committee said, “the government has a frustrating habit of saying that the legislation is not necessary, and yet not having subsidiarity issues.”<sup>30</sup> Since the Commons’ committee is a Euroskeptic outlier

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<sup>30</sup> Legal Counsel to the European Scrutiny Committee, Personal Interview, UK House of Commons, London, December 4, 2014.

compared to the rest of the House, they would generally be happy to agree with subsidiarity complaints if given a reasonable argument. Being in agreement with the government would only strengthen both of their positions in Brussels. They therefore believe they could more effectively use reasoned opinions if this institutional change was made. Interparliamentary cooperation is also a tool that they can use without substantial changes to institutions, since they can attend inter-parliamentary meetings and make phone calls to other parliaments, but again, there are institutional changes that could be made that would strengthen this tool.

Institutional changes may also be necessary at both the national and European levels, depending on the change. For example, there has been considerable discussion (and one attempt at) introducing the idea of a “green card,” which would allow a group of national parliaments to collectively suggest that the Commission propose new legislation. This could conceivably be done under the guise of the political dialogue between the Commission and national parliaments, although then it would not be a particularly strong tool, since the Commission would be under no obligation to listen. However, some parliaments are concerned that even doing this as part of the political dialogue would require treaty change at the European level, since the treaties do not suggest any power of initiation for the national parliaments. Interestingly, the Polish *Senat* has also suggested that this type of tool would require institutional changes at the national level as well, since there is “no legal basis for proactive actions in external and European relations within the framework of Polish Constitution and law. According to the Polish Constitution, only the Government had a right to pursue an external policy, while the Parliament could only control and verify it” (COSAC 2015b). Thus, one needs to consider the institutional changes that may be necessary at all levels.



Returning to the aforementioned tools of third party government, the characteristic of visibility is loosely related to the level of publicity of certain parliamentary tools. In the case of parliamentary tools, we are not interested in how visible they are in the budget, but rather in how visible they are to the public. Does the public have any awareness that the tool exists? Will they notice if it is being used in reference to EU affairs rather than domestic politics? For example, transposition is likely to be very not public, except possibly in the case of very contentious policies. Most of the work that EU Affairs committees do is also relatively not public. While most of these committees have at least most of their meetings technically open to the public, few citizens or media are likely to attend these meetings or view them through a parliamentary television station. De Ruiter (2014) shows that British and Dutch opposition MPs do most of their “shaming” over what the governments are doing under the open method of cooperation (a system of voluntary cooperation and sharing of best practice in non-EU policy areas) in committees, so it is not getting covered in newspapers and therefore is not reaching the public. If MPs or parties wanted to use this type of “shaming” to score electoral points with their publics, or at least with the Euroskeptic portions of their publics, using a more public tool would be more effective. To whatever extent there is an electoral benefit to discussing the EU or being involved in its policy-making, both individual MPs and political parties need to communicate these things to their publics. Tools that are visible to the public are the best option for individuals or parties that want to “score points” with voters, and they are also the best (and possibly only) way that national parliaments may be able to increase a sense of connection between voters and the European Union.

There are some times when using less public tools like these is clearly a benefit. This is particularly true if using a public tool would publicize existing divisions between or within the

governing party or parties (Auel and Raunio 2014b). Public tools can also be problematic if doing so could cause problems in Brussels. First, it would risk showing weakness and division to other governments, letting them know that there is not a united front. Second, it could make the negotiation strategy for the Council public to other governments. This concern may lead some committees to close their doors, especially if they are discussing the issue of the government's position ahead of Council meetings (Auel 2013). One Danish MP spoke about how they will have closed meetings if they are going to talk about what other governments or national parliaments are going to do, especially since it would "come off weird" that the Danish parliament is, for example, talking about the British parliament.<sup>31</sup> Another Danish MP said that the effect of having made the committee meetings open was that they started having much of the actual negotiation before the actual meetings.<sup>32</sup>

The third main characteristic of parliamentary tools is what type of actors are required to use them. The first component of this is whether individuals can use them, or whether they require the support of one or more parties or of the parliamentary majority. An individual member of parliament can use some tools, like parliamentary questions. Other tools require the support of a party, such as (in many cases) proposing a resolution or requesting a debate. Still other tools require a majority of parliament, such as voting to pass a resolution or reasoned opinion. A divided parliament is likely to find it easier to use individual tools than ones that require party or majority support.

The second component of this characteristic is whether it is a tool that can be used by the opposition. Opposition MPs generally have very different goals than MPs from governing

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<sup>31</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, May 21, 2013.

<sup>32</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, November 7, 2014.

parties, and since they likely have less influence over policy, they are more likely to turn to electoral goals like regaining power. They also have different options for influence, and therefore tend to use the tools at their disposal. They often cannot influence policy by reaching out to a minister for an informal discussion, so they may be more inclined to reach out to the public and the media to place pressure on that minister.

There is some evidence that tools of the opposition may have different effects. Salmond (2011) examines spontaneous questioning, or the ability of MPs to ask questions that have not been given to the ministers before hand, usually as follow-ups to other questions. He finds that those parliaments that allow spontaneous questioning have ministers that are less likely to delegate, because they are more concerned about getting caught off-guard. He tests this by replicating Huber and Shipan's (2002) study, and shows that more open procedures (more allowance of spontaneous questions) lead to less delegation. This is in contrast to what Huber and Shipan found, since questions are a reliable non-statutory factor, and they found that only unreliable non-statutory factors impeded delegation. What is different about open question time from other reliable non-statutory factors that Huber and Shipan study is that it is a tool of the minority, rather than the majority. When the majority wields all the oversight tools, then dull tools make them more vigilant, but when the minority wields them, sharp tools will lead to more detailed legislative instructions. Another reason why it matters whether the opposition can use a tool is that Euroskeptic parties have thus far almost always been in the minority, so they should be more likely to use these tools, especially when they are also public tools.

## 2.4 TOOLS FOR EU INVOLVEMENT

If MPs and parliaments *are* going to get involved in European policy-making, there are a variety of tools that they can use in order to do so, and the set of tools at their disposal has increased, both as parliaments have pushed for more rights at the national level and because of those given to them at the EU level. Some parliaments themselves have cited these developments. The Austrian parliament “argued that it had to make use of new instruments and mechanisms and to become more involved while it also said that Parliaments/Chambers needed to create new mechanisms, on the European level and between national Parliaments and the EU institutions, which have full democratic accountability” (COSAC 2013a, 7). Even more specifically, the Danish *Folketing* sees itself “as an active player scrutinising the national government as well as European decision-making; applying existing tools to European decision-making and to developing new tools - for instance through inter parliamentary cooperation” (6-7). COSAC surveyed parliaments in 2013 to ask them about the various tools, or mechanisms, that they used to scrutinize EU affairs, either via their governments or the EU institutions. I will briefly summarize some of the tools available to parliaments below, along with their basic characteristics. The specific tools of questions, opinions and resolutions, and transposition will be discussed further in the empirical chapters that focus on those tools.

### 2.4.1 European Affairs Committees and scrutiny systems

One of the first EU-related tools that parliaments established for themselves was the establishment of dedicated European Affairs Committees, which generally oversee the scrutiny process. There is a lot of variation in terms of strength, power, composition, and procedures.

Some committees in bicameral systems are joint between both houses, such as in Spain or Ireland, while some have two separate committees. They also vary quite a bit in terms of the strength and prestige of the committees within parliament. For example, the Danish European Affairs Committee is one of the strongest committees in their parliament, although it is still a “committee of the nerds.”<sup>33</sup> The Europe Committee in the Polish *Sejm* is the largest of their committees, made up of about 10% of the *Sejm*’s full membership, and unlike other committees, it meets during weeks without plenary sessions and during election periods.<sup>34</sup> In contrast, the Belgian *Chambre*’s committee is an “advisory committee” that “can only advise, with no decision power.” One MP spoke about an analysis on the roles of the national parliaments that they had received, which said that they played one of the smallest roles.<sup>35</sup> Another Belgian MP characterized the work of the committee as consisting of a “loud debate about what went wrong.”<sup>36</sup>

There is also variation in the main way that parliaments and committees engage in scrutiny. One of the main scrutiny styles, such as that engaged in by the British House of Commons, is focused on documents. The European Scrutiny Committee in the House of Commons receives documents from the Commission, accompanied by an Explanatory Memorandum from the government that explains its position on the document. The committee engages in “sifting” of these documents, and either clears the document from scrutiny or chooses

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<sup>33</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, May 23, 2013.

<sup>34</sup> Staff Member, Personal Interview, Polish *Sejm*, Brussels, June 4, 2013.

<sup>35</sup> Member of Parliament, Personal Interview, Belgian *Chambre des Représentants*, Brussels, June 6, 2013.

<sup>36</sup> Member of Parliament, Personal Interview, Belgian *Chambre des Représentants*, Brussels, June 6, 2013.

to ask more related questions to the government. Ministers are not supposed to vote in the Council until parliament has cleared the document from scrutiny.

Another main scrutiny style, which is used in the Danish *Folketing*, is focused on providing a mandate for the government ahead of each Council meeting. The relevant minister explains to the committee what position it plans to take, the committee may ask the minister questions, and once it is satisfied with the minister's position, it gives him a mandate to negotiate from that position in the Council. The main reason why a minister will tend not to get a mandate from the Danish committee is because they were unprepared and could not answer the questions. Usually, in this case, they will come back after further preparation, potentially after making a compromise, and will then receive the mandate. Additionally, since the same legislation may get discussed numerous times in the Council, there is also a trend for ministers to come as early as possible on the legislation to get a mandate, which then tends to result in a relatively open mandate with more flexibility. The idea is that they should then come back and have it strengthened on the important issues as the legislation progresses, but they rarely come back and usually the early mandate holds.<sup>37</sup>

It is worth noting that there is some debate over whether having a mandate (or any other clear statement from the national parliament that effectively constrains the government's negotiations) helps or hurts the national interest at the European level. On the one hand, it might strengthen their position because they can point to these constraints as a reason why they cannot shift beyond a certain position, or it might hurt because they cannot be flexible and so other countries might choose to just work around them instead. Another issue might be if negotiations at the national level demonstrate weakness or division. A Danish MP and former minister

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<sup>37</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, October 29, 2014.

expressed the need for ministers to get as large of a majority behind the mandate as possible, so that they can show Brussels that they have a united front and to ensure that they “take care of the dirty laundry at home.”<sup>38</sup>

A third main scrutiny style involves “mainstreaming” EU legislation out to the sectoral committees so that it gets dealt with more likely any other national legislation. The German *Bundestag* and the Irish *Dail* do this, leaving the European Affairs committee to deal mostly with fundamental questions of integration (e.g. treaty changes), broad legislation, and subsidiarity concerns. The German committee also plays a coordination role when a single piece of legislation involves multiple sectoral committees (Auel 2006).

Mainstreaming has a number of benefits. It allows those committee members with expertise in the policy area of the legislation to scrutinize it, which likely leads to better scrutiny of the actual policy than forcing EU committee members to act like a “jack of all trades” or to focus on the integration questions involved in policy, rather than its substance. It also involves all members in European affairs, increasing overall interest. In contrast, one Danish MP estimated that 90% of all EU scrutiny happens in the EU committee and only involves those members.<sup>39</sup> Mainstreaming also cuts down on the overwhelming amount of work given to just one committee, and lets the EU committee focus on “big” things, like the stability mechanisms after the economic crisis, the EU 2020 strategy, or the multi-year financial frameworks.<sup>40</sup>

However, there are also some challenges that mainstreaming creates. If parliaments do not have a central ‘screening’ committee to select the most important information coming from

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<sup>38</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, May 21, 2013.

<sup>39</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, May 23, 2013.

<sup>40</sup> National Parliamentary Representative, Personal Interview, *Espace Léopold*, Brussels, June 4, 2013.

the Commission, the problem of information overload may become more acute. It may also result in a loss of visibility for the EU committee,<sup>41</sup> and if that is not countered with increased visibility for EU issues elsewhere in the parliament, it may limit the visibility of EU policy-making. It may also result in less actual involvement. Mainstreaming may make interparliamentary communication or coordination that much more difficult. For example, the national parliamentary representative of a parliament that does not even have full mainstreaming but makes an effort to get the standing committees involved spoke about how it was impossible for him to deal with approximately 25 standing committees, so he focused on three or four committees engaged with policy areas that have more EU legislation and for whom EU proceedings might be of more interest, like the environment committee.

Of these three main types, primarily document-based systems are the most common, with about 20% of parliaments using them. Just under 10% each use primarily mandating or mainstreamed systems. About 30% use mixed systems, while another 30% used some other type of system. These numbers, gathered in 2013, reflect an increase in the number of mixed systems and the overall complexity of scrutiny systems (COSAC 2013b). Some of this increased complexity may be a beneficial result of the sharing of best practice between parliaments, which has also been particularly helpful to those countries that have acceded to the EU recently. This newer group of member states seems to have learned from their predecessors and they have, on average, implemented more comprehensive scrutiny measures (Auel and Raunio 2014b).

European Affairs committees are relatively institutionalized and non-automatic tools for their parliaments. They are institutions that have had to be built up specifically for use in

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<sup>41</sup> National Parliamentary Representative, Personal Interview, *Espace Léopold*, Brussels, June 4, 2013.



European affairs, and they tend to function somewhat differently. This is especially true where there are well-institutionalized systems for mandating the government or for scrutiny reserve, which do not exist in other committees. The establishment of mainstreaming systems requires institutional changes to all committees in the parliament, not just European Affairs committees. Other institutional changes have also been implemented, such as giving some European Affairs committees the right to make decisions on behalf of the plenary in ways that other committees cannot. The strengthening of these committees has therefore been relatively slow over time and the strongest committees tend to be found in those parliaments that were already institutionally strong. The work that these committees do is generally not very public, since neither citizens nor the media are likely to sit on their committee meetings or read any minutes of these meetings. They are somewhere in the middle in terms of how many actors they require, since they are not an individual tool, but decisions also do not require a plenary majority. Usually these committees are still proportional to the plenary and so will have the same influence from governing parties. However, some committees, such as the one in the German *Bundestag*, have a tradition of being chaired by someone from the opposition.

#### **2.4.2 Basic legislative tools, repurposed**

Some of the tools that national parliaments use to influence EU policy and oversee their governments' actions at the EU level are the same ones they use to influence and oversee domestic issues. One such tool are parliamentary debates. Debates may be one of the most important ways that parliaments connect with citizens and may be particularly important for communicating with them (Auel and Raunio 2014b). However, debates may be limited as a tool for constraining the government because many debates that include European issues may also

involve domestic ones, which may make it difficult for the government to parse out the parliament's exact position (Auel 2006). EU issues may also be set in the larger context of debates about foreign affairs.<sup>42</sup> Additionally, debates may not be able to have the clearest impact on government actions because they often include a variety of views, without necessarily coming to a firm conclusion. The prospect of debates to influence actual EU policy-making may also be limited by the larger difficulty of synchronizing issue discussion at the EU and domestic levels, so that "things may no longer really be relevant at the EU level by the time they get debated in the national parliament."<sup>43</sup>

Auel (2006) initially found that purely focused EU debates were relatively rare, although there is some evidence that they are becoming more common, especially in light of the recent crises.<sup>44</sup> During the 1994-1998 session of the German *Bundestag*, they received 2,070 documents, made recommendations on 158 of them, which is a precondition for debate, but they only actually debated 36 of these (1.5%). In the 1998-2002 session, they received 3,137 documents, made 102 recommendations, and debated 64 (2%) (Auel 2006). About a decade later, focusing in on debates held in relation to the European Arrest Warrant, the Services Directive, and providing financial aid to Greece in the spring of 2010, Auel and Raunio (2014a) find that the *Bundestag* had by far the highest share of EU debates in comparison to the French *Assemblée Nationale*, the Finnish *Eduskunta*, and the UK House of Commons. They found that the *Bundestag* was the only of the four in which standard EU legislation was often debated on the floor. The Finnish *Eduskunta* had the fewest EU-related debates. As the case selection for this study and the finding about the Bundestag may suggest, it does seem that many parliaments

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<sup>42</sup> Member of Parliament, Personal Interview, Polish *Sejm*, Warsaw, September 24, 2013.

<sup>43</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, May 21, 2013.

<sup>44</sup> Member of Parliament, Personal Interview, German *Bundestag*, Berlin, October 10, 2014.

save debates for the bigger issues, especially since some parliaments, like the House of Commons, have agendas that are predominantly set by the government.<sup>45</sup>

Debates are clearly a public tool, and have the most potential for communication with the government and the public. If the debate comes to a clear conclusion, they may also serve to politically force the government to take a certain position, since it would be difficult for it to publicly go against the government after such a public display. They are relatively automatic and less institutionalized, since no institutions clearly need to be changed to hold debates about the EU. However, some institutional changes could strengthen this as a tool for European affairs, such as institutionalizing periodic debates focusing on the EU. What actors are required to use this tool depends on the rules for setting the agenda in various countries. In some countries, the governments have quite a bit of control over the legislative agenda and their consent may be required, and in all countries, the governmental parties retain primary control of the agenda. However, most systems allow a small portion of the agenda to be set by backbenchers or the opposition, and these groups may use debates as a tool for EU influence. For example, the British Backbench Committee has scheduled some EU debates,<sup>46</sup> and the Green party in Germany has used its debate scheduling power to hold debates on the Transatlantic Trade and Investment Partnership (TTIP), the free trade agreement that is being worked out with the US. Since they have generally achieved their goal of ending nuclear power in Germany, they have capitalized on concerns over TTIP as a new wedge issue. The MP discussing this strategy

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<sup>45</sup> Member of Parliament, Personal Interview, UK House of Commons, London, December 4, 2014.

<sup>46</sup> Member of Parliament, Personal Interview, UK House of Commons, London, November 21, 2014.

also specifically cited the use of plenary debates because they were a public tool and could be used politically to gain favor from the public.<sup>47</sup>

Another traditional parliamentary tool that parliaments can use for European issues are parliamentary questions, which will be discussed in more detail below and in the following chapter. Questions allow individual MPs the opportunity to raise an issue of concern with a minister or the head of government. One relatively recent study of parliamentary questions in the French *Assemblée Nationale* found that EU-related questions were only a small share of all questions and that they showed only a modest increase over time. They found that MPs from the governing parties used questions to control the cabinet, especially when the minister comes from a different party. Euroskeptic and opposition deputies were no more likely to ask EU-related questions than pro-European and governing party MPs (Navarro and Brouard 2014). My research suggests that the *Assemblée Nationale* is somewhere around the average in terms of the share of questions that are used for European issues. As will be discussed below, questions are public, less institutionalized and more automatic, and a tool that both individuals and the opposition can utilize.

Both debates and questions, as well as some of the other tools here, can be combined with the “tool” of the media in order to have more of an impact. A former spokesperson on EU matters in the Danish *Folketing* spoke about how this combination, plus public opinion, was key for having influence: “if you raise a debate in the media and the public agrees, then you can have influence.”<sup>48</sup> Another MP in Britain spoke about how the key was to “get published beyond Hansard,” which is the British parliament’s official record of parliamentary proceedings. “Media

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<sup>47</sup> Member of Parliament, Personal Interview, German *Bundestag*, Berlin, October 6, 2014.

<sup>48</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, October 31, 2014.

coverage... creates political pressure. The media is quite influential and can get Brussels to withdraw legislation.”<sup>49</sup>

At an extreme, another possible tool that national parliaments could use to constrain their governments are votes of confidence. This is one of the strongest tools that parliaments have, but it is one that they are not likely to be used for EU issues. Actual confidence votes are held relatively rarely, and it is hard to imagine most parliaments voting against the government on a confidence vote about EU issues, at least in the normal course of affairs. However, there were a series of confidence votes in the Greek parliament during the Eurozone crisis and bailouts that could conceivably have gone against the government. While there was no formal confidence vote that led Tsipras to resign in 2015 (until the results of a snap election returned him to power), it did follow a rebellion of 43 of his MPs on the vote over the third bailout package. The Dutch parliament also had a confidence vote based on its government’s support for the Greek bailout, although the government did survive the vote.

The United Kingdom is/was another country where a confidence vote or leadership challenge over European issues might have been conceivable. In 1992, a group of Conservative MPs rebelled against John Major’s Conservative party over the bills to implement the Maastricht Treaty. They voted against the government and did cause them to lose some parliamentary votes. They arguably came close to bringing the government down three times, although they ultimately voted with the government on confidence motions. It was finally by tying confidence in his government to a vote that he had previously lost, as just a ‘take-notice’ motion, that Major was able to gain the power to ratify the Maastricht Treaty. One of these rebels spoke about

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<sup>49</sup> Member of Parliament, Personal Interview, UK House of Commons, London, December 8, 2014.

Cameron and his government in similar terms, saying that he had told Cameron he needed to veto the “Fiscal Compact” treaty, and while he thought that Cameron probably agreed with the Euroskeptics that the treaty was a bad deal, he thought he also did it “because he was scared of them. If Cameron agreed to further integration or went for the single currency, he would be out in twenty-four hours, so he won’t do these things.” He referred to a leadership election as the “nuclear option, but it is something we would do.”<sup>50</sup> As this MP stated, parliaments can use these tools to control the government, even if they have not used them in relation to European affairs, as long as they can make a credible threat. This tool is relatively automatic and not institutionalized, as no changes would need to be made to the procedure to use it for European affairs. When confidence votes are used, they are public, and if one was successful, it would be extremely public. However, threats to use these votes are not public. Who has the ability to hold a vote of confidence depends on the system, but a majority would always be required to pass one.

### **2.4.3 Transposition**

Transposition is the process by which European law is written into national law. To some extent this is also a repurposed traditional parliamentary tool, but since transposition often follows a different process than passing new legislation, I treat it as a separate tool. There are three kinds of European laws: directives, regulations, and decisions. Directives are “binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national

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<sup>50</sup> Member of Parliament, Personal Interview, UK House of Commons, London, November 21, 2014.

authorities the choice and form of methods.”<sup>51</sup> This means that while the EU sets out what the final result of the law must be, it gives each state flexibility on how the policy should be implemented, providing room for significant adaptation at the national level through transposition. Transposition is also substantively important, considering the amount of legislation that begins at the EU level. Therefore, the opportunity to influence such legislation is a valuable one.

Despite these opportunities, the work of transposition is often left to the executive, either by allowing them to write the legislation through special or secondary procedures that do not require as much parliamentary involvement or by a simple lack of involvement as the legislation passes through the parliament. Much of the transposed legislation in Denmark follows this latter route. By the time legislation comes back to the *Folketing*, the strong and interested European Affairs Committee is out of the picture. Ideally, each person on the standing committee (who would also ideally have taken a position before the European Affairs Committee provided a mandate) would think about what the EU committee person from her party had said about the legislation and take that into consideration during transposition, but the standing committee rarely gets involved at either point.<sup>52</sup> Transposition is a highly institutionalized and non-automatic tool, that is not particularly public, and usually requires the cooperation of the government as well as a parliamentary majority. Further discussion on transposition follows on the chapter dedicated to it.

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<sup>51</sup> Article 288 of the Treaty on the Functioning of the European Union

<sup>52</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, May 21, 2013.

#### 2.4.4 Communication with the Commission

Since 2006, parliaments have gained a new tool, which is direct communication with the Commission. The Commission now sends all of its pre-legislative and legislative documents directly to the national parliaments and invites them to write opinions in response as part of a “Political Dialogue.” The Treaty of Lisbon also introduced the “Early Warning System,” which gives national parliaments the responsibility for monitoring whether proposed legislation complies with the principle of subsidiarity. If parliaments think that it does not, they can write a “reasoned opinion” explaining their subsidiarity concerns. Each of these that the Commission receives from a chamber of a bicameral parliament counts as one vote against the proposal, while opinions from a unicameral parliament count as two votes. If the votes against amount to one-third of the total potential votes, then the “yellow-card” procedure is triggered and the Commission must review the proposal and explain why it is subsequently choosing to withdraw, amend, or maintain the legislation. If the votes amount to a simple majority, the “orange-card” procedure is triggered, and if the Commission still wishes to proceed after a review, the Council and the EP must decide whether they think it complies with subsidiarity.

Both of these tools will be discussed further in the chapter on resolutions, since these opinions are often passed as resolutions. The introduction of these tools, especially the responsibility for monitoring subsidiarity, has caused a substantial increase in the amount of work for many of the EU committees, but it has also made them more interested, and has led to more opinions and involvement.<sup>53</sup> In this way, they may actually have a benefit outside of themselves. Members of Parliament may not actually care that much about the rearview mirrors

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<sup>53</sup> National Parliamentary Representative, Personal Interview, *Espace Léopold*, Brussels, June 5, 2013.



on tractors, but when they start to look at the proposal for subsidiarity questions, they also start to absorb the substance of the policy. MPs therefore become more informed about the EU level and EU policies because of the process.<sup>54</sup>

In addition to these written tools, there is also an increased effort to increase face-to-face communication between national parliaments and Commission officials. This includes Commission officials coming to the national parliament, either to speak about specific legislation or to talk about something broader, such as the annual Commission Work Programme. It also includes visits of delegations, especially the European Affairs Committees, to Brussels. There is also increased use of videoconferencing between national parliaments and Commission officials.

Both types of opinions somewhat public, as they are published online, but are not likely to attract much media or public attention under normal circumstances. Visits from Commissioners are more public, since they often involve speeches, debates, and/or questions in the plenary. All of these tools are somewhat institutionalized and non-automatic, since they required the creation of some new institutions, especially at the EU level, but did not necessarily require changes to existing institutions. Reasoned opinions are more institutionalized than opinions sent under the political dialogue. Visits are more ad hoc and less institutionalized. Political dialogue opinions often only require a majority in the European Affairs committee, whereas reasoned opinions usually require a majority in the plenary. Commission visits require the participation of the Commission, as well as those actors in charge of scheduling plenary sessions.

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<sup>54</sup> National Parliamentary Representative, Personal Interview, *Espace Léopold*, Brussels, June 5, 2013.

## **2.4.5 Tools for interparliamentary cooperation and coordination**

One set of tools available to national parliaments, and largely developed for involvement in European affairs, involves collaboration between parliaments. One such tool is the biannual COSAC meetings, as well as additional meetings of the chairpersons of the European committees. These meetings allow for the exchange of information and best practice, sometimes informally and sometimes through organized conversations. COSAC has also organized a series of coordinated subsidiarity checks, in which it has selected certain pieces of legislation proposed for the Commission and designated them as being worthy of special subsidiarity consideration by the national parliaments. This was done in the lead up to the introduction of the Early Warning System, as well as afterwards, in an attempt to increase coordination. COSAC meetings also present an opportunity for discussions and an exchange of views with representatives of the EU institutions, especially the Commission and Council, who will often speak at these meetings (COSAC 2010). In addition to these tangible tools that COSAC provides, there are also some more intangible benefits of interparliamentary cooperation. It helps parliaments scrutinize effectively the most relevant legislative proposals, helps them hold their governments accountable, and is “an important tool for the qualitative and in-depth involvement of national Parliaments in the EU decision-making process” (COSAC 2014). Interparliamentary cooperation may provide some tangible tools to parliaments, but it may also provide the benefit of helping them better use their existing tools.

Some tools have also been designed specifically to help parliaments make better use of other tools. For example, they have developed a website for “the mutual exchange of information between the national Parliaments and the European Parliament concerning issues related to the European Union”, called the InterParliamentary EU information eXchange, or

IPEX.<sup>55</sup> The platform contains a database of documents, which contains all of the draft legislative and consultation documents from the European Commission, as well as all documents that parliaments upload in relation to these, including reasoned opinions and political dialogue opinions. They can also post other information during the scrutiny process. This allows parliaments to easily check whether other parliaments are scrutinizing certain documents and what concerns they have with the document, which may help them decide whether or not to draft an opinion of their own.

All of the national parliaments have also stationed representatives in Brussels. These are civil servants of the national parliaments, who all work together on one floor and meet at least weekly. They primarily act as information conduits between their national parliament and the European institutions, as well as between their national parliament and the others. One of these representatives said that his main goals were to gather information and to follow dossiers, especially those that the EU committee has noted for special attention at the beginning of the year, so that he can report on common ground and whether there is any chance of a yellow card.<sup>56</sup> Another representative said that his overall goal was to act as the “eyes and ears” for his national parliament at the European level.<sup>57</sup> These representatives were particularly instrumental in reaching the yellow card threshold the first time that the national parliaments did so, on the Monti II proposal about the right to strike (Cooper 2015). They have been a valuable “tool” that

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<sup>55</sup> From the “About IPEX” page on its website, currently found at: <http://www.ipex.eu/IPEXL-WEB/about/aboutIpexl.do>. The main website can currently be found at: <http://www.ipex.eu/>.

<sup>56</sup> National Parliamentary Representative, Personal Interview, *Espace Léopold*, Brussels, May 30, 2013.

<sup>57</sup> National Parliamentary Representative, Personal Interview, *Espace Léopold*, Brussels, June 4, 2013.

can help parliaments coordinate and stay more informed about what is occurring “on the ground” in Brussels.

These types of tools are somewhat institutionalized and relatively automatic, in that they required the development of new institutions. However, they did not require changing existing institutions, which can sometimes be more difficult. They are not particularly public, as most work is done between parliaments and would not be of much interest to national publics or the media, and therefore is not publicized in any way. They are open to use by many actors, including individuals from any party, although they tend to be used by European Affairs committees.

#### **2.4.6 Other possible tools for the future**

In addition to these tools and others currently at their disposal, there is also a desire for and an effort to develop new tools. About two-thirds of the national parliaments favor the development of new tools and/or the adaptation of existing ones, in order to be better involved in European policy-making. One of the main adaptations involves extending the deadline for subsidiarity checks. They also seek to be able to go farther than subsidiarity, in order to be able to scrutinize whether the actions proposed by the Commission are proportional to the legislation’s objectives. They also seek a more proactive power, rather than just a blocking one, in order to be able to suggest new legislation to the Commission through the use of a “green card.” They would like to further develop the political dialogue, in order to make it more fruitful. They also expressed desire for a permanent assembly of national parliaments that would be a legislative partner in certain policy areas, and they would like to be able to scrutinize draft trade agreements (COSAC

2014). While some of these are more realistic proposals than others, they all suggest that national parliaments are interested in being involved and want the tools to be able to do so.

## **2.5 CONCLUSION**

The general rates of questioning about Europe seem neither particularly high nor particularly low. At the median for questions that are definitely related to Europe, about 7%, it is hard to believe that questions are really serving as an effective tool for holding the government accountable on EU issues or communicating about them. However, the mean for the less strict coding of questions, at 23%, seems more optimistic, and the highs of places like the House of Lords seem like they might be getting too high, at least if they were present in lower chambers. However, it is also worth recognizing that an MP might be able to ask a question that would cover the local, national, and European levels in one, which might be the sign of a true cosmopolitan MP.

Overall, the results did support the theory that how formal or institutionalized a tool is matters and that how strong a parliament is in relation to its government will matter in different ways depending on how institutionalized the tool is. The hypothesis was simply that the general legislative-executive relationship would not be the most important factor in explaining the use of EU-related questions, but the results provided even stronger evidence, with the direction of the effect going in the direction opposite to that found by studies of more institutionalized tools. For questions, weaker parliaments were more likely to ask EU-related questions, suggesting that MPs may be more likely to use questions to monitor the government's actions at the EU level when they lack other tools to do so.

The findings for Euroskepticism suggested that parliamentary questioning habits do respond to changes over time, since each MP can generally ask about what interests them and their constituents. The Euroskepticism finding was particularly interesting, since the between-chamber and within-chamber effects went in opposite directions. In those countries where Euroskepticism is typically quite high, MPs may be wary of inflaming this dissatisfaction or of demonstrating to that they are more pro-European than their constituents, which could potentially lead voters to turn this EU-dissatisfaction back on the politicians themselves. However, when there is a short-term increase in Euroskepticism, MPs may feel either that they have to express some of this dissatisfaction in order to reflect their constituents' views or may see doing so as an opportunity to gain credit without threatening the long-term viability of the EU. As one of the most public tools that parliaments have at their disposal, the use of questions as a tool does clearly respond to how the public feels about the EU, in both the long and short terms.

## **2.6 CAUSES OF PARLIAMENTARY INVOLVEMENT IN EU AFFAIRS: WHAT WE KNOW**

Much of the existing research on why parliaments get involved has tended to focus on certain types of tools, which are the more institutionalized and less automatic ones, as well as the less public ones. These include European Affairs committees and transposition. They also tended to focus on the rules and formal power of those tools, rather than the actual use of those tools.

In terms of classification, Auel and Honig (2014) identify four main types of parliaments, although a single parliament may belong to more than one type. “Policy shapers” are parliaments that focus mainly on issuing resolutions and mandates to their governments. Among the lower chambers and unicameral parliaments that they examine, this is the most frequently observed type, with fourteen chambers qualifying for this group. “Debating arenas” focus on public debates. They focus on the importance of debates and include nine chambers in this group, but it is worth noting that debates on the EU are below fifteen percent of all debates. “Commission Watchdogs” focus on the political dialogue and reasoned opinions, which includes four chambers. Finally, “Scrutiny laggards” could technically be put into the above groups, but their overall activity is so low that they are better grouped together. There are eight chambers in this group. As for the cases that are discussed more fully in this project, they include the Belgian *Chambre des Représentants* and the Polish *Sejm* as Scrutiny Laggards, the Danish *Folketing* as a Policy Shaper, and the German *Bundestag* and UK House of Commons as both Policy Shapers and Debating Arenas.

Until recently, most of the work that looked at what caused different parliaments to fall into groups like these had focused on very formal or institutionalized tools and they had tended to find that the two main factors were the overall institutional power of the legislature and the level of public Euroskepticism in the country. Working primarily with small samples, these early studies generally found that domestic politics is the best predictor of involvement in European affairs. Parliaments take the patterns of scrutiny and oversight that they use for domestic politics and apply them to the oversight of government actions at the EU level. In this way, domestic strengths become strengths of EU scrutiny and domestic weaknesses become EU

level weaknesses. Dimitrakopoulos (2001) finds this about the French, Greek, and British parliaments, while Damgaard and Jensen (2005) echo it for the Danish *Folketing*.

Raunio (2005) was one of the first to expand beyond case studies. He examined the West European member states using fuzzy set analysis. His dependent variable was how well the parliament was able to control the executive in EU matters, based on the involvement of the sectoral or standing committees, access to EU-related information, and whether or not the parliament can issue voting instructions to its ministers. He finds that the only necessary condition for involvement is domestic institutional strength, and that the combination of this with a Euroskeptic electorate is a necessary and sufficient condition.

Karlas (2011) conducts a similar study on the ten Central and East European states. He includes four dimensions in his measure of parliamentary control in EU matters: access to information, scope of scrutiny (documents, council meetings, or both), decentralization of scrutiny (involvement of standing committees and the plenary), and the implications of control (whether the government is obliged to follow the parliament's opinions). Using Spearman's correlation coefficients, he tests the relationship between this control measure and four independent variables: public Euroskepticism, party Euroskepticism, the general power of the parliament, and the frequency of minority governments. He finds that only a narrower measure of the power of parliament, constructed from legislative activity and participation rights, is significantly associated with control.

A variety of other smaller-sample or largely descriptive research also identifies the importance of the overall strength of the legislature and its relationship with the executive as important factors (Bergman 1997, Pahre 1997, Bergman 2000, Martin 2000, Maurer and Wessels 2001, Rozenberg 2002, Saalfeld 2005, Kietz 2006, Hamerly 2007, Raunio 2009, Karlas 2012).



A similar variety of work has identified Euroskepticism, especially public Euroskepticism, as another important variable that drives parliamentary power in EU affairs (Bergman 1997, Pahre 1997, Bergman 2000, Raunio and Wiberg 2000, Rozenberg 2002, Kietz 2006, Hamerly 2007, Winzen 2013). However, most of these studies looked at the overall set of legal, constitutional, and procedural powers that parliaments have, rather than at individual tools or the actual use of those tools.

One study that did look at a single tool was the work by Franchino and Hoyland (2009), which explored the causes of variation in transposition in the fifteen member states that were part of the EU before the 2004 eastern expansion. While they look at actual “use” of the “transposition tool,” this is still a very institutionalized tool, with the extent of parliamentary involvement limited by formal agreements with the executives and procedures. They again find that the institutional balance of power between the government and parliament is an important factor. They also find that parliaments become more involved as intra-cabinet disagreement increases and as the discretionary scope of the directive increases.

More recent work, led by the Observatory of Parliaments after the Lisbon Treaty (OPAL) project, has begun to venture into looking at the actual use of individual tools, including less institutional tools. A couple of these studies focus on “crisis-related activities” between 2010 and 2012, as a share of all other EU-related activities. Auel and Honig (2014) use bivariate correlations to show that overall EU activity, institutional strength on crisis issues, and institutional strength in EU matters are all positively correlated with crisis activities. These crisis activities include parliamentary resolutions and/or mandates, plenary debates, and opinions sent to the Commission, which they generally combine into a single score. They also find that there

was generally more involvement from Eurozone members and less from debtor countries, while those parliaments planning to enter the Eurozone remained particularly quiet.

Another article using essentially the same data expands on these findings (Auel and Honig 2015). The descriptive portion of this article does recognize some differences between the various crisis tools. For example, they note that the use of opinions and mandates/resolutions, which lend themselves to focusing on documents, tended to correlate with the percentage of documents that were crisis related. In contrast, debates saw more of a jump in crisis-related activity. Just under half of the number/hours of EU plenary debates were crisis-related, whereas only 14% of mandates/resolutions and 11% of opinions were. However, they still combine all of these activities together in their dependent variable, rather than considering these differences more closely.

They find that those parliaments who are generally active in relation to the EU remained the most active in terms of crisis activities, and the same for those that are generally weak. In this way, crisis activity was not substantially different from overall EU activity. In terms of the institutional strength set of variables, they find something slightly different from most of the previous studies. Institutional strength in relation to the crisis issues and institutional strength on EU matters were positively related to more involvement, but there was no relationship with overall institutional strength. To an extent, they still find that the crisis essentially exacerbated existing strengths and weaknesses, carrying over the theme of earlier research. Eurozone countries were again more involved than debtor countries, but the key variable here was credit rating. However, in contrast to much earlier research, this study found that Euroskepticism did not matter. “Public Euroskepticism did not spur parliaments into greater activity regarding the crisis. One explanation is that MPs felt compelled to scrutinize, and especially to communicate,

crisis-related matters to their citizens irrespective of their citizens' attitude towards the EU - and possibly precisely to avoid (further) increases in public Euroskepticism" (388).

Another study that looks at parliamentary behavior during the crisis, without focusing specifically on it, explores parliamentary questions and debates in seven countries over three years at the height of the crisis (Auel, et al. 2015a).<sup>58</sup> Despite the fact that they are looking at less formal and institutionalized tools that focus on communication, they still find that strong oversight rights make parliaments more likely to use these tools. They do not find evidence of a trade off, where weaker parliaments use these in place of stronger tools, which is in contradiction to my findings in the subsequent chapter. They again find that public Euroskepticism matters, as does the salience of EU matters. The share of Euroskeptic parties had a small, but positive effect overall, although it was negative for the share of plenary debates. They are surprised by this negative debates finding, but one possible explanation is that since governing parties tend to have more control over the agenda and tend not to be Euroskeptic, they may be less willing to open debate on EU issues when there are more Euroskeptic MPs. The authors also find that intra-coalition disagreement about the EU decreased the absolute number of questions and debates, but not the share that were EU-related. They then test how these relate to news coverage, and find that debates lead to more coverage but that oral questions do not. Coalition dissent also leads to more news coverage, while the share of Euroskeptic parties leads to less.

Continuing research into parliamentary involvement during the crisis period, Gattermann and Heffler (2015) look at involvement via reasoned opinions as part of the Early Warning System. They examine each of the 411 draft legislative acts that the Commission proposed

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<sup>58</sup> They focus on the lower houses of Austria, Finland, France, Germany, Poland, Spain, and the UK.

during this period, but they do not use fixed effects and their models struggle to find robust results. In some of their models, they find some evidence that having a majority government decreases reasoned opinions, that dispersion of political opinion on the EU dimension has a positive effect, and that left-right dispersion has a negative effect. In terms of the variables at the level of the piece of legislation, some of their models find that reasoned opinions are more common on new legislation or when there is an early vote in the EP, which they consider to be a sign of an urgent proposal. The number of other reasoned opinions that were submitted also increased the likelihood that additional chambers would submit one for that piece of legislation.

Continuing this more recent trend toward looking at actual involvement rather than just formal oversight rights, Auel, et al. (2015b) emphasize that research on national parliaments “needs to be completed by explaining why parliaments act rather than why they *are able to act*” (283, italics in original). They also stick with the crisis period, focusing on 2010-2012 in lower chambers and unicameral parliaments across the EU. They assume that the main factors explaining involvement are the institutional capacities of the parliaments and whether or not MPs are motivated to act. They are the first to try to distinguish between different types of tools, although they do not use that language. They expect that “activities related to the influencing and scrutiny function, such as mandates or resolutions, are more likely to depend on institutional capacities, while (electoral) incentives can be expected to be more important for activities relating to the communication function such as plenary debates” (283). They test these expectations by looking at mandates and/or resolutions that constrain their government, European Affairs Committee meetings, plenary debates, and opinions in the political dialogue (excluding reasoned opinions).

They begin by showing that there are relatively low correlations among these different tools, suggesting that parliaments that are active with one type of tool are not necessarily as active on others. There is, however, a relatively strong correlation between opinions and resolutions, since often they are one and the same. They use linear regression with clustered standard errors. They do not find any effect for the overall strength of the legislature domestically, but do find that the parliament's strength in EU affairs matters for resolutions/mandates, debates, and European Affairs Committee meetings. Whether the system is consensus or majoritarian, which may be related to parliamentary power, matters for resolutions. Euroskeptic parties and involvement in the Economic and Monetary Union matter for the duration of debates. They find that public Euroskepticism only matters for resolutions, while I find that it matters for opinions as well, possibly in part because I break down the within-chamber and between-chamber effects of Euroskepticism. They do not find any variables that explain opinions submitted to the Commission, unlike my models, which are better able to explain why parliaments use this tool.

From the tools perspective presented here, the combination of mandates and resolutions as a single dependent variable is problematic. They combine these because they can both be used to constrain what the government does in the Council. Mandating procedures do this either through a legal mechanism or an agreement between parliament and the government. In those chambers that cannot mandate, resolutions can generally constrain the government because governments cannot ignore such a public statement of their parliament from a political perspective (Auel 2006). However, these two tools do not share the same characteristics. Mandates only require a majority in the committee, whereas resolutions require a majority of the plenary. Mandating systems are also much more institutionalized, with a special mandating

system set up for use in European affairs and the establishment of norms surrounding the frequency of such mandates. Resolutions are generally passed through the same procedures as any other resolutions, and therefore are relatively automatic. They also tend to be used on a much more *ad hoc* basis. While the authors do not provide a breakdown of how many mandates were sent on average in comparison to how many resolutions were sent, I would imagine that many fewer resolutions were passed. Finally, these two tools differ in how public they are. Mandates are generally granted within the committee and treated as a matter of course, not as something that is noteworthy. The exact details of the mandate may also be kept private, so as not to give away the negotiating strategy to other Council members. In contrast, the only way that resolutions work to constrain the government is because they are public. This difference suggests that motivations for using resolutions should be much more based in public opinion than those for using mandates.

Winzen (2013) also begins to separate out different types of tools, although he continues to focus on rights more than on how tools are actually used. He looks at two broad categories of oversight institutions - information rights and constraining the government. Information rights attempt to reduce the information asymmetry, which includes access to EU documents and information about the government's intended strategy for Council negotiations. This may include the work by European Affairs Committees and sectoral committees. The second category includes efforts by parliament to regain authority over their governments, particularly in terms of trying to ensure that the government does not make decisions at the EU level before parliament can consider the issue. This includes scrutiny reserve and mandating procedures. He develops indicators for whether parliaments are weak, medium, or strong on both of these categories. His results for overall parliamentary oversight echo earlier studies, finding that

popular Euroskepticism is a main factor, as is the depth of integration, since he includes a longitudinal component in his models. Integration remained important for just the information model, but instead of public Euroskepticism, disagreement within cabinet parties was significant. Public Euroskepticism does matter for constraining governments, and there are “signs” that domestic parliamentary strength may matter as well (317).

## **2.7 HYPOTHESES**

The more institutionalized and less automatic a tool is, the more that parliamentary strength or the domestic balance of power between the legislature and executive should matter for use of that tool. As many of these examples show, developing and changing the institutions necessary to use these types of tools for EU affairs or to strengthen them is likely to require changes to legislation, possibly the Constitution, or to other rules that require the consent of the executive. This occurs for two parallel reasons. First, where parliaments are stronger, they will already be likely to have stronger versions of these tools and the adaptation for the EU will tend to follow this institutional path. For example, in “working parliaments,” where committees are already stronger, it will follow the institutional path to develop a strong European Affairs Committee, since it will generally start with powers comparable to the other committees. Second, when the parliament needs to negotiate with the government to change and strengthen these institutions, it will be doing so from a place of strength and will likely be more successful.

This expectation makes sense when one considers that parliamentary strength was so consistently found to be an important predictor of oversight rights, considering that most of the earlier work looked at very institutionalized and rights-based measures of these rights. Among

the tools I explore in detail in subsequent chapters, parliamentary questions are the least institutionalized, opinions and resolutions sent to the Commission are somewhat institutionalized, and transposition is the most institutionalized. I expect that the balance of power between the legislature and executive will matter most for the most institutionalized tools.

*H1: Parliaments with more institutional control over their executives will be the most involved in transposition. They will be more likely to send opinions to the Commission, but this factor will be less important for this tool. Parliamentary strength will be of little or no importance for parliamentary questions.*

Tools like transposition and the European Affairs committees are not particularly public, operating primarily outside of the view of the media and citizens. Other tools, like parliamentary questions and debates, are about as public as parliamentary tools can be. The media, interest groups, and particularly interested citizens are likely to observe the use of these tools. They can therefore be more helpful if a parliament wishes to communicate with the public. Referring to the tools of third party government discussed above, Peters (2002) argues that when programs that benefit a wide range of voters, politicians might want to make them more visible so that they can claim credit for them. Since most evidence has pointed to Euroskepticism as the potential factor that matters electorally, I flip this expectation. Where publics are more Euroskeptic, politicians will want to talk (complain) about Europe more, and that this will have a stronger effect the more public the tool is.

*H2: The more Euroskeptic the public is, there will be a greater share of EU-related parliamentary questions. Parliaments with more Euroskeptic publics will also send more opinions to the Commission, but this will matter less than for questions. Public Euroskepticism will have little to no effect on transposition.*



The third characteristic refers to the type of actors that can use the tool. Questions exist at one end of this spectrum, in that they are both an individual tool and one that can be used by the opposition. The generally smaller and more extreme parties that tend to be more Euroskeptic should be most likely to use tools like these to talk about Europe, and will be more likely to use this tool than others, largely because they may not have much access to other tools. These types of parties are more likely to be found where there are more parties. Additionally, the more parties there are in general, the harder it should be for them to agree on and effectively use tools that require collective actors like parties or the majority, or even the majority of a committee. I therefore expect that more fragmented parliaments with more parties should be more likely to deal with Europe using tools that are more individualized and can be used by the opposition. Resolutions and opinions require more collective action than questions, since they require a majority in the committee and sometimes require a majority in the plenary. In general, opinions submitted under the dialogue are often able to be voted on in the committee, while reasoned opinions often require a plenary vote. Transposition, if the parliament is involved, requires a plenary majority.

*H3: The more fragmented a legislature is, the higher the share of parliamentary questions that will be EU-related. More fragmented legislatures will send fewer opinions, and this will be truer for reasoned opinions. More fragmented legislatures will be less involved in transposition.*

## **2.8 RESEARCH DESIGN**

In order to test these expectations, I employ a mixed methods strategy that will utilize both large-N quantitative analysis and in-depth qualitative analysis into a few cases. This mixed strategy allows me to adequately account for context and to use information from the field to build theory. Although much of the analysis is at the level of parliaments, it is still based on the decision and behavior of individuals, so it is important to talk to these individuals and understand their logic. The quantitative analysis helps to draw out patterns across all of the parliaments and across time. It allows me to find the broad trends and relationships among the different variables that one cannot see within a single case or across a small number of them.

### **2.8.1 Qualitative methodology**

In order to understand what MPs are thinking and their motivations for when and how to deal with European policy, it is necessary to talk to them. As such, I conducted about 170 interviews, primarily at five national parliaments. Most of these interviews were with national parliament members, who can speak most directly to my research question. Using a semi-structured interview technique in interviews that lasted about twenty minutes to an hour, I asked them about what techniques they use to hold their ministers accountable when they go to Brussels, and specifically about any mandates or resolutions that they use to do so. I asked about how they use questions for scrutiny and what topics they tend to focus on when doing so. I asked about the role of the national parliament in transposition. More broadly, I asked about how the EU has changed their parliament, how interested they are in European level policy, how much of a role they think their parliament plays in European legislation, the role of the European Affairs

committee, and whether they get sufficient information about legislative developments at the EU level.

In addition to general members of parliament, I sought out any members of parliament who were formerly ministers and were be able to speak to both sides of the relationship. I also spoke with civil servants working for the parliament, especially those who are most involved with the European Affairs committee. These individuals had a sense of how the parliament as a whole functions in relation to Europe and knew many of the details of procedure – often more than the MPs themselves. As many of them have a vested interest in promoting Europe within the parliament, they could also provide a sense of what the ideal is supposed to be. For example, during one of my interviews in Brussels, a Belgian civil servant told me all of the information that their office provides MPs about European policy and about how communication back and forth between the MPs, their office, and contacts at the European level is supposed to function.<sup>59</sup> Comparing this to the answers I got from MPs, who did not know about most of these opportunities or did not read the information they were given was enlightening, and provides evidence that simply building the structures is not enough in practice. Simply because tools are available to MPs does not mean that they are being utilized, which is why it is particularly important to study the actual use of various tools, rather than just the formal powers that parliaments have.

I began by contacting (former) ministers and MPs that served on the European Affairs committees, as they were likely to be the most knowledgeable and have the most to offer. However, since they were certainly not a random sample and were not likely to be representative

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<sup>59</sup> Staff Member, Personal Interview, Belgian *Chambre des Représentants*, Brussels, June 7, 2013.

of the average MPs' views on Europe, I then reached out to a random sample of other MPs that are representative of the full spectrum of parties and committees. In many meetings, I asked if they knew of any other individuals that I should speak to, initiating a "snowball" process on top of my randomized process. I believe that this effectively put me in touch with those individuals who were most helpful to my research, as well as with a broad enough sample to draw reliable conclusions. The snowball portion was particularly helpful for determining which civil servants to contact, since their information is not as publicly available. I also conducted interviews with fifteen national parliamentary representatives from various EU member states, which allowed me to gain (limited) insight into some of the parliaments that I was not able to visit.

I visited and conducted interviews in Belgium, Denmark, Germany, Poland, and the United Kingdom. I chose these five cases because they each have some of the core characteristics that the literature has found to matter for explaining variation in parliamentary involvement. They also show variation across the dependent variables.

Denmark is generally considered to be one of the strongest of the national parliaments when it comes to European Affairs. Their European Affairs Committee is one of the strongest, with the tradition of bringing ministers into meetings both before and after their trips to Brussels for Council meetings. They give the minister a mandate about what strategy he or she should pursue while there and what the negotiating position should be. Its relatively high levels of Euroskepticism also suggest higher levels of parliamentary involvement. It is a country that often has minority coalition governments, so the parliament is relatively strong in relation to the executive. Further, while the governments are often a left or right coalition, the parliamentary support for the government's positions are generally based on the center parties, which all have a pro-European stance. This makes the government even more dependent on parliamentary

support and suggests that all of the parties in the government may not entirely trust what the others would do without the parliamentary mandate. Overall, then, the Danish Folketing has a number of features that should make it quite strong and this is its general reputation. However, since much of its power comes from its committee and this is not one of the features I measure in the quantitative section, it is interesting to observe the extent to which the focus on this single tool limits their involvement via other tools.

Belgium is in some ways Denmark's opposite. The general impression from MPs there was a relative disinterest in being involved in European policy, and a sense that those who were interested realized that it was generally a personal interest that was not typical of many of their fellow MPs. The clearest distinction is in terms of their committee, which is only an advisory committee. Some of the individuals who are listed as members could not offer any information about it, and other members admitted that they did not know that it existed. One set of staffers for an MP admitted that neither they nor their MP had heard of it and that they had researched it online before I got there.<sup>60</sup> Belgium is also interesting because of its federal nature. The sub-national governments send their ministers to certain configurations of the Council and the federal parliament has no real role in any of these policy areas. Additionally, Belgium would be the most likely case for MPs to have a relationship with their MEPs and to gain information this way, since they are all located in the same city. However, while MEPs are invited to be members of the European advisory committee and are invited to party meetings, I was told that they rarely attend and this link is rarely utilized.

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<sup>60</sup> Staff Members, Personal Interview, Belgian *Chambre des Représentants*, Brussels, June 12, 2013.

Poland is important as a new and Eastern member state. Among this group, it has one of the more stable party systems and has had relatively stable politics over the years since accession. It generally has high levels of EU support, at least relative to other countries, and therefore will serve as a contrast to some of the more Euroskeptic countries. However, this has shifted in the last year or two, especially in response to the migrant crisis. As one of the parliaments that set up its scrutiny system after many of the other countries had already developed theirs, it was able to observe some of this best practice before setting up its own. It is also one of the bicameral systems that has a relatively equal upper house, at least in terms of European Union affairs.

Germany is another case that is generally supportive of EU integration. It also is a federal system, and the representation of the Länder in the Bundesrat creates an interesting chamber, with the state ministries serving as staff for each “MP” and the norm that each Land uses all of its votes to vote the same way. Germany is the biggest and generally thought of as the most influential of the EU member states, so if any national parliament is going to impact overall EU policy, the German parliament should be the most likely case. Finally, Germany’s constitutional court has played an integral role in giving the parliament the powers that it has, even when the parliament was not necessarily looking for them.

Finally, the United Kingdom is the opposite of Denmark in terms of government type, since it generally has single-party governments and is the most majoritarian of Europe’s systems. However, it surpasses Denmark in its extent of Euroskepticism. The recent Brexit debate and referendum also suggests that the public is more aware of European issues, broadly speaking, at least in the later years under examination here. The British parliament also has a scrutiny system that is the archetype of the document-based scrutiny described above, which takes documents

that are submitted to the parliament and screens them for the legal or political importance of the document, and then decides whether to pass them onto one of three standing European committees or the whole house. Since the government needs to approve passing it onto the whole house, it is difficult for the parliament to bind the government to any course of action against its will (Auel and Benz 2005). All of this suggests that the British parliament may focus more on public and individualized tools, like questions, and less on direct involvement or transposition. The House of Lords, in contrast, is generally much less Euroskeptic and has a much more independent and active EU committee.

### **2.8.2 Quantitative methodology**

For my quantitative analysis, I use a set of time series cross-sectional analyses. The first of these will focus on scrutiny activities via parliamentary questions. I began by going through the parliamentary archives of the parliaments under examination and scraped the text of all of these questions from the websites. I then search for a list of EU-related words. Since some countries make available only questions from plenary, while others include questions from committee meetings, I will focus on plenary questions. The unit of analysis is the chamber-year, and the dependent variable will be a proportion that is the share of EU-related questions (out of all questions) asked by that chamber in that year.

Parliamentary questions are important for several reasons, mostly described above. They are public tools, available to individuals and the opposition, that are relatively not institutionalized. They are one of the parliamentary functions that are available to all members and parties in parliament. It is one of the few ways that the opposition can play a key role in monitoring the executive. They are a method for parliament, including the opposition, to force

the executive to make a public statement (Rasch 1994, 2009; Wiberg 1995). They allow parties and individuals to communicate about what issues are important, bringing the attention of fellow MPs, the government, and the public to these issues. Attentiveness to an issue is a necessary prerequisite for significant policy change (Baumgartner and Jones 1993, 2002; Jones 1994; Kingdon 1995). They are also an opportunity for an exchange of information between the parliament and the government. Since an information asymmetry is one justification for the deparliamentarization thesis, any opportunities to correct this asymmetry are key to our understanding of these relationships and the deparliamentarization process.

The next empirical chapter examines the national parliaments' "direct" involvement at the EU level through the number of opinions and reasoned opinions voted on by each chamber in each year. Opinions are a moderately public and moderately institutionalized tool, which requires support at the level of a majority of the committee or plenary. While procedures for passing these do vary, final subsidiarity decisions do overwhelmingly involve the plenary (COSAC 2010). This allows political dialogue opinions and reasoned opinions to function as a study within a study, since reasoned opinions are somewhat more institutionalized and tend to require the involvement of more actors.

Since the parliaments cannot go to Council meetings, these opinions are the most direct involvement they can have on the EU level. Since 2009, resolutions can also be reasoned opinions that claim subsidiarity concerns and suggest that the policy should not be decided at the EU level, but rather at a national (or even regional) level. If enough of the national parliaments pass these, then the Commission will reconsider the legislation. I include models with three different dependent variables in this chapter. One is a count of opinions sent under the political



dialogue by chamber-year, the second includes just reasoned opinions, and the third combines these.

The third analysis examines the transposition process, where delegation in its classic form is most apparent. Transposition is the most institutionalized of the tools I analyze here, it is the least public, and it requires a parliamentary majority. For this portion of the analysis, I follow a similar procedure to that used by Franchino and Hoyland (2009), but include more recent legislation and the member states that have joined since 2004. This dataset includes information on how the legislation was transposed, so that one can determine whether the parliament was involved in the process or whether it was delegated to the executive.

The parliamentary questions chapter follows this one, in chapter three. I then examine opinions and resolutions in chapter four, and proceed to transposition in chapter five. Chapter six compares the findings of all of these chapters and concludes.

### **3.0 QUESTIONING EUROPE: EXPLAINING THE VARIATION IN EU-RELATED QUESTIONS**

#### **3.1 INTRODUCTION**

Questions are one of the more flexible tools that parliaments have at their disposal. MPs generally do not have to get questions approved by party officials or the government. Often, question times are open to any topic, or at least any topic that is relevant to the ministers that are present. At other times, question sessions may have a broad topic, but MPs can still choose any related question and can choose to focus it at the national or European level. For example, one MP mentioned a question period scheduled for the following day about refugees, and said that she expected it to take on a heavily European character, since many politicians think that the issue calls for a European solution.<sup>61</sup> Another MP from the Green Party said that she and others who deal with climate and the environment almost always ask about the EU, because these issues are almost exclusively dealt with at the European level.<sup>62</sup> These characteristics make questions one of the most flexible and individual tools available to members of parliament.

Questions are often about the public display, and members of parliament do view them as such. For example, the Speaker of the House of Commons stepped in during one question period

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<sup>61</sup> Member of Parliament. Personal Interview. October 7, 2014. Bundestag, Berlin.

<sup>62</sup> Member of Parliament. Personal Interview. October 8, 2014. Bundestag, Berlin.

to clarify the procedures being used “because we must not mislead the public.”<sup>63</sup> Depending in part on what MPs wish to display to the public, as well as on the day and the issue at hand, questions periods can be put to many different uses and can take on a very different character. They may sometimes take on a humorous character and display a good relationship between ministers and MPs, such as when a Canadian MP asked his Foreign Affairs minister about Quebec’s and US Center for Disease Control’s emergency measures for a possible zombie invasion and whether he was working with the US about a cross-border zombie strategy. Joining in the joke, the Foreign Affairs minister reassured MPs and Canadians that he was “*dead-icated*” to ensuring that Canada did not become a “safe haven for zombies.”<sup>64</sup> Similarly, UK Prime Minister David Cameron took time during his last session of parliamentary questions to refute recent rumors, with photographic evidence, that he did indeed love Larry, the cat who lived at 10 Downing Street and would be remaining with the house.<sup>65</sup> This type of question and answer interaction may be particularly useful to show the public a level of cordiality and collegiality between or within parties, especially after a publicly and politically tense period, such as the UK referendum on EU membership and party leadership fight that surrounded Prime Minister Cameron’s resignation. If the humor is done well, these types of exchanges are likely to be picked up by the press and social media, as both of these examples were.

In contrast, questions can also be used in a very adversarial manner, with the goal of embarrassing or “ambushing”<sup>66</sup> the government or getting them to divulge information they did

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<sup>63</sup> Speaker of the UK House of Commons. Hansard, 21 June 2010, Column 28.

<sup>64</sup> Question from Pat Martin, MP for Winnipeg Centre, MB to Foreign Minister John Baird on February 14, 2013.

<sup>65</sup> Answer from David Cameron during parliamentary questions on July 13, 2016.

<sup>66</sup> Member of Parliament. Personal Interview. November 25, 2014. House of Commons, London.

not want to make public. One such technique is for MPs to find the information from another source, have the government answer the question, and then show the discrepancy between them. This works particularly well if the government is purposely not answering or is hiding something and the MP can show this “in black and white,” and then take it to the press so they can publicize it.<sup>67</sup> It may come as no surprise that it is usually members of the opposition that use questions in this way.

Questions may also be used to actually get information, although often written questions may be more useful for getting detailed information than are oral questions. While detailed information may be the least likely to attract the interest of the public or the press, one member of the House of Lords pointed out that getting information in a question may be a better way of getting that information into the public domain, even if it is already somewhere on a government website, since the press will often pay attention to questions but would not bother to go to the website for it.<sup>68</sup> Questions may also be used to highlight concerns, especially those shared by constituents or interest groups, which simultaneously puts the concerns “on the minister’s radar”<sup>69</sup> and can be demonstrated to interested actors.

Therefore, I argue and demonstrate that question asking is different from other types of parliamentary activities, such as passing legislation, in three main ways: it is more individual, it is less institutionally constrained, and it is more public. Therefore, different factors affect questioning behavior about the EU. Institutional factors matter less, and if they do matter, they matter in the opposite way – it is actually the “weaker” parliaments that make more use of

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<sup>67</sup> Member of Parliament. Personal Interview. November 24, 2014. House of Lords, London.

<sup>68</sup> Member of Parliament. Personal Interview. October 8, 2014. *Bundestag*, Berlin.

<sup>69</sup> Member of Parliament. Personal Interview. November 25, 2014. House of Commons, London.

questions, likely because they have less access to other tools. The public nature of questioning means that public opinion about the EU is quite important for the number of questions asked about the EU, although long-term and short-term Euroskepticism work in different directions. Those countries with high overall Euroskepticism ask fewer questions, likely because most of the main parties in Europe are pro-European – often more so than their publics – and they do not want to point this out to their citizens. However, as there are short term increases in Euroskepticism, parliaments respond to these by asking more questions and showing citizens that they are voicing their concerns.

This paper aims to understand the relative involvement in parliamentary questioning among Europe's national parliaments, and to examine how and why such involvement varies across parliaments and over time. Why do some of the national parliaments more closely monitor EU policy-making by asking questions? Why do some of the parliaments choose to focus on certain strategies, such as questioning, for involvement? In order to answer these questions, I explore the use of parliamentary questions as a means of parliamentary scrutiny. Some of the main tasks of parliaments are to hold their executives accountable and to communicate with the public, both of which MPs can accomplish through public questions to ministers. It is therefore important to understand whether MPs perform these tasks in relation to Europe and how often they do so.

### **3.2 THE TOOL OF PARLIAMENTARY QUESTIONS**

The informal and individual nature of parliamentary questions helps make them a fairly versatile tool that can be used to achieve a variety of purposes. The public nature of questions allows

MPs to use them for communicating with the public about various policies and issues. For example, opposition MPs often use questions as a way of publicizing what they believe to be the government's failures or embarrassing actions. This is a way of getting the minister to speak publicly, and even if the minister is able to avoid directly answering the question, it is still a way for the MP to point out these embarrassing details on a public stage. This may help the opposition gain votes and supporters. Additionally, criticizing a minister based on information that they have provided can be particularly effective, since they cannot claim that the information is inaccurate or misleading. While government backbenchers may use question time as an opportunity to criticize the government, they may be less likely to do so in countries that allow for supplementary questions,<sup>70</sup> since this may open the minister up to further criticisms from the opposition (Cole 1999). Questions are, however, a way for backbenchers to signal disagreement without threatening formal censure or confidence proceedings. This is more likely to be necessary in the case of European Union politics, since most governing parties were not formed along the European politics issue dimension, and intra-party disagreement is more common. Qualitative evidence suggests that questions are used this way, especially among the UK Conservatives, who are very divided over Europe.

In contrast, government supporters may use questions as a way to help the government, by providing them with the opportunity to highlight their achievements or to take a stand on a popular issue, trying to gain votes and support for their party. They may also help consume time with positive and easy questions, limiting the time that their minister is “on the spot” for the

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<sup>70</sup> In parliaments that allow for supplementary questions, there is usually a list of formal questions, which may be printed on an agenda or submitted to the government ahead of time. After each of these questions is asked, there will be time for the original inquirer to ask a follow up or for other members to pose related questions.

opposition. In contrast to the point above, supporters may also try to help the minister by using supplementary questions to put a more positive spin on something started by the opposition. In some cases, the government may also plant questions from its supporters so that it can reveal good news in the public spotlight (Cole 1999). Another potential way for government supporters to use questions occurs in multi-party governments, where MPs from one party may use question time to monitor the actions of ministers from a coalition party (Thies 2001, Martin and Vanberg 2004, 2005). However, it is questionable how much this occurs in practice, as Russo and Wiberg (2010) do not find much evidence of it.

Questions may also be used as a way to represent citizens or interest groups, which MPs can then publicize as a form of “credit-claiming” (Mayhew 1974). One MP who I met with immediately before Question Time showed me the briefing he had gotten from a pro-Israel pressure group with suggestions of questions to ask and background information on each one. I attended the subsequent Question Time, and he did have this material in hand as he asked a question based on it. He said that he gets similar briefings on every subject, including Europe, although he usually does his own research as well.<sup>71</sup> Such information provides a relatively low cost way for MPs to take a certain position and let interested parties see that they are acting on their behalf. For European issues, which MPs may know less about, questions have the potential to be an easy, low stakes way to get involved. MPs may also raise local or even individual issues from their constituency, and “communities and constituents really appreciate the issue being raised.”<sup>72</sup> In Ireland, a constituency-centered parliament, about 45% of questions have a constituency basis (Martin 2011b). Even in the Italian parliament, with a closed-list electoral

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<sup>71</sup> Member of Parliament. Personal Interview. December, 2 2014. House of Commons, London.

<sup>72</sup> Member of Parliament. Personal Interview. December, 12 2014. House of Commons, London.

system, there is still a substantial constituency focus, although it is more prominent among members of certain parties, especially regional ones, and among those MPs without previous national political experience (Russo 2011).

The media help as an important intermediary between the legislature and the citizens in order to make questions effective. Prime Minister's Questions or the equivalent are often broadcast live on television and watched by millions of citizens, and the media pay relatively more attention to questions, or at least to oral questions, than many other activities within the legislature (Salmond 2007). There is evidence that more open and flexible questioning institutions do improve communication with citizens, as they are associated with increased political knowledge by citizens, increased partisan attachment, and increased electoral turnout (Salmond 2014). Since one of the main issues facing the EU is the lack of citizen awareness of it and connection to it, more questions about Europe might lead both citizens and the media to begin paying more attention to Europe.

Other purposes are more about communicating directly with the executive, with less concern for public perception. Questions may help backbenchers or the opposition to press for governmental action or attempt to shift government policy. Questions allow parties and individuals to communicate about what issues are important, bringing the attention of fellow MPs, the government, and potentially the public to these issues. Attentiveness to an issue is a necessary prerequisite for significant policy change (Baumgartner and Jones 1993, 2002; Jones 1994; Kingdon 1995). This may be one of the most important reasons why MPs use questions, as 74% of Norwegian MPs believed that "parliamentary questions are important to direct attention towards issues that would not otherwise attract interest from the government minister" (Rasch 2011). While this attention may (and very often does) exist at the EU level without



existing at the national level, it must also exist there in order for there to be any significant influence on the executive by members of parliament. Questions are a good way for members of parliament to demonstrate their interest and concern on these issues, especially for members of the opposition or backbenchers, who may have much less access to ministers.

One of the other major functions of all parliaments is to hold government accountable and fulfill a scrutiny role. Questions can be a useful way of doing this, especially for opposition MPs who may not have much direct or informal access to ministers or the party strength to use stronger measures. One French MP used a question about the Greek debt crisis to point out the weakness of the National Assembly's EU accountability powers, compared to the German Bundestag, which must be consulted. She praised the government for holding a debate on the issue, but pushed for further parliamentary accountability by asking that the parliament be allowed to hold a vote on the government's position.<sup>73</sup> Even when parliaments cannot get a formal mandating right, holding votes or coming to some other consensus position in parliament (as during a debate) is likely to constrain the government, since it would be difficult politically for a government to ignore a clear, public preference of its parliament (Auel 2006).

Even without using some of these other tools, questions do seem to be at least moderately effective at holding the government accountable. About 64% of Norwegian MPs strongly or partly agreed that "Questioning is a very important instrument in the *Storting's* control of the executive" (Rasch 2011). Salmond (2011) shows that questioning practices do affect ministerial behavior, at least in terms of delegation. He demonstrates that when ministers face more open questioning procedures, especially in terms of spontaneous questions, they are less likely to

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<sup>73</sup> Eva Sas, French MP. Question No. 3089. September 7, 2015. French National Assembly. Available at: <http://questions.assemblee-nationale.fr/q14/14-3089QG.htm>

delegate, because they would have a greater chance of being held responsible for decisions they were not aware of, which would hurt their reputations for competency. Cole (1999) looks at a least likely case, examining the effect of questions on non-departmental public bodies, and finds a small effect for these quasi-governmental institutions. Additionally, countries with larger public sectors do tend to have more parliamentary questions, indicating that more government activity leads MPs to ask more questions (Wiberg 1995). Qualitative evidence suggests that their effectiveness depends on the usefulness of the minister's answer and, more importantly, whether it has the potential to be combined with media pressure. Some MPs will mention questions in press releases, while others publicize them on their websites or social media.

Questions are also an opportunity for an exchange of information between the parliament and the government. Since an information asymmetry is one justification for the deparliamentarization thesis, any opportunities to correct this asymmetry are key to our understanding of these relationships and the deparliamentarization process. While members of parliament may also ask for information through more informal means or through the committees, questions are the key formal and public way for any individual member to request information from the government. They are a tool that can help MPs "tease out the government position."<sup>74</sup> By using formal questions, they also make the answer public, which may help with the scrutiny function and connects this purpose back to the more public ones. They can help spread information, including to other members of parliament, even if both the MP asking the question and the minister answering it already know the answer. It can also help with the information asymmetry because it may allow MPs to use the civil service as researchers, thereby

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<sup>74</sup> Member of Parliament. Personal interview. November 23, 2014. House of Commons, London.

increasing their capacity to get information, especially in countries where parliamentary staff is in short supply.

However, the idea of using questions to exchange information highlights the fact that even within the category of parliamentary questions, different types of questions are used for different purposes. The main distinction is between written and oral questions. For example, many MPs said that they use oral questions as a way to embarrass the government, while they use written questions to get information. Oral questions “can be used to make a point, but not to make a case.”<sup>75</sup> Either way, questions bring some kind of information, embarrassing or not, into the public domain and reminds ministers that members of parliament are observing their actions, especially on the given issue.

There may also be some individual reasons for asking questions, such as those relating to individual career advancement. They can be a way of building a name and reputation, especially as a leader on certain policy areas, and demonstrating this to party leaders may help MPs get specific committee assignments or eventually ministerial posts. Bailer (2011) finds that the best predictor of question-asking was age and experience, with younger and newer MPs using questions as a way to build a reputation for themselves. MPs themselves seem to believe that self-promotion is a common use of questions, at least in Norway, since a 2005 survey of Norwegian MPs found that 74% of respondents either strongly or partly agreed that “too many MPs use parliamentary questions for self-promotion” (Rasch 2011). This opportunity for specialization may also be important for the internal functioning of the parliament, since Rozenberg et. al. (2011) argue that questions may help fulfill the role that US Congressional

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<sup>75</sup> Member of Parliament. Personal Interview. November 24, 2014. House of Commons, London.

committees do in Krehbiel's informational view (1991). Since committees in European parliaments are generally much weaker, they do not provide the same incentives for members to become policy experts, but the public and reputational benefits of questions may help fulfill this role.

### 3.3 HYPOTHESES

Beyond these substantive roles for questions, there are also reasons why questions are important theoretically. Many of the studies that try to explain differences in national parliamentary involvement in EU affairs tend to focus on institutionalized patterns of involvement, such as the European Affairs committees or their involvement in transposition. Given the formal powers necessary for these types of involvement, it is not surprising that some of the factors they have found to be most influential relate to the general relationship between the parliament and the executive (Franchino and Hoyland 2009, Raunio 1999). In order for a parliament to gain these types of formal and institutionalized powers, it will often need to have had enough power at the domestic level to bargain for such powers in European matters. In contrast, questions are much less institutionalized or formal, so the general domestic relationship between the parliaments and their governments should be a much less important factor in explaining parliamentary involvement. The frequency of questions, especially on a certain topic, can change much more quickly than more formal institutions. They can fluctuate in response to changes in party composition, public attitudes, etc., without requiring any formal changes.

*H1: The general domestic relationship between parliaments and their governments should be less important for explaining EU-related questions than for other types of involvement.*

*H2: Questioning about Europe should respond to time-varying factors.*

In addition to how institutionalized the powers are, the number and type of actors involved also influences how useful a tool may be in a given situation. Asking parliamentary questions about EU legislation does not require a parliamentary majority. They are one of the parliamentary functions that are available to all members and parties in parliament. It is one of the few ways that the opposition can play a key role in monitoring the executive. They are a method for parliament, including the opposition, to force the executive to make a public statement (Rasch 1994, 2009; Wiberg 1995). Some discussions of the relationship between parliaments and executives take the opposition out of the equation entirely. For example, Carter and Poguntke (2010) focus on monitoring, but they conceptualize a principal-agent relationship with the governing parties as the principals and the executive as the agents, arguing that the opposition parties have very little control over what happens and do not belong in the model. Questions are a type of legislative behavior where such a model would not make sense. First, while those parties not in government do have much less control than those in government generally speaking, legislators from these parties may still have some influence, especially in the case of questions. Opposition members in all countries are also able to ask parliamentary questions, and thereby perform a scrutiny and monitoring function. In fact, in some countries questions are (almost) exclusively the tool of the opposition, so a model that does not include them would not be able to tell us much about parliamentary questions. Parliamentary questions are also therefore one of the best ways to find out about the behavior and involvement of opposition members, who often make up close to half of the legislature.

Questions may also be the best way to learn about the interests of MPs, since they are the least diluted by party influence, and therefore “provide a more reliable perspective of the choices

parliamentarians exercise for focusing on parochial, national or international issues” (Martin 2011a, 263). Speeches, which use up more of precious plenary floor time, tend to be more controlled and restricted by the parties. Roll call votes are often not taken in European legislatures, and when they are, party discipline tends to be quite high. Much of committee and other legislative work takes place behind the scenes. Thus, questions are a public and relatively sincere expression of MP behavior and interests, and are comparable across legislatures.

The individual nature of questions affects what variables are important for explaining variation in the use of these tools, increasing the importance of less institutional variables. For example, higher levels of public Euroskepticism may be particularly important for explaining EU-related parliamentary questions, since parties and individual MPs that disagree with the government’s position can implement these on their own. Similarly, when there is more ideological diversity and fragmentation within parliament (or parties), these types of actions that do not require cross-party cooperation should be more useful. This would be true of question-asking in general, but since parties tend to be less unified on Europe than on other issues, it should be magnified for questions about Europe.

*H3: Greater fragmentation should lead to more EU-related questions.*

The third main factor that affects the usefulness of certain tools in certain situations is how apparent their use is to the public and the media. Questions are important tools for communication with the public, in ways that transposition or committee meetings (especially closed meetings) are not. As discussed above, communication with the public is one of the main uses of asking questions, so MPs are likely to use them to ask about things they want the public to know. They will ask about things that they think will help score political “points” and things that they think the media or interest groups may be more likely to pick up on. Therefore, in

situations where public Euroskepticism is high and MPs can appeal to the electorate by taking a stand against Europe, there should be more use of EU-related oral questions.

*H4: High levels of public Euroskepticism should lead to more EU-related questions.*

### **3.4 DATA AND MODEL**

The dependent variable measures the percentage of all parliamentary questions in a year that were related to Europe. I calculated this measure by collecting all oral questions from the official parliamentary websites and searching for EU-related terms. Some search terms clearly indicate that the question is about Europe. For example, if they ask about a specific EU directive, one of the EU institutions, or a broad EU policy program, then that question is certainly related to the EU. However, other terms are less clear. For example, even when they mention the European Union by name, sometimes it because they are commenting about how they have the highest unemployment rate in the European Union or the lowest carbon emissions in the European Union. While this still shows that they are choosing Europe and the EU as their frame of reference, instead of another relevant grouping, such as OECD countries, it is not clear that simply using phrases like “Europe” or the “European Union” clearly makes the question related to the EU in the same sense as referring to the EU’s institutions or policies. For automated coding, the use of words like “Brussels” is particularly problematic, since it may be used as a way to refer to the politicians, bureaucrats, and institutions located there, or it may be part of a discussion about the train line between Paris and Brussels. I therefore present two

dependent variables, one which includes terms and phrases that involve a clear reference to the EU, and one which includes a broader set of terms that refer to the EU more loosely.<sup>76</sup>

I began by developing a core list of search terms in English, developed in part by going through the parliamentary questions for the United Kingdom. I then use the EU's inter-institutional terminology database ("Inter-Active Terminology for Europe", or IATE) to translate as many of these as possible into as many of the EU's official languages as possible. This tool is used in the EU institutions "for the collection, dissemination and shared management of EU-specific terminology... IATE incorporates all of the existing terminology databases of the EU's translation services into a single new, highly interactive and accessible interinstitutional database."<sup>77</sup> The database contains approximately 1.4 million multilingual entries. After using this tool to compile a base search list in each country's native language, I search through the questions for these terms. I have then looked through a subset of questions in each language and modified the list as necessary. This allows me to add some variations on the terms or additional phrases that indicate a clear reference to the EU. It also allows me to remove some translations that are too vague and would pull in too many questions. For example, a search on "Council of the European Union" returns similarly specific phrases in all languages, but also returns a simple translation of the term "Council" in most languages. In some, even a fairly specific phrase like "Council of Ministers" (another name for the same institution) translates to the same phrase that those countries use for their cabinets. Where necessary, I remove phrases like this from the search list so that there are not too many "false positives" on the dependent variable.

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<sup>76</sup> Efforts are underway to manually code this middle category, which is potentially about the EU. A subset of the questions for each country has been coded manually.

<sup>77</sup> From the "About IATE" page on the database's website. The tool is available at: [iate.europa.eu](http://iate.europa.eu).



The dataset currently includes the questioning behavior of fourteen parliamentary chambers in ten countries.<sup>78</sup> It covers the period 1996-2015, although not all years are present for all countries. It produces a set of 131 chamber-years, although the coverage of some of the independent variables limits the final set to 125 chamber-year observations. For the more strictly defined dependent variable, the mean is 10.6% of questions being related to the EU and the median is 6.8%. There were five chamber-years in which no clearly Europe-related questions were recorded. For the more broadly defined version of the variable, the mean is 22.6% and the median is 20.7%. Only one chamber-year still had no recorded EU-related questions.

The mean total number of questions per year was 2,933 questions, and the median was 1129. Eleven of the twelve chamber-years with the most questions are all from the United Kingdom, with the highest six going to the House of Commons, the seventh to the Irish *Dail*, and the next five to the House of Lords. The Danish *Folketing*, the Polish *Senat*, the Italian *Camera* and *Senato*, and the French *Assemblée Nationale* tend to fall in the next group, followed by the German *Bundestag* and the Cypriot *Vouli ton Antiprosopon*. The Irish *Dail*, Polish *Sejm*, and Belgian *Chambre des Représentants* and *Sénat* make up the next group, with the Austrian *Nationalrat* tending to ask the fewest questions.

In terms of EU-related questions, the House of Lords, *Assemblée Nationale*, *Sejm*, and *Bundestag* are in the top half of parliaments (and vaguely in that order, although the House of Lords is universally near the top). The House of Lords references the EU in 47-67% of its questions, depending on the year and the definition of EU-related. In contrast, the Belgian

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<sup>78</sup> These are the Austrian *Nationalrat*, the Belgian *Chambre des Représentants* and *Sénat*, the Cypriot *Vouli ton Antiprosopon*, the Danish *Folketing*, the French *Assemblée Nationale*, the German *Bundestag*, the Irish *Dail*, the Italian *Camera dei Deputati* and *Senato*, the Polish *Sejm* and *Senat*, and the UK House of Commons and House of Lords.

*Chambre des Représentants* asks the lowest percentage of questions that are definitely about the EU, mentioning something about the EU in between 0.6 and 15% of its questions. The Belgian *Sénat* asks the fewest questions that are potentially about the EU, mentioning it in somewhere between 1.7 and 14% of its questions.

In order to be able to test how both time varying and time invariant factors affect this questioning behavior, while also being able to account for the panel-type nature of the data, I use a hybrid random and fixed effects model (Skrondal and Rabe-Hesketh 2004, Bell and Jones 2015). This type of hybrid model introduces the mean of all time-varying independent variables into the model, along with the variable. This avoids the traditional problem of random effects, which is that it cannot account for any relationship between the unit term/unit unobservables and the time-varying independent variables. It also allows one to estimate the effects of the time invariant variables, which a fixed effects model would not allow. One can then re-write the original equation so that it includes the deviation from the mean, the coefficient of which is the within-unit effect, and the mean, the coefficient of which gives us the between-unit effect. I use clustered standard errors by chamber. Including year dummies in the models begins to put heavy demands on the data, but I include estimates for these models as well.

The first independent variable in the model accounts for the general relationship and balance of power between the executive and the legislature. Other scholars have found that these factors are very important for explaining the strength of the EU Affairs Committees or the parliament's involvement in transposing EU legislation into national law (Raunio 2005, Franchino and Hoyland 2009). However, since questions are less subject to institutional constraints, I expect that these will be less relevant for questions. The first variable accounts for whether the parliament, acting on its own without the assent of any other actors, can replace the

executive. This represents legislative power over the executive. This measure is one of the components of Fish and Kroenig's (2009) Parliamentary Powers Index, and utilizes their coding with some updates by the author for upper chambers.

The next set of variables account for the parliamentary fractionalization of the legislature, by chamber mean and the deviation from it. More fragmentation in the legislature means more, smaller parties, and therefore potentially leads to less trust and more need for governmental oversight. Since parties tend to be even more fractured on EU affairs, I hypothesized that more fragmentation would compound this and lead to more EU-related questions. These variables are based on the effective number of legislative parties (Laakso and Taagepera 1979), as provided in the Comparative Political Data Set (Armingeon, et al. 2015) and updated by the author for upper chambers.

I then include two variables that account for public Euroskepticism, by country mean and the deviation from it. Given the public nature of questions and their flexibility, I expect that more questions will get asked as Euroskepticism increases. The data for this variable come from the Eurobarometer biennial survey, using a question that asked: "In general, does the European Union conjure up for you a very positive, a fairly positive, neutral, fairly negative, or very negative image?" I combine the "very positive" and "fairly positive" categories together, creating a positive category. I do the same for negative. I then subtract the percent that answered positively from the percent that answered negatively. This codes the variable so that positive and higher values indicate overall Euroskepticism, while leaving out those who are neutral or unsure.

The next three variables in my model came from the qualitative research that I did. The first codes for whether the chamber is an upper house. This includes the House of Lords, the

Belgian *Sénat*, the Italian *Senato*, and the Polish *Senat*. During my fieldwork, it seemed that chambers that did not have to focus on reelection in the same way as most lower chambers do or chambers that were less involved in the scrutiny of the government were more able to focus on the EU and to do so in a productive way. Many MPs in lower chambers commented on the lack of time or expertise to deal with European matters. In contrast, many of those in upper chambers were able to become EU policy experts. Additionally, since the government is often not dependent on the confidence of the upper house, these chambers may have more freedom to criticize the government.

The next variable accounts for whether or not a country has judicial review. During my interviews with German MPs and their staff, they frequently discussed the Constitutional Court ruling that gave more power in EU affairs to the parliament (or forced it on them, depending on one's perspective). The Bundestag might have struggled to gain these rights on its own or might not have decided to fight for them, but it has become more involved since the court's ruling. I include this variable to help determine whether this is a generalizable factor or something unique to Germany. The variable comes from the Comparative Political Data Set (Armingeon, et al. 2015).

The next variable codes for whether or not members of parliament have policy staff to support their parliamentary work. The variable is coded as a dummy variable that takes a value of one if each MP has at least one non-secretarial staff member with policy expertise and takes the value of 0 if they do not. Coding comes from Fish and Kroenig (2009) and is updated by the author for upper chambers. Policy staff can help bring issues to a member's attention or help them craft relevant questions. This is particularly useful for asking EU-related questions, since these staff members may be able to follow what is going on at the EU level and alert their MP to

important legislation or events. A member of parliament without support may be more inclined to focus on the domestic issues that are still at the heart of legislative work in national parliaments.

I then include two variables that account for the time to the next election, measured in years. One is the average amount of time between elections, which allows the model to estimate a between-chamber effect, and one is the deviation from that mean, which estimates a within-chamber effect. As national elections approach and many MPs are involved with campaigning for their seats, they will be more likely to focus on national issues that voters tend to care about. They may also be spending less time in parliament, so what time they do have for asking questions will tend to be more focused on more pressing (or campaign beneficial) domestic issues.

### **3.5 RESULTS**

I present the results of these models in Table 1. The first variable, whether the parliament has the power to replace the executive, is significant at the .001 and .01 level ( $p=.001$  and  $p=.003$ ) in both models that include year fixed effects. The effect is negative, meaning that stronger parliaments ask fewer EU-related questions. On average, parliaments that can replace the executive ask about 19 to 20% fewer questions. This result suggests that weaker parliaments may use questions as a substitute for other, more formal powers that these parliaments do not have. The main hypothesis related to these variables was that they would not be that important for questioning, since it is a more individualized activity. It is only significant in two of the models and at a relatively low level. More importantly, however, the fact that the relationship is

negative provides even stronger support for the theory, in that stronger parliaments that may have other, stronger (and more formal or institutionalized) tools do not use questioning as much as weaker parliaments that may not have these other tools at their disposal. It also emphasizes the importance of studying different types of tools, since this finding is opposite to the main finding in studies of other, more institutionalized tools (Franchino and Hoyland 2009, Raunio 2005). The fact that we see an increase in questions as public Euroskepticism increases in the short-term provides some support for hypothesis two, which predicted that questions would respond to time-varying variables. The fact that questions are an individual and flexible tool enables politicians to use them to quickly respond as the environment changes.

Between chamber variation in party fractionalization was only significant in the model for the strictly defined version of the dependent variable with fixed effects ( $p=.010$ ). It was positive, indicating that more fragmented parliaments ask more questions about the EU. Since questions are an individual tool, they are one that fragmented parliaments can still use. However, there is nothing to keep less fragmented parliaments from using them as well, which may be why this variable was not significant in more of the models.

The between-chamber effects for Euroskepticism are significant for both of the models that include year fixed-effects, whereas the within-chamber effects are significant in three of the four models. Contrary to expectations, the relationship between chambers is negative, suggesting that chambers with more Euroskeptic publics ask less questions about the EU. Those chambers with a .1 higher average level of Euroskepticism are expected to ask 9-10% fewer EU related questions, on average. However, it is interesting to note that the within-chamber effect is positive, meaning that short-term and long-term Euroskepticism have opposite effects. On average, as Euroskepticism increases by .1, parliaments will ask about 1% more questions about

the EU. This suggests that in those countries with generally high levels of Euroskepticism politicians tend to avoid the topic, which would make sense if the politicians are more pro-EU than their publics, while those for whom higher levels of Euroskepticism are a short-term factor may feel more comfortable capitalizing on this to criticize the EU. As far as the long-term (time invariant/between chamber) effect goes, center parties tend to be broadly pro-EU, leaving many politicians facing a disconnect between their party's views and their voters' views. It is not entirely surprising that, especially in the long-term, this might lead them to avoid bringing up the EU.

Judicial review is significant in both models with year fixed effects, but it is negative. It is possible that this effect is similar to the effect for replacing the executive, such that if courts grant parliaments other, more institutionalized rights, they may use these instead of questions. Staff is, surprisingly, also negative, meaning that those parliaments where MPs have policy-oriented staff ask fewer EU-related questions. It is only significant in the model that uses the strictly defined version of EU questions and includes year fixed effects. One possible explanation was mentioned above, in that MPs that are short-staffed may ask questions as a way of getting civil servants in the ministries to research the answers for them. This technique might be especially useful for the EU, since members of parliament are already an information disadvantage when it comes to EU affairs.

The amount of time to the next election is significant both between chambers and within them. Both effects are significant in both of the models that include year fixed effects and are positive, meaning that those parliaments with more average time between elections ask more EU-related questions and they ask more of them when they are further away from that mean. The between chamber effect is much more substantial than the within chamber effect.

The upper house variable was not significant. Some of the year fixed effects were significant, but not in any pattern that is of theoretical interest.

**Table 1.** Determinants of EU Questions

VARIABLES	(1) Strictly EU Related	(2) Strictly EU Related w/ Year FE	(3) Broadly EU Related	(4) Broadly EU Related w/ Year FE
Replace Executive	-0.015 (0.037)	-0.196*** (0.058)	-0.050 (0.046)	-0.208** (0.071)
Effective # Parties Mean	0.012 (0.014)	0.056** (0.022)	0.008 (0.019)	0.040 (0.024)
Effective # Parties Mean Deviation	0.005 (0.010)	-0.007 (0.011)	0.009 (0.017)	-0.005 (0.011)
Euroskepticism Mean	-0.263 (0.214)	-0.889*** (0.225)	-0.403 (0.395)	-1.061** (0.382)
Euroskepticism Mean Deviation	0.101* (0.047)	0.174* (0.076)	0.157* (0.072)	0.173 (0.111)
Upper Chamber	0.066 (0.085)	-0.029 (0.032)	0.012 (0.092)	-0.064 (0.057)
Judicial review	-0.201 (0.139)	-0.414*** (0.100)	-0.296 (0.174)	-0.507*** (0.148)
Staff	-0.060 (0.054)	-0.224** (0.070)	0.001 (0.129)	-0.223 (0.142)
Mean Time to Next National Election	0.279 (0.153)	0.684*** (0.198)	0.227 (0.241)	0.657* (0.264)
Time Between Nat. Elections Mean Dev.	0.000 (0.002)	0.006* (0.003)	0.006 (0.004)	0.011*** (0.003)
Constant	-0.397 (0.462)	-1.190** (0.454)	-0.105 (0.577)	-0.731 (0.564)
Observations	125	125	125	125
Number of chamber2	14	14	14	14

Robust standard errors in parentheses

\*\*\* p<0.001, \*\* p<0.01, \* p<0.05

Hybrid Fixed and Random Effects Regression. See text for information on variables.  
Year fixed effects on models 2 and 4 are suppressed for readability.



## **4.0 RESOLVING EUROPE: EXPLAINING THE VARIATION IN EU-RELATED PARLIAMENTARY RESOLUTIONS AND OPINIONS IN EUROPE'S NATIONAL PARLIAMENTS**

### **4.1 INTRODUCTION**

Most of the tools that parliaments can use to influence European Union policy-making are still national instruments. These national tools allow them to scrutinize the actions of their governments at the European level and to try to influence what their governments do at the European level. These actions, such as parliamentary questions, still take place in national parliaments and are used to directly influence national governments. However, since 2006, some tools have been introduced that allow national parliaments to act directly at the European level. The Commission now sends all of its legislative proposals and consultation documents directly to national parliaments, engages in a (written) dialogue with them about their concerns over these documents, and allows them to submit opinions that, under certain circumstances, will lead the Commission to reconsider its proposal or may even trigger a different voting system in the Council and European Parliament. These are the first formal tools that allow national parliaments to engage directly at the European level.

These tools have the potential to give national parliaments a substantially greater role at the European level, to shift the power dynamic in the EU's legislative process, and to provide a

clearer path between citizens and EU decision-making. As Cooper (2012) contends, these tools may allow the national parliaments to become a collective actor and function as a virtual “third chamber” within the EU’s legislative system. He argues, “even though they do not meet together in the same physical space, they to some extent fulfill the functions of a parliamentary chamber at the EU level” (442). He suggests that three key functions of such a virtual chamber would be legislation, representation, and deliberation. The orange card procedure, explained more fully below, does allow national parliaments to trigger a different voting procedure among the Council and the EP, thereby allowing them to directly intervene in the legislative process. These tools create a third chain of representation, linking citizens to EU policy-making through national parliaments, without the additional link of national governments in the Council. There is evidence that these tools have encouraged greater interaction between parliaments, thereby allowing for deliberation. However, the potential of all three of these functions and therefore of any virtual chamber will depend on how the parliaments use these tools. This chapter therefore examines how often and under what conditions parliaments are most likely to send opinions directly to the Commission.

These opinions that national parliaments send to the Commission are generally passed by majority vote, either in committee or in a plenary vote, often as a form of resolution. As such, they require majority support, and therefore also usually require the support of the governing political party or parties. This means that they are much less individualized than parliamentary questions and cannot often be used by the opposition. They are still public, since the Commission posts the opinions and its replies on its website, as do many of the national parliaments. However, since they are not always presented on the plenary floor, since they are not always presented in the same, media-accessible format as questions are, and since they do

not have the same potentially media-enticing adversarial drama as questions do, they may be considered less public. If a parliament or its members are primarily trying to show voters that they are paying attention to certain topics, questions are much more likely to be a useful tool than sending an opinion to the Commission. However, if they are looking to “claim credit” for a tangible action (Mayhew 1974), then being able to point to a resolution or an opinion sent to the Commission may be quite useful. The procedures required to use this tool, such as scheduling plenary debates and votes, are also more institutionalized or formal than parliamentary questions. In order to submit these types of opinions to the Commission, over half of the national parliamentary chambers made amendments to their rules of procedure or passed new legislation to set out the relevant procedures (COSAC 2011, 2013a). At least some of these changes required government support. Thus, passing resolutions about and sending opinions to the Commission is a less individual, less public, and more institutionalized tool than are parliamentary questions.

## **4.2 INFORMATION RIGHTS, THE POLITICAL DIALOGUE, AND THE EARLY WARNING SYSTEM**

The idea of introducing formal rights for national parliaments was initially raised during the Convention on the Future of Europe and included in the Constitutional Treaty. During 2005, the Commission began to plan how it would implement these changes once the Constitution went into force, but these preparations and the treaty were put on hold following the “no” votes in referenda in France and the Netherlands. However, the Commission took note of the increasing interest of national parliaments, including the fact that many had sent permanent representatives

to the EU institutions, and of the democratic principles inherent in the plans for the Constitution. Borroso's Commission determined that "the Commission cannot remain indifferent to the representation of the national assemblies of 21 Member States in Brussels. It cannot ignore the extension of the paradigms of prior parliamentary examination since enlargement; nor can it afford not to exchange views with the national parliaments during the period of reflection" (Commission of the European Communities 2006b, 1).

Therefore, the Commission voluntarily made relations with national parliaments a priority. It appointed one of its members to be in charge of relations with the national parliaments and stepped up its commitment to visiting and meeting with national parliaments. In 2006, it sent a communication to the Council entitled "A Citizen's Agenda: Delivering Results for Europe", in which it expressed its desire to send all Commission documents directly to the national parliaments, including pre-legislative/consultation documents and legislative proposals, and to invite them to react to these, in order to open up a "political dialogue" with them and "improve the process of policy formulation" (Commission of the European Communities 2006a, 9). The Council welcomed this commitment and called on the Commission to consider the responses of the national parliaments, especially as regards subsidiarity and proportionality concerns. These refer to two principles in the EU treaties that guide the extent of EU policy-making. Subsidiarity establishes that the EU should only act if the objectives could not be sufficiently achieved at state, regional, or local level, and so there is an added benefit of action at the EU level. It embodies the idea that all decisions should be taken at the closest possible level to the citizen. Under proportionality, the EU's actions should go no further than is necessary to achieve those objectives. The Commission began sending all documents to national parliaments

in September 2006 and the national parliaments responded, with 22 national parliaments submitting 83 opinions in the first eight months.

The role of national parliaments was later formalized under the Treaty of Lisbon, which went into force in 2009. The Treaty added an article that acknowledges the national parliaments as contributors to the “good functioning of the union” and formalizes these rights. The parliaments now receive all Commission consultation documents, instruments of legislative planning, draft legislative acts, Council agendas, and Council meeting minutes. In addition to these increased information benefits, the Treaty introduced the Early Warning System, which gives the national parliaments a formal role in monitoring EU legislation. This mechanism allows each of the parliamentary chambers to write a reasoned opinion arguing why proposed legislation does not meet the EU's principle of subsidiarity. All parliaments get two votes, with each chamber of bicameral parliaments getting one vote. If reasoned opinions are submitted from chambers totaling one-third of the votes, then the “yellow card procedure” is triggered and the Commission must review the draft legislation and provide an explanation of why it is maintaining, amending, or withdrawing the draft.<sup>79</sup> If the total is one half of the votes on a proposal that is under the ordinary legislative procedure, then the “orange card procedure” is triggered. If the Commission still wishes to maintain the proposal in this case, it must issue its own reasoned opinion explaining why the subsidiarity principle is not violated and the Council and EP have to decide during first reading whether they agree. If 55% of the members of the

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<sup>79</sup> In those cases where the initiative did not come from the Commission, the actor that put forward the proposal would make this decision and provide the necessary justification for its actions. Additionally, if the proposal is in the area of freedom, security, and justice, then the threshold to trigger this procedure is a quarter of the votes, rather than a third.

Council or a simple majority of the EP disagree with the Commission, then no further consideration will be given to the proposal (COSAC 2008).

#### **4.2.1 Increased information rights and information exchange**

The increased access to information is a substantial first step for greater national parliamentary involvement. It is quite difficult to be involved in the legislative process if one does not know what legislation is being considered or proposed, or what policies are included in those proposals. In this way, information acts as a prerequisite for involvement. The information also puts parliaments on more equal footing with their governments, reducing the information asymmetry and allowing parliaments to scrutinize their governments in a more informed way. In fact, the information provided by the Commission may actually give national parliaments a slight information advantage. An individual at the Polish *Sejm* pointed out that they often now receive these documents a day or so before the government does, since they get them directly and the government receives them only after they are forwarded on by the Council.<sup>80</sup>

Access to these documents is also important because it allows national parliaments to be involved at much earlier stages of the decision-making process. Consultation documents allow them to suggest amendments or raise concerns before the Commission has put together its proposal, thereby allowing them to potentially have an impact before the formal agenda-setting phase of the legislative process. Access to the Commission's proposals allows them to try to influence the Commission, members of the European Parliament, and their own government's

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<sup>80</sup> Staff member, personal interview, September 12, 2014, Polish Sejm, Warsaw.

actions in the Council during the main legislative phase, rather than only discovering objectionable policies after the decisions have already been made.

Overall, the parliaments do consistently consider access to information to be a useful tool. In one survey of parliamentary chambers, all but two of those that responded thought that it was a very helpful tool and that it had had a positive impact on the good functioning of the Union (COSAC 2014). However, there is a potential problem of information overload, especially for more short-staffed parliaments. For example, the German Bundestag, which also receives additional documents from its government, estimates that it receives about 1,500 documents that relate to different policy proposals and could be used in committee discussions, as well as an additional 25,000 documents each year that provide supplementary information on these, including “communications from Council bodies, follow-ups to legislative proposals, accompanying working documents from the Commission, documents on proceedings before the European courts to which Germany is a party and a host of notifications from the Federal Government” (Risse 2014).

In addition to these formal information rights, the introduction of the Early Warning System has also encouraged a greater exchange of information among parliaments, in order to increase the likelihood that they will meet the yellow or orange card thresholds before the eight-week deadline. Technology has also helped with this endeavor, as some of the most used tools for exchanging information are email and a website that has been explicitly set up for the purpose, the “InterParliamentary EU information eXchange” or IPEX.<sup>81</sup> This includes documents sent from the Commission and information uploaded by the national parliaments, including most of the opinions that they submit to the Commission. It allows them to see

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<sup>81</sup> <http://www.ipex.eu/>

whether other parliaments are considering or have successfully passed a reasoned opinion. About half of the national parliaments said that these tools had helped them in drafting either a reasoned opinion or a broader opinion as part of the political dialogue, and about a quarter (for email) or a third (for IPEX) said that it helped them decide not to draft one of these opinions. The other most useful tools for coordination involved face-to-face interactions, either through the national parliamentary representatives based in Brussels or through their governments and permanent representations in Brussels. They have also coordinated by sending letters between chairmen of parliamentary committees, informal discussions at the COSAC meetings, video conferences between parliamentary committees, and political group (party) meetings at COSAC conferences (COSAC 2013a).

#### **4.2.2 Political dialogue**

The political dialogue primarily consists of written opinions that the national parliaments can submit to the Commission and written responses from the Commission. Most parliaments send their opinions only to the Commission, but some also address them to the EP and Council. The Commission generally responds to opinions that raise concerns or ask for information, but it will only acknowledge receipt of the opinion if it is supportive of the Commission's proposal. The number of opinions submitted by national parliaments increased for the first few years, until it leveled off at around 600 per year in 2012. There was a decrease in the number of opinions received in 2014, down by 19% in comparison to 2013. However, this decrease can be explained by the lower number of new initiatives produced by the Commission because of the changeover from the second Barroso Commission to the first Juncker Commission. Some parliamentary



chambers are much more active than others, with about 80% of the opinions tending to come from ten chambers in recent years (European Commission 2014, 2015).

In addition to the written opinions that make up the heart of the political dialogue, there are some other interactions between national parliaments and the Commission that may contribute to it and the broader effort to improve communication between the two. Bilateral visits are another main component. These visits might include a presentation of the Commission's Annual Work Programme, which some chambers ask for annually, or presentations to committees on specific proposals, either from the relevant Commissioner or from local EU representation staff. Other interactions include study visits of national parliamentary delegations to the Commission, pre-legislative consultations on specific topics, or technical briefings by Commission staff. Sometimes, when the term is used more loosely, it might also include interactions with other EU institutions, such as meetings between parliamentary committees and national MEPs (COSAC 2012).

As with information rights, one advantage of the political dialogue is that it does allow parliaments to get involved earlier in the legislative process by allowing them to comment on consultative and pre-legislative documents. This early access is often when there is the greatest opportunity for influence. For example, by the time a proposal comes out and the Early Warning System becomes relevant, the three EU institutions may have already met in trilogue and decided many of the important parts of the legislation (Cooper 2012, Farrell and Héritier 2003). For these reasons, and because they can use scrutiny over their governments as a tool to influence the legislative stage, some parliaments have at times focused mostly or entirely on consultative documents. An example is the Swedish *Riksdag*, especially before 2012.

Although the evidence on the effectiveness of this political dialogue is quite limited, there is some reason for optimism. First, there has been considerable and growing engagement on both sides, which suggests that both sides see value in the process. Second, there are some examples of when the Commission has responded to suggestions from one or more national parliaments. For instance, in 2007 the Commission put forth a proposal “on the protection of pedestrians and other vulnerable road users”<sup>82</sup>, and the French *Sénat* wrote in its opinion that while it did not think the text of the proposal violated subsidiarity, the title made it sound that way. It therefore suggested changing the title to something along the lines of “on the development of vehicles for the protection of pedestrians and other vulnerable road users.” The Commission took this into consideration and into its negotiations with the Council and Parliament (Commission of the European Communities 2008). As a result, the final regulation took the title, “on the type-approval of motor vehicles with regard to the protection of pedestrians and other vulnerable road users.”<sup>83</sup> While this may be a relatively small change, it was one that clearly addressed the concerns of only a single parliamentary chamber.

However, despite substantial and continued involvement by many of the national parliaments, almost all of them think that dialogue with all of the EU institutions needs to be strengthened and that this is especially true of the dialogue with the Commission. On their part, some of the national parliaments suggested that they could help by including more targeted and relevant recommendations in their opinions, which would allow for a more fruitful dialogue. On

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<sup>82</sup> COM(2007) 560, Proposal for a Regulation of the European Parliament and of the Council on the protection of pedestrians and other vulnerable road users.

<sup>83</sup> Regulation (EC) No 78/2009 of the European Parliament and of the Council of 14 January 2009 on the type-approval of motor vehicles with regard to the protection of pedestrians and other vulnerable road users, amending Directive 2007/46/EC and repealing Directives 2003/102/EC and 2005/66/EC.

the Commission's part, the largest suggestion was that the Commission's responses should be more prompt and substantive, and that they needed to be more targeted to the individual opinions written by different chambers, rather than a general response. This request has tended to increase over time. They also proposed that the parliament should report what impact the opinions had, so that their effect could be more clearly demonstrated. Other suggestions include greater consultation in advance of politically important proposals, more frequent visits by commissioners to national parliaments, more informal dialogue with national parliamentary representatives in Brussels, and more involvement during discussions at COSAC meetings (COSAC 2012). Thus, there is a clear interest and some tangible evidence of success, while also leaving much room for improvement and as yet unexplored potential for this tool.

#### **4.2.3 Reasoned opinions and the early warning system**

Reasoned opinions vary quite a bit in style and form depending on the chamber that is submitting them. They may also vary within parliaments; just under half of the parliamentary chambers have a set form they use for drafting reasoned opinions, and these are generally used flexibly (COSAC 2015a). Some parliaments clearly state that they are passing a reasoned opinion or title the document as such, while others refer to subsidiarity concerns in the course of the opinion. Some are written as legal arguments and prepared by legal secretaries, while others are more politically based arguments. There is disagreement over whether proportionality concerns should be included along with subsidiarity concerns, or whether these two principles can even be disentangled (COSAC 2015a). Some parliaments will raise subsidiarity concerns over the legal base of the legislation, which other chambers do not consider to be a "justifiable" reason for

sending a reasoned opinion.<sup>84</sup> The Commission considers opinions to be reasoned opinions if they clearly state a breach of subsidiarity and were received within the 8 week deadline (European Commission 2015). There has been discussion about whether to set up a consistent framework for reasoned opinions that could be shared by all parliaments, but a majority of chambers recently stated that they were against developing a standard form, and would instead prefer informal and non-binding guidelines (COSAC 2015b).

The reasoned opinions submitted as part of the Early Warning System (EWS) have the most potential to give parliaments influence in the EU's legislative process, especially at the EU level. Increased information gives them the ability to be actively involved at both the national and EU levels, and the political dialogue gives them the opportunity to be involved at the EU level, but with only those tools, it would remain entirely at the discretion of the Commission (as well as the Council and EP) as to whether or not they should listen to the national parliaments. With the early warning system, and particularly with the orange card procedure, the national parliaments collectively have the power to hinder legislative proposals and produce a different voting system in the Council and European Parliament. If an orange card is triggered, it causes the EP and Commission to vote ahead of their normal votes in the course of the ordinary legislative procedure and it is subject to different rules. The EP's threshold is lower, only needing a simple majority (rather than an absolute majority) to agree with the national parliaments and block the proposal. The Council needs 55%, or a majority of states, regardless of QMV weights or sizes. Therefore, an orange card effectively makes it easier for the EP to stop a proposal from going forward, whereas the voting threshold is higher in the Council, since a smaller number of states could potentially block the proposal under QMV. Thus, when the

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<sup>84</sup> Staff member, personal interview, December 14, 2014, House of Commons, London.

national parliaments trigger an orange card, they effectively empower the European Parliament (Barrett 2008). Using Norton's (1990) terminology, the EWS helps the national parliaments become policy-influencing bodies, since they can contribute to the modification or rejection of proposals (Cooper 2012).

While reasoned opinions and the Early Warning System should theoretically be the most effective if the yellow or orange card procedures are triggered, there is evidence that the opinions can still have an impact on the policy-making process even when the threshold is not met. One example is the Seasonal Workers' Directive, which the Commission proposed in 2010.<sup>85</sup> Nine parliamentary chambers responded with reasoned opinions that raised subsidiarity concerns.<sup>86</sup> An additional nine chambers sent opinions as part of the political dialogue, which were generally positive but raised certain concerns or made suggestions for certain amendments.<sup>87</sup> While this only amounted to 10 actual votes out of 54 and was therefore not close to triggering a yellow card, it was still significant enough to gain the attention of the Commission and other EU institutions. The Commission stated, "Overall, it should be emphasized that some of the opinions received from national Parliaments on this proposal have served as an effective 'early warning' for the Commission as regards issues likely to be raised in the course of the legislative process" (European Commission 2011). The Commission's written responses reiterated and further explained its positions, but did not make any substantial policy concessions. Similarly,

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<sup>85</sup> COM(2010) 379, "Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment."

<sup>86</sup> Austrian *Nationalrat* and *Bundesrat*, Czech *Poslanecká sněmovna* and *Senát*, Dutch *Tweede Kamer* and *Eerste Kamer*, Lithuanian *Seimas*, Polish *Senat*, and UK House of Lords.

<sup>87</sup> Finnish *Eduskunta*, German *Bundesrat*, Italian *Camera dei Deputati* and *Senato*, Latvian *Saeima*, Portuguese *Assembleia*, Spanish *Congreso de los Diputados* and *Senado*, and UK House of Commons.

the European Parliament brought MPs from a few of the national parliaments in to speak at a committee meeting and that meeting spent substantial time discussing the subsidiarity concerns, but the EP's subsequent discussions and negotiating position called for strengthening the legislation, rather than weakening it (Cooper 2013). In these two institutions, the opinions from the national parliament shifted the conversation somewhat, but did not substantially alter the policy positions of either body.

However, the Council took the suggestions of some of the national parliaments more closely into its position, which had an effect on the final outcome. Cooper (2013) identified five concerns of national parliaments that the Council Presidency included in suggested amendments for a compromise position. These can now be compared to the final text of the directive, which passed in 2014, and all were included in some form.<sup>88</sup> The German *Bundesrat* had suggested the text clearly state that a member state's right to limit the volume of admission was sufficient for rejecting an application, and this was added as its own article. Both Italian chambers had suggesting changing the duration of stay from a "maximum of six months" to a "maximum of five to nine months," which was changed in the final text. The directive also includes a change in the amount of time that member state officials were given to make a decision on an application from thirty days to ninety days, which had been suggested by the Italian *Senato* and German *Bundesrat*. The Latvian *Saeima* had suggested changing the requirement on accommodation for seasonal workers, so that it would be the applicant who had to provide evidence of adequate accommodation, rather than the employer needing to do so, or at least leaving this up to the member state. The final text avoids this distinction by stating, "Member

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<sup>88</sup> Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

States shall require evidence that the seasonal worker will benefit from accommodation that ensures an adequate standard of living” (Art 20(1)). The German *Bundesrat* had also suggested explicitly stating that it does not allow for family reunification, and this was added to recital 46. In addition, the subsidiarity concerns of both Dutch chambers led their government to vote against the final Directive in the Council (Lazarowicz 2014). The governments of the Czech Republic and Poland also both voted “no,” citing subsidiarity concerns in their statement. This example helps to show that governments are likely to take reasoned opinions into account when choosing a negotiating position in the Council, and if multiple chambers work together to develop reasoned opinions, it may influence multiple members within the Council.

Although there were not enough votes on the Seasonal Workers Directive to trigger a yellow card, the national parliaments did reach this threshold in May 2012 over the “Monti II” legislation on the right to strike.<sup>89</sup> There was substantial communication between national parliaments during the eight-week window during which they can raise subsidiarity concerns. Only three chambers reported not having engaged with other parliaments on this proposal (COSAC 2013a). In the end, twelve chambers, totaling nineteen votes, submitted reasoned opinions arguing that this legislation violated the subsidiarity principle.<sup>90</sup> An additional five parliaments submitted opinions under the political dialogue (European Commission 2013).<sup>91</sup> The

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<sup>89</sup> COM(2012) 130, “Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services.”

<sup>90</sup> Belgian *Chambre des Représentants*, Danish *Folketing*, Dutch *Tweede Kamer*, Finnish *Eduskunta*, French *Sénat*, Latvian *Saeima*, Luxembourg *Chambre des Députés*, Maltese *Kamra tad-Deputati*, Polish *Sejm*, Portuguese *Assembleia da República*, Swedish *Riksdag*, UK House of Commons

<sup>91</sup> Czech *Senát*, German *Bundesrat*, Italian *Senato*, Polish *Senat*. The Commission says it received seventeen total opinions, but the author could only locate sixteen in the online

results of this action were mixed; the Commission did withdraw the proposal, but it did so after stating that it did not agree with the subsidiarity concerns and that it was not the reason for withdrawing the proposal. While about half of the national parliamentary chambers thought that this response was in accordance with the Treaty of Lisbon, a handful of others did not think it was, because of the Commission's inadequate response about subsidiarity concerns. More parliaments were concerned that it had not correctly applied its own procedural rules, since it did not publish a Commission Communication or demonstrate proper transparency about subsidiarity. The Latvian *Saeima* wrote: "There is a lack of justification as to why despite numerous reasoned opinions provided by national parliaments, the European Commission still believes that in this case the principle of subsidiarity was observed. As a result, the "yellow card" mechanism was put into practice, but the outcome cannot be regarded as a trustworthy precedent because it does not facilitate understanding of the subsidiarity principle" (COSAC 2013a, 33). While these national parliaments were satisfied with the final result of the legislation being withdrawn, the reasoning provided by the Commission meant that it was not a clear success.

National parliaments again reached the yellow card threshold in 2013, when they objected to the creation of a European Public Prosecutor's Office, which would be able to prosecute fraudulent use of the EU budget in national courts. The Commission again disagreed with the subsidiarity concerns and it maintained the proposal as it was. A number of the MPs who I spoke with echoed the formal sentiments of the UK House of Commons (among others), which expressed its disappointment with the Commission's lack of responsiveness and that this had undermined faith in the procedure (HM Government 2014). The Polish *Sejm* observed that



this was indicative of the fact “that national Parliaments had limited influence on the functioning of the EU” (COSAC 2014, 25). This sense that the Commission will not take these concerns into consideration has led to decreased interest in pursuing this route among some members of parliament.

This dissatisfaction with the Commission’s response to the two Yellow Cards is compounded by a general frustration with the Commission’s responses to all opinions, especially reasoned opinions. The Commission has said that it will respond to all opinions within three months, but it is not uncommon for them to miss this self-imposed deadline, leaving chambers to wait four to six months for a response. There is also a sense among the majority of parliamentary chambers that the responses do not provide an adequately detailed response and that they are often written to respond to the collective concerns of all parliaments, rather than the specific concerns raised by each one. In general, they were “not deemed satisfactory, in particular because of their brevity, generality and delay in their receipt” (COSAC 2014, 24). The Commission has consistently said that it will work on improving these responses, so there is some possibility that may occur, although in general dissatisfaction with them has grown among the national parliaments responding to COSAC’s bi-annual surveys. Another possibility is that a future response could be brought to the Court of Justice, which might “clarify the scope and content of the principle of subsidiarity and would impact... how the European Commission responded to national parliaments” (26).

Another substantial challenge to the successful use of the Early Warning System is the fact that reasoned opinions have to be passed within eight weeks. This is a tight time frame for each parliament acting on its own, and it is especially tight for parliaments to coordinate with one another. This has led many parliamentarians to call for a longer window for the submission

of reasoned opinions, perhaps to 10 or 12 weeks. There has also been increasing discussion about removing various holidays and parliamentary recesses from consideration when counting the eight week window, such as the mid-December to New Year's break, the August break, or any recess of the EU institutions. While some have raised concerns that an extension would slow down the EU's legislative process, others have argued that given its usual (multi-year) duration, a few more weeks would not significantly slow down the process and could lead to an improvement in the quality of the reasoned opinions.

Another proposal from the Danish Folketing, as part of a list of twenty-three recommendations that they put together to strengthen the role of national parliaments, is for the parliaments to look at the Commission's annual Work Programme and draw up a list of prioritized proposals ahead of time. This would allow all of the interested parliaments to begin working on the reasoned opinions early in the eight-week window, increasing the chances of meeting the yellow or orange card thresholds without necessarily extending the deadline (European Affairs Committee of the Danish Parliament 2014).

Passing these opinions requires more work and coordination than might initially be apparent, which may help to explain the relatively low number of reasoned opinions, and especially of successful yellow and orange card challenges. First, opinions often require that someone has followed activities at the EU-level closely enough to be aware of when an issue of national interest is being discussed, potentially within the eight-week time frame necessary for passing a reasoned opinion. Second, someone then needs to have read the relevant EU documents closely enough to be able to decide that an opinion is in order and to draft the text of that opinion. This is especially important in the case of reasoned opinions, where someone with legal expertise may be needed to draft a resolution of sufficient quality. Third, someone then

needs to shuttle that resolution through the committee stage and often get a plenary vote scheduled on the topic. Additionally, in the case of reasoned opinions and an effort to reach the yellow or orange card thresholds, there may be an additional step of coordinating with the national parliamentary representative in Brussels and with other national parliaments directly.

Parliamentary schedules also complicate the process of passing these opinions, especially for reasoned opinions. Given the steps outlined above, if the process does not begin shortly after receiving the relevant documents from the EU level, it might be difficult to get a resolution passed before the relevant Council meeting or before the eight week deadline, even if the parliament is meeting regularly during that period. However, parliaments structure their schedules differently, and some do so in ways that may make this even more difficult. For example, the Czech *Senat's* European Affairs committee only usually has two meetings per month and only one plenary meeting a month, and a reasoned opinion has to be deliberated at both (COSAC 2011). Similarly, the Polish chambers and the German *Bundestag* generally meet only every other week, and the Polish chambers often only for three days at a time. Thus, if relevant documents come in on a week when parliament is not in session or at the end of a week when it is, the decision may not be made to bring it up to the committee until the following session week, and that may then be scheduled for the subsequent session week – potentially four weeks after the EU document arrived. Then if the committee decides to send it to the house, there may only be two session weeks (potentially six days) left to get it on the plenary schedule and voted on. Even that outline simplifies the process in most of these parliaments and assumes that there is no extra break in the middle of the eight weeks. Thus, parliaments who meet on schedules with frequent non-sitting weeks may find the time frame for reasoned opinions more difficult to meet.

The *Bundesrat* should theoretically struggle with this the most, as it holds plenary sessions only every three weeks or so. However, in order to overcome this limitation, they introduced the Europe Chamber in 1990, which can make decisions on behalf of the plenary in between sessions. Following the Treaty of Lisbon and the introduction of the Early Warning System, they began to use this Chamber much more often.<sup>92</sup> This explains why the *Bundesrat* is able to be one of the most active participants in the political dialogue and users of reasoned opinions, despite meeting the least frequently of any parliament. It also suggests that there are ways to overcome the effects of such schedules without changing the way the entire chamber meets. The Czech *Senat*, in order to overcome its limited schedule, has had to convene an extraordinary meeting in order to adopt a reasoned opinion on time (COSAC 2011).

Another option would be to change some of the internal rules and expectations. For example, the EU committee in the Polish *Sejm* commits to expressing its opinion on all documents within seven weeks, but this only leaves one week for it to go to the plenary in the case of a reasoned opinion.<sup>93</sup> Pushing this internal deadline forward might give them more options for scheduling a plenary vote. The Austrian *Nationalrat's* European Affairs subcommittee now meets more regularly than it used to, and the Lithuanian *Seimas* introduced the use of its special urgency procedure in the case of subsidiarity concerns, so that it can get a plenary debate scheduled in time. Ireland noticed a particular problem around elections, so they have changed their rules of procedure so that within three days of its first sitting after an election, a transitional committee is established to consider the subsidiarity aspect of EU proposals in order to give them time to consider reasoned opinions if necessary (COSAC 2011, 2013a).

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<sup>92</sup> Civil Servant, Personal Interview, Germany, October 1, 2014.

<sup>93</sup> Staff member, Personal Interview, Polish *Sejm*, Warsaw, September 12, 2014.

Because of these challenges and the limited response from the Commission, a Polish Senator described the EWS as “only a little step, not a big step.”<sup>94</sup>

### **4.3 HOW OPINIONS ARE USED**

In addition to attempting to block legislation on subsidiarity grounds, parliaments may also use the political dialogue, or in some cases reasoned opinions, to state their preferences about EU policies. This may be a way to formally state support for an idea that the public or important interest groups also support, and to thereby gain votes or support from these interested actors, whether or not the resolutions actually have much impact at the EU level. One MP in the Flemish Parliament spoke about the need for them to pass more resolutions, at least on important issues, since these serve as a “sign to the public that they are following EU policy-making... and MPs have a public function that includes informing the public about the EU... and act[ing] as a bridge between the EU and its citizens.”<sup>95</sup>

Often, the opinions sent from the parliaments to the Commission are in accordance with the position that each parliament’s respective government has taken or plans to take. However, there is potential for a parliament to come out with a position before their government has taken one or to take one in opposition to the government’s (planned) position. The Romanian parliament identified this as one of the benefits of the Early Warning System, in that it “enabled national Parliaments to adopt their positions on EU proposals independently, before national Governments even started their analysis” (COSAC 2014, 24). While many parliaments are not

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<sup>94</sup> Senator, Personal Interview, Polish Senate, Warsaw, September 23, 2014.

<sup>95</sup> MP, Personal Interview, Flemish Parliament, Brussels, November 12, 2014.

able to mandate their government to take a position contrary to its preferred one, it would often be politically untenable for a government to act in a way that is completely contradictory to such a public statement from the legislature (Auel 2006). Acting against such an opinion is also unlikely since the parliament is most likely to make such a strong statement and risk putting its own government in such an awkward position if it thinks that the public is on their side. Without speaking to whether governments or parliaments initiated the position, the Commission (2008) finds that they do usually end up with the same opinion: “In most cases, parliamentary positions mirrored the national opinions presented in the Council by Member State delegations” (6).

However, in bicameral systems, the two chambers may disagree with one another from time to time, which gives the government a choice. “For example, the two Dutch chambers disagreed on this issue with regard to the proposal on Critical Infrastructure Warning Information Network (CIWIN) and to the directive on Energy performance of buildings, and the two chambers of the French Parliament presented diverging views on the subsidiarity compliance of the proposal on animal-testing” (European Commission 2010, 4).<sup>96</sup> While this may cause each chamber to have less of an effect on their government, these splits show that parliaments clearly do take positions independently of their governments.

These opinions are clearly much less contentious when parliaments and governments agree from the outset. Parliaments may use these to publicly declare support for a popular position or to please interest groups. They may also make these to strengthen their government's negotiating position in the Council. All of these opinions are made publicly and are publicly available, so they are one way for the parliament to communicate its preferences to its constituents and to the media.

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<sup>96</sup> COM(2008) 676, COM(2008) 780, COM(2008) 543, respectively.

#### 4.4 HYPOTHESES

The procedures that parliaments use to pass these types of opinions, including plenary debates and votes, are more institutionalized than parliamentary questions, but less institutionalized than involvement in transposition. While there tend to be very few rules regarding the content of questions that parliamentarians ask, there are substantially more rules regarding the procedures for passing these opinions. This is more true for the reasoned opinions than the opinions under the political dialogue, since the former are more often debated and passed by the plenary, rather than just at the committee level. The acts of entering something onto the plenary agenda and scheduling a vote tend to be more institutionalized and are more likely to involve the government than are the acts of including something on a committee's agenda or voting on it in committee.

Many of the parliaments did have to change some formal institutions in order to become involved in the political dialogue and the Early Warning System. Twenty parliamentary chambers reported having made changes to their rules of procedure by 2011 and another five planned to do so. Only five chambers reported having made no changes. For example, in Poland, they first had to pass new legislation, the "Act on the cooperation of the Council of Ministers with the *Sejm* and the *Senat* in matters relating to the Republic of Poland's membership of the European Union," and then they also amended the Standing Orders of the *Sejm* to introduce new rules regarding who could table a draft resolution on the breach of the principle of subsidiarity and for what would happen once such a resolution was tabled (COSAC 2011). Since changes like these may require the consent and participation of the government, the general domestic relationship between parliaments and their governments should be more relevant than it was for questions, but less important than for transposition, where such consent is always necessary.

*H1: The general domestic relationship between parliaments and their governments should impact the number of resolutions passed, and should be more important for reasoned opinions than the political dialogue.*

In addition, since these changes require some considerable effort and are not likely to be reverted, these opinions should be less responsive to time-varying factors and should show more of a trend than parliamentary questions.

*H2: Opinions should show more response to time-invariant factors than to time-varying ones.*

The decision to submit an opinion to the Commission is not made at the individual level, but rather requires a majority of at least a committee, usually the European Affairs committee, or of the plenary. Thus, the more unified and less fragmented a parliament is, the more opinions one would expect to see. Ideally, one would measure the level of fragmentation or disagreement over European politics, either in the plenary or the committee. However, since no such measure exists, I use party fragmentation of the plenary as a proxy.

*H3: Greater parliamentary fragmentation should lead to fewer opinions.*

The third main factor that distinguishes one tool from another is how public it is. Opinions are less public than questions, since media cannot and do not tune in at a particular time of the day or week to “see” an opinion the way they do with questions and since opinions, especially legally based opinions about subsidiarity, do not have the same potential for drama that a questioning session does. However, many parliaments post their opinions on their websites and the Commission posts all opinions and responses on its website. Parliaments may also issue press releases about opinions that they have sent to the Commission. For one example, the House of Lords, which is quite active in terms of both EU opinions and questions, listed six



articles about opinions in the EU Select Committee’s “News” section on its website, while it listed seven articles about questions asked to ministers during committee meetings.<sup>97</sup> While these seem about equal, it is worth noting that four of the opinion articles are actually about an opinion that was led by the House of Lords as an inaugural trial of a proposed ‘green card’, where parliaments request the Commission to take action in a certain policy area.<sup>98</sup> As a novel tool, this received substantially more coverage than other opinions. Another of the six opinion articles is about a report that the Lords commissioned themselves about the UK’s EU referendum and sent to the Commission. The Commission lists both of these communications as ‘own initiative’ opinions. The House of Lords clearly see these opinions as something that they can claim credit for, but apart from the novel ‘Green Card’, they are not something as newsworthy as questions. While broader statistics of this kind for other parliaments or other modes of communication do not exist, I expect this general balance to hold. Therefore, the opinions of the public, in the form of Euroskepticism, should matter somewhat but less than for questions, and I expect opinions to be less responsive to short term variation in Euroskepticism.

*H4: Euroskepticism should have a moderate, positive effect on the number of opinions issued.*

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<sup>97</sup> The articles listed here cover the period June 8, 2015 to July 5, 2016. At the time of writing, the webpage is available at: <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee-/news-parliament-2015/>.

<sup>98</sup> On 22 July 2015, the House of Lords submitted a letter to the Commission proposing EU legislation on Food Waste, which was co-signed by sixteen other chairpersons of committees of national parliaments. The idea of sending such proposals as part of a proposed ‘green card’ has been discussed by national parliaments and COSAC for several years, largely in response to frustration that the Early Warning System only gives them the power to block legislation. In its letter of response, the Commission responded positively to this effort, thanking the participants and saying that it would “pay particular attention to your suggestions... including on food donation and on data collection.”

## 4.5 DATA AND MODEL

For model 1, the dependent variable is a count of all opinions submitted under the political dialogue for each year. Model 2 is a count of the reasoned opinions, and model 3 is a combined count of opinions submitted both to the political dialogue and the Early Warning System. The data come from the Commission's Annual Reports on Relations with the National Parliaments. Data on the political dialogue are available for 2006 to 2014, while data on reasoned opinions are available from its first full year in 2010 to 2014. All countries are present for all years, except for Croatia, which only acceded to the EU in July of 2013. The models only include data for Croatia in 2014, since the observation for 2013 would only include six months of membership. In some countries, the two houses of bicameral parliaments submit joint opinions. In the models presented here, each chamber is considered to have sent the same number of opinions that they sent jointly. In other words, if the two Irish chambers jointly sent nine opinions as part of the political dialogue in 2013, both the *Dail* and the *Seanad* are considered to have sent nine opinions.<sup>99</sup> The Spanish *Congreso de los Diputados* sent its opinions jointly from 2010 on, the Irish *Dail* and *Seanad* have consistently sent their opinions jointly, and the Dutch *Tweede Kamer* and *Eerste Kamer* sent their opinions jointly between 2006 and 2008.

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<sup>99</sup> Dropping these chamber-years from the analysis does not substantially change the results. In the political dialogue model, the mean Effective Number of Parties loses some significance, dropping to the .05 level. In the third model for total opinions, the deviation from that mean also loses some significance, with a p-value of 0.054. Mean Euroskepticism becomes more significant in the first model, reaching the .001 level, and the deviation around that mean achieves significance at the .05 level for the reasoned opinions model. The first model on the political dialogue also shows increased significance (to the .01 level) for the upper house variable and decreased significance (to the .05 level) for deviation around the mean of the amount of time to the next election.

Since 2006, national parliaments have sent an average of 9.1 opinions per year as part of the political dialogue. The median is substantially lower, at only 2 opinions per year. The number of opinions sent to the Commission increased steadily from 2006 to 2011, at which point it leveled off. In 2006, the mean number of opinions was 1.4, whereas since 2011 it has been between 13.1 and 15.1. The most opinions sent in one year were from the Portuguese *Assembleia da República*, which sent 226 opinions in 2012. This is more than double their average, of 106 per year, which is the highest of all of the chambers. However, it should be noted that the *Assembleia* often sends positive opinions supporting the Commission's position, without much in the way of substantive suggestions.<sup>100</sup> The chambers that send the next most opinions are: the Italian *Senato della Repubblica*, with an average of 40 per year; the Czech *Senát*, with an average of 30 per year; the German *Bundesrat*, with an average of 25 per year; and the Swedish *Riksdag*, with an average of 15 per year. The political dialogue tends to be dominated by a handful of very active chambers, such that in most years a handful of chambers are responsible for a much larger proportion of the opinions. For example, in 2009, twelve chambers sent about three quarters of all of the opinions (European Commission 2010).

The national parliaments send many fewer reasoned opinions per year, with an average of 1.4 and a median of 1. These have steadily increased from 2010 to 2013, from an average of .9 to one of 2.4. The drop off in 2014, to an average of only .5, was likely due to a lower legislative output on the part of the Commission due to the changeover of its members. The most reasoned

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<sup>100</sup> Since the Portuguese *Assembleia* is a substantial outlier and it is using the opinions in a different way than many of the other parliaments are, I also ran a model that dropped it from the analysis. The results are generally the same, although a few variables have small changes in their significance and coefficients. For the reasoned opinions model, replacing the executive is more significant and the EU staff variable is less significant, both at the .01 level. For the total opinions model, the between chamber effect of Euroskepticism is more significant, also reaching the .01 level.

opinions in one year were sent by the Swedish *Riksdag*, which sent 20 reasoned opinions in 2012. It also has the highest average number of reasoned opinions, at 9 per year. The French *Sénat* and the UK House of Commons have the next highest average, each at 3.4 per year, and followed closely by Luxembourg's *Chambre des Députés* (3.2 per year) and Austria's *Bundesrat* (3 per year).

I again use hybrid random and fixed effects, similar to those used to predict questioning behavior, but this time I include them in a negative binomial model to account for overdispersion and the count nature of the dependent variable. The structure of the hybrid models allows the inclusion of both time-varying and unvarying variables, allowing them to estimate both the effect of within-chamber variation and between-chamber variation. I include year dummies.

The first independent variable accounts for the overall balance of power between the executive and legislature. Since resolutions are more institutionalized than questions but less institutionalized than transposition, I expect this variable to have a moderate impact. The first variable accounts for legislative power over the executive, operationalized as whether the chamber, acting on its own without the assent of any other actors, can replace the executive. Coding comes from Fish and Kroenig's (2009) Parliamentary Powers data for most lower chambers, and is updated by the author for upper houses and those countries not included in their data.

The next two variables both measure the parliamentary fractionalization of the legislature, one for within-chamber variation and the other for between-chamber variation. I expect that increased fractionalization will make it more difficult for parliaments to agree on and pass opinions. The data for lower chambers come from the Comparative Political Data Set (Armingeon, et al. 2015), which calculates the effective number of parties according to seat share

(Laakso and Taagepera 1979). I supplemented this data with my own calculations for the upper chambers.<sup>101</sup>

I then include two variables for public Euroskepticism, both by country average and variation around that average. I expect that public Euroskepticism will be less important for opinions than for questions, and that the overall average will be more important, since the use of opinions is not likely to respond as much to over time variation as the use of questions. Higher Euroskepticism should lead to somewhat more opinions. Reasoned opinions serve as a way to block action at the EU level, while political dialogue opinions can suggest removing objectionable aspects of legislation and can serve as a way to claim credit for action at the EU level. The measure comes from each year's second Eurobarometer survey, subtracting the percentage of people who said that the EU conjured up a positive image from the percentage of those who said it conjured up a negative image.<sup>102</sup>

One factor of particular importance for resolutions is whether or not the chamber is an upper house. This variable is coded as 0 for all lower chambers and unicameral parliaments, and as 1 for those that are upper chambers. There are a couple of mechanisms by which this can lead to higher levels of involvement, especially for resolutions and reasoned opinions. The first is that their preferences tend to be less aligned with those of the government because they sometimes

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<sup>101</sup> For some chambers that are not elected or are not elected on a consistent basis, I calculated annual figures. In the German *Bundesrat*, each Land votes as a bloc based on the position of the governing coalition. Therefore, each coalition was counted as a party. In the Slovenian *Državni Svet*, the members represent interests, rather than parties. These interests include local interests, employers, employees, non-commercial interests, farmers, craftsmen, trades, and independent professionals. I therefore calculate the Effective Number of Parties using these interest groups as parties, which gives this chamber the same score over time.

<sup>102</sup> The question is posed to respondents as: "In general, does the European Union conjure up for you a very positive, a fairly positive, neutral, fairly negative, or very negative image?" I combine the very positive and fairly positive responses together, and combine the fairly negative and very negative responses together.

were indirectly elected and because they often do not play a part in choosing the government, so they may feel a need to put forth views that may not be expressed by their government in the Council. They are also freer to do so if disagreeing with the government will not call into question the confidence of the parliament in its cabinet. For those same reasons and because they often have less legislative power than the lower house, they also see resolutions and reasoned opinions as one of their best tools for influencing the policy-making process.

I also include a variable to account for whether the country has judicial review, since the courts have sometimes given parliaments more powers or rights in EU policy-making, as was the case with the German *Bundestag*. I would therefore expect this to have a positive effect, although it should not be particularly important for opinions, since the Treaty of Lisbon has granted this right to all national parliaments. The coding for this variable comes from the Comparative Political Data Set (Armingeon, et al. 2015).

Due to the high level of work involved in passing these opinions, especially in regard to the reasoned opinions, I also include a variable for the number of staff members each parliament has working on EU affairs. COSAC collected this data via a survey of all parliamentary chambers in 2013, so there is unfortunately no across-time variation for this variable. However, the differences are considerable. Some parliaments have only 1 staff member working on EU politics, whereas the German Bundestag has 59 staff members. The mean is just under 12, while the median parliament has 7 EU staff members. Data was not reported for the Swedish Riksdag, the Czech Poslanecká Sněmovna, and the Finnish Eduskunta, so these get dropped from the first set of models in Table 2. I include a second set of models that leaves this variable out and includes these chambers, which is presented in Table 3. The variable is a count of the number of EU staff members, and for those bicameral parliaments that jointly report staff, I assign the

full number to each chamber. This makes more sense than splitting the number, since staff members that are flagging important documents from the Commission, writing reports or reviews, or contacting other parliaments to discuss possible reasoned opinions can simultaneously do this for both chambers.<sup>103</sup>

I also include the time to national elections as a variable, since parliaments generally are more focused on seeking reelection and national issues as they approach an election. I include both the average time between elections over this period, as well as the deviation around that mean. For the most recent years, I use the date by which the next election has to be held according to that country's electoral rules.

## **4.6 RESULTS**

I present the models that include the EU staff variable in Table 2 (1a, 1b, and 1c), and those that do not include it in Table 3 (2a, 2b, and 2c). Across both sets of models, the results for the political dialogue and the total number of opinions are very similar, which makes sense, since the parliaments collectively sent so many more political dialogue opinions than reasoned opinions. The most important variables in the reasoned opinions models tend to have more to do with capacity (staff) and institutional variables (replacing the executive and whether or not it is an upper house), whereas the political dialogue and total opinions models see more of an effect from party fractionalization and Euroskepticism. Since reasoned opinions are more likely to involve the plenary, this is consistent with the overall theory that those parliaments with the

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<sup>103</sup> Models that include half the number of staff for each of these chambers do not produce substantially different results.

institutional power and capacity to use tools that require institutionalized behaviors, such as plenary votes, and those that do not will be more likely to use alternative tools. The only variable that does not achieve or approach significance in any of the models is judicial review.

**Table 2.** Determinants of EU Opinions

VARIABLES	(1a) Political Dialogue	(1b) Reasoned Opinions	(1c) Total Opinions
Replace Executive	0.4693 (0.3463)	0.6689* (0.2689)	0.5283 (0.3485)
Effective # Parties Mean	0.2753** (0.1067)	-0.0331 (0.0724)	0.2672* (0.1089)
Effective # Parties Mean Deviation	-0.2485* (0.1072)	0.2141 (0.1954)	-0.2240* (0.0996)
Euroskepticism Mean	2.7075** (0.8270)	-0.4755 (0.5571)	2.2633** (0.8389)
Euroskepticism Mean Deviation	0.4107 (0.5867)	-1.5535 (0.8896)	0.3043 (0.5240)
Upper Chamber	0.7422* (0.2919)	0.6625** (0.2367)	0.7071* (0.2933)
Judicial Review	-0.3528 (0.4248)	-0.2500 (0.2711)	-0.5325 (0.4270)
EU Staff	0.0009 (0.0122)	-0.0298** (0.0106)	-0.0083 (0.0121)
Mean Time to Next National Election	0.2886 (0.5252)	1.7843*** (0.3940)	0.4793 (0.5353)
Time Between Nat. Elections Mean Dev.	0.1225** (0.0414)	0.0622 (0.0571)	0.1176** (0.0363)
Constant	-2.0233 (1.4870)	2.7470** (3.0323)	-2.0954 (1.5121)
Observations	334	186	334
Number of chamber2	38	38	38

Standard errors in parentheses

\*\*\* p<0.001, \*\* p<0.01, \* p<0.05

Hybrid Fixed and Random Effects Negative Binomial Regression. See text for information on variables. Year fixed effects are repressed for readability.



**Table 3.** Determinants of EU Opinions, Without EU Staff Variable

VARIABLES	(1) Political Dialogue	(2) Reasoned Opinions	(3) Total Opinions
Replace Executive	0.6962* (0.3170)	0.6649* (0.3156)	0.6987* (0.3167)
Effective # Parties Mean	0.2901** (0.1066)	-0.0195 (0.0967)	0.2758* (0.1087)
Effective # Parties Mean Deviation	-0.1867 (0.1004)	0.2575 (0.2041)	-0.1641 (0.0924)
Euroskepticism Mean	2.9626*** (0.8056)	0.4735 (0.8125)	2.5763** (0.8125)
Euroskepticism Mean Deviation	0.4634 (0.5618)	-1.7342 (0.9799)	0.3144 (0.5015)
Upper Chamber	0.8239** (0.2806)	0.5472 (0.3107)	0.7638** (0.2796)
Judicial Review	-0.0440 (0.3925)	-0.0834 (0.3596)	-0.2622 (0.3944)
Mean Time to Next National Election	0.5171 (0.4307)	1.4052*** (0.4259)	0.5003 (0.4407)
Time Between Nat. Elections Mean Dev.	0.1269** (0.0395)	0.0822 (0.0559)	0.1240*** (0.0346)
Constant	-2.8943* (1.2899)	1.3113*** (0.5721)	0.2000 (0.3338)
Observations	361	201	361
Number of chamber2	41	41	41

Standard errors in parentheses

\*\*\* p&lt;0.001, \*\* p&lt;0.01, \* p&lt;0.05

Hybrid Fixed and Random Effects Negative Binomial Regression. See text for information on variables. Year fixed effects are repressed for readability

The first variable, which accounts for the general balance of power between the chamber and its government, is only significant in the reasoned opinions model (1b) when EU staff is included in the model. In the second set of models, which drop the EU staff variable, the balance of power is significant for all three models. Hypothesis 1 had expected that this would matter for all types of opinions, but that it would matter more for reasoned opinions, since the procedures

involved in passing those are more institutionalized. For reasoned opinions (1b and 1c), the relationship is positive and significant at the .05 level ( $p=.013$  and  $p=.035$ ). Those chambers that can remove the executive are expected to send about 95% more reasoned opinions per year than those that cannot, holding all other variables constant. In the second set of models, being able to replace the executive is also significant at the .05 level ( $p=.028$  and  $p=.027$ ) for the models of political dialogue opinions (2a) and total opinions (2c). This effect is slightly greater; on average, those chambers that can replace the executive will send about 101% more reasoned opinions per year.

Parliamentary fractionalization is significant for the political dialogue (1a and 2a) and the number of total opinions (1c and 2c). Between chamber variation is significant at the .01 or .05 levels ( $p=.006$  to  $p=.014$ ), and is positive, such that those chambers that have an average of one more effective party are expected to send about 30% more opinions. Interestingly, within chamber variation is also significant in these models (at the .05 level when the EU staff variable is included, 1a and 1c, and at the .1 level when it is not, 2a and 2c), but the effect is negative. For each additional effective party above a chamber's own mean, it would be expected to send about 15-20% fewer opinions.

This latter finding provides more direct support for hypothesis 3, which expected this effect, since passing these opinions usually requires a majority in at least the committee if not the plenary. Party fractionalization may matter in the expected direction as it changes within a chamber, but not between chambers, because chambers with consistently high levels of fractionalization may have developed relatively stable coalitions across parties that still allow them to find majorities and produce opinions, whereas those that face a new increase in the number of parties may struggle to build these working relationships, at least at first. In fact,

multiparty systems and coalition executives, which are more likely to be necessary in a fragmented legislature, are two of the defining characteristics of Lijphart's (1999) consensual style of democracy.

One possible explanation for why there is some effect for the political dialogue (and total opinions) but not for the reasoned opinions is that the former can be used to make substantive suggestions about policy, whereas the latter are primarily used for subsidiarity concerns. Different parties are more likely to have different opinions on substantive policy ideas, which are more likely to align with the left-right dimension, than they are about subsidiarity concerns, which are often legally based and may involve more of a second, pro/anti-EU dimension. Therefore, more party fractionalization would make it harder to agree on political opinions than subsidiarity ones.

Between chamber Euroskepticism is significant for the political dialogue and overall number of opinions, while within chamber variation in public Euroskepticism approaches significance for reasoned opinions. For the political dialogue (1a and 2a) and overall number of opinions (1c and 2c), average Euroskepticism is significant at the .01 or .001 levels ( $p < .000$  to  $p = .007$ ). The relationship is positive and substantively large – even a .1 difference in mean public Euroskepticism (there is only a .62 difference between the minimum and maximum) is expected to produce a difference of between 86% and 183% in the number of opinions sent. In contrast, the borderline significant ( $p = .081$  and  $.077$ ) relationship between deviation around that mean and the number of reasoned opinions produced is negative (1b and 2b). A .1 increase from the mean is expected to lead to about 7% or 8% fewer reasoned opinions. The first relationship is in the direction expected by hypothesis four, while the second is not. Since the mechanism underlying this hypothesis is about showing the public that members are paying attention to EU

legislation and are attempting to influence it, the more politically based political dialogue opinions may be easier to sell than the more legally oriented reasoned opinions, producing some of this difference.

The effect of being an upper chamber acts as expected and is the most consistent result across all of the models. It is positive and significant in five of the models ( $p=.003$  to  $p=.016$ ), and approaches significance in the sixth ( $p=.078$  for 2b). Upper chambers are expected to produce about 100% more opinions of all kinds. This effect is somewhat smaller for reasoned opinions (73%-93%) than for the political dialogue and total opinions (102%-128%). This aligns with the questioning results, providing further evidence that upper chambers are more involved in EU affairs than lower chambers.

The number of EU staff is highly significant ( $p=.005$ ) in the reasoned opinion model (1b), but it is surprisingly negative, meaning that those parliaments with more staff tend to produce fewer reasoned opinions. This is certainly counterintuitive, but the fact that it does not have a significant impact on other opinions suggests that more staff does not lead to less EU involvement of all kinds, but rather that there is something specific to reasoned opinions. One possibility is that those parliaments with more staff make more use of other tools where those staff can have more added value than on reasoned opinions. It is also a relatively small effect, with each additional EU staff member leading to an expected decrease in the number of reasoned opinions by only 2.9%.

Time to the next national election has an effect in the expected direction. For reasoned opinions, the between chamber effect is significant ( $p\leq .001$ ), with those chambers that have a higher average time between elections being more likely to pass reasoned opinions. Each additional year that parliaments have on average between elections is estimated to lead to an

average increase of 496% or 307%. This suggests that as parliaments have more time with stable party configurations and to pursue normal business, the more likely they are to fall into a rhythm of passing reasoned opinions and to have time to do so within the necessary eight-week time frame. For opinions, the average time between elections is not significant, but the actual within-chamber time until the next election is significant ( $p < .003$ ). As a chamber has more time until its next election, it will pass more opinions, with each year leading to about 13% more opinions, on average.

Overall, the support for hypothesis 2, which expected time invariant factors to matter more than time varying ones, especially for reasoned opinions, is supported. For reasoned opinions, the only relevant time varying variable was within chamber Euroskepticism, which was only significant at the .1 level. Within chamber variation in the effective number of parties and the time to the next election was also significant for the political dialogue and the total number of opinions, but even these models had more significant time invariant predictors than varying ones.

## **4.7 CONCLUSION**

European parliaments are using both the political dialogue and reasoned opinions in relatively substantial numbers, and this use has been increasing over time. There is mixed evidence for whether they have had much impact on the EU legislative process. This is especially true for the two successful yellow cards, which the Commission responded to by dismissing the subsidiarity concerns, even if they did withdraw one of the proposals. However, there is at least some evidence that suggestions brought up by parliaments in their opinions gets echoed by their governments in the Council and has made it into some final legislation. There is also dialogue

happening between parliaments and both the Commission and the European Parliament, which can be thought of as a first step toward any potential influence on policy. The fact that parliaments continue to engage in the political dialogue and the Early Warning System suggests that they think it is a worthwhile tool that at least has potential. Through the idea of the ‘green card’ and some of their other proposals, they also have shown interest in developing additional tools that allow them to be more proactive than reactive and provide more than just a negative, blocking influence. This interest bodes well for the possibility of further involving the national parliaments in EU policy-making.

The results of this chapter largely support the parliamentary tools theory, both as opinions compare in general to other tools like parliamentary questions, and between reasoned opinions and opinions that are part of the parliamentary dialogue. In comparison to parliamentary questions, these opinions involve actions that are more institutionalized, such as bringing them up for plenary debate or for a vote. This is more true of reasoned opinions than of opinions sent under the political dialogue, which can more often be sent based on committee approval. As expected, those chambers that are more powerful, as measured by their ability to unilaterally remove the head of government, are more likely to send reasoned opinions. Under some model specifications, they are also more likely to send political dialogue opinions. The time invariant variables were the most important predictors, especially for reasoned opinions. Opinions also require a majority, either in plenary or committee, so they are less individual than are questions. In line with this, within chamber changes in parliamentary fragmentation did limit the number of opinions that parliaments agreed upon. Opinions are public, if not the most heavily advertised, so we do see an effect of public Euroskepticism, but it is a less significant factor than it was for questions, which are a more public tool.

Upper chambers were much more likely to get involved through these opinions than are the lower chambers. This suggests the possibility for a new role for upper chambers that may be able to devote more attention to European issues than their lower chambers and may be more willing or able to take a position that differs from their governments. It might be possible to have a sort of division of labor, with lower houses focusing more on domestic politics while upper houses focus more on European issues. It could also provide a new “life” for some upper chambers that have been the subject of discussions for various possible reforms or even abolishment. However, concerns over the democratic deficit remain, since many of these chambers are not democratically elected.

## **5.0     TRANSPOSING EUROPE: EXPLAINING THE VARIATION IN PARLIAMENTARY INVOLVEMENT IN THE TRANSPOSITION OF EU LAWS**

### **5.1     INTRODUCTION**

By agreeing to the European treaties, each of the member states have agreed to comply with and enforce European laws, and the Court of Justice of the European Union has declared that European laws are supreme. There are three main types of EU legislation: decisions, regulations, and directives. Regulations are directly applicable in the member states and decisions are directed at specific individuals, organizations, or member states. Directives, on the other hand, set out specific goals that all countries must achieve through national legislation. The process of writing national laws that implement the objectives of a directive is known as “transposition,” or the transposition of European law into national law. This process is primarily top-down, in that European law is affecting what gets written into national law, but it is also an opportunity for the national level to adapt European policies to their own circumstances. If dialogue with the Commission through opinions and involvement in the Early Warning System is the most direct opportunity for national parliaments to be involved at the European level, then transposition is the point in the European policy-making process with the greatest opportunity for them to influence how European policies are enacted at the national level. They have the potential to



influence both the substance of the national law and the amount of time it takes their country to implement it.

However, much transposition is done by the government through secondary forms of legislation, such as decrees and regulations. These types of legal instruments do not undergo the same parliamentary scrutiny in committee or plenary and do not receive the parliamentary approval that primary legislation does. Some scholarly studies have described parliamentary involvement in the process as “rare and selective” (Brouard, et al. 2012, 7). Other quantitative studies have found that parliaments are involved in transposing about fourteen to seventeen percent of all European directives. These numbers suggest that parliaments are not irrelevant to the transposition process, but they are also certainly not involved in transposing the majority of directives.

The involvement of national parliaments in transposition is important from a normative perspective, both from in terms of the democratic deficit and in terms of preventing ministerial drift. The European Parliament has emphasized that “*national parliaments have an essential role to play in the monitoring of the application of Community law*, because they... reinforce the democratic legitimacy of the Union and... make it closer to citizens” (Batta 2007, 2, emphasis in original). While estimates of how much national law is currently rooted in European legislation vary widely, it is an increasing share of all national legislation. If parliaments are left out of the implementation process, then it is one more disconnect between European citizens and those making their laws. National parliaments are also an important part of this process in their principal-agent role, either in terms of monitoring the government’s actions as a whole, or in terms of helping one or more coalition parties monitor the actions of ministers from other parties.

The study here focuses on parliamentary involvement based on the types of legal instrument used to transpose legislation. When directives are transposed through primary legislation, such as laws or acts of parliament, then the legislation can be scrutinized in committees, debated on the plenary floor, and amendments can be added. It is possible, and maybe even probable, that when directives are transposed this way, members of parliament pay less attention than they do to original domestic legislation that is passed this way, since they believe that their options for changing the legislation are limited. However, passing legislation this way is a precondition for parliamentary involvement. In the study of questions and resolutions/opinions presented previously, it was up to each parliament and its members whether they wanted to use those tools and whether they wanted to use them in relation to European issues. When directives are transposed through primary legislation, the same is true for parliamentary involvement in transposition. They can use various tools, such as committee work, questions, debates, and amendments, to try to influence the legislation at hand. However, when directives are transposed through secondary instruments without the parliament specifically delegating them, parliaments never even have the opportunity to use any of these other tools or engage in the transposition process. In many circumstances, the average member of parliament may not even be aware that a ministry is transposing a directive through regulations and will have very limited opportunities for engagement. Of course, they could always use question time to pose questions to the relevant minister, but transposition through secondary legislation severely circumscribes the opportunities for parliamentary influence.

The first section explains the mechanics of directives and how the transposition process works. I then discuss how national parliaments can fit into this process. The next two sections review the relevant literature. The first focuses on the literature about why member states fail to properly

transpose EU directives, either in terms of timeliness or substance. While that is not the focus of this paper, this section discusses how these findings relate to national parliamentary involvement. I then discuss the main findings from work that has specifically looked at explaining parliamentary involvement in transposition. One of the main theoretical arguments from this literature is that governments involve the parliament when they want to better monitor ministers from other coalition parties. I take issue with some of the microfoundations of these theories, and argue for a more institutional view of them. Transposition is very institutionalized, so institutions are essential to determining how it gets carried out. The next section sets out specific hypotheses, followed by a description of the data and models. I then present the results, which show that institutional strength and long-term factors are what matters, supporting a more institutionalized conception of the mechanics underlying the transposition process. The final section concludes.

## **5.2 DIRECTIVES AND THE TRANSPOSITION PROCESS**

European Union directives require a certain outcome, but often allow states to decide how to implement procedures that will produce that outcome. According to the Treaties, they are “binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice and form of methods.”<sup>104</sup> In other words, while the directive sets out a certain aim or result of the law, it gives each state flexibility on how the policy should be implemented, providing room for significant adaptation at the national level

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<sup>104</sup> Article 288 of the Treaty on the Functioning of the European Union.

through transposition. Of course, some directives allow more discretion than do others, and some deal with more salient and substantive issues than do others.

One rather simple directive that would seem to be not very salient for most citizens in most countries is the Cocoa and Chocolate Directive of 2000.<sup>105</sup> The directive sets out minimum percentages of cocoa butter than can be used and allows up to 5% vegetable fats in the chocolate. This was of essential importance to chocolate producers in Belgium, who opposed the measure, but was a win for some other chocolate producers, such as British brands like Mars and Kit Kat that wanted to be able to sell their chocolate across the EU. However, for the average citizen it was not likely to be a particularly salient directive and it seems to be a relatively simple one to transpose. Every country used secondary instruments to transpose this legislation, although Slovenia and Poland both listed primary legislation on agriculture as well. Almost all countries only passed one piece of legislation to implement it. A few used up to four, some of which were subnational for different regions within the country. The clear exception was Poland, which used ten different legal instruments to transpose this directive. Except perhaps in Belgium, this does not seem to have been too controversial and there is not a ton of discretion within the directive, so leaving this to the ministries may make sense in this case. However, the fact remains that parliaments in almost every member state did not have the opportunity to engage with the transposition of this directive.

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<sup>105</sup> Directive 2000/36/EC of the European Parliament and of the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption

In contrast, in 2008, the EU passed the Return Directive, which set out common standards and procedures for returning illegal third-country immigrants.<sup>106</sup> This was, as one might expect, a more controversial and salient piece of legislation. At the EU level, there was considerable disagreement over the duration of deportation custody and rules regarding the provision of legal aid for appeals. It also provides considerable discretion that allowed for real policy choices to be made during transposition. In particular, they had flexibility in terms of the scope of application and the return decisions (Dörrenbächer, et al. 2015). Transposition of this directive tended to involve more separate pieces of legislation, with seven countries using more than fifteen legislative instruments. The Czech Republic reported forty-four different instruments that it used for transposition. Every country except Malta used at least one piece of primary legislation to transpose this directive, giving their parliament the opportunity to be involved. Dörrenbächer, et al. (2015) examine the involvement of the Austrian, German, French and Dutch parliaments, and found that they were all involved. For example, the relevant committee in the Austrian *Nationalrat* supported seventy-nine amendments and two motions, and nineteen of the amendments did something to change the policy. Both chambers agreed to all of the amendments. The other parliaments were similarly active, engaging in scrutiny within the committees and supplying amendments. Apart from the Maltese parliament, all of the national parliaments were given the opportunity to engage with the transposition of this important directive, and the qualitative evidence from a few suggests that they were active in doing so.

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<sup>106</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

These two directives show how different directives can be in terms of salience, level of controversy, and discretion provided within them. These two also vary qualitatively, in that rules harmonizing the market for chocolate will affect certain business sectors, whereas rules about illegal immigrants affect people's lives and are also a more sensitive subject for national legislation. For some types of directives, it may be normatively acceptable for the government to transpose EU legislation without much input from the parliament, while other directives deserve the full attention of parliament and the opportunity for parliamentary involvement.

Before directives reach the transposition stage, they are proposed by the Commission and either passed by the Commission acting alone, in a manner similar to secondary legislation at the national level, or with the approval of the Council and, increasingly, the European Parliament. Council directives are negotiated and approved by national ministers, and the early stages are often negotiated in the Council's Working Groups, which often include national civil servants sent to Brussels for that purpose. Once directives are passed at the European level, the Commission sets deadlines by which member states are expected to transpose the directive into national law. It expects transposition to be done on time and correctly.

At the national level, the relevant minister for the policy area usually leads the transposition process. This is partially due to the normal distribution of work at the national level, as well as to the experience that the minister and some of her civil servants have likely already had with the legislation while it was at the EU level (Kaeding 2007, König and Luig 2014). As the Greek parliament explained, "the relevant ministerial departments... usually include those that have witnessed Community acts *in fieri*, through the participation of their representatives in European Commission or Council working groups and are familiar with their basic content, points of conflict with national legislation, and points needing further regulation

under national law” (Batta 2007, 43). This experience increases the information advantage that ministers usually possess in their policy area, over both the parliament and other members of the government. It also means that ministers have often already agreed to the directive by accepting it in the Council, given the often unanimous or high levels of consensus in the Council. One would expect this agreement to ease and accelerate the transposition process.

However, there are some exceptions, which may lead to problems in transposition. For example, in 2006 the EU adopted the Data Protection Directive. During the negotiations, the responsible minister for Germany was the Minister of Justice, Brigitte Zypries of the SPD. She had insisted on more extensive data surveillance during the negotiations and had voted for the final directive. She even attempted to implement it early in Germany, but was blocked by the German Federal Constitutional Court. However, in 2009 the composition of the government changed and the new Minister of Justice was Sabine Leutheusser-Schnarrenberger of the FDP, who was opposed to stronger surveillance of personal data. She therefore did not move to implement the directive, which led to action by the Commission to push Germany to transpose the legislation. However, neither this pressure nor “the strong pressure from the (larger) Christian Democratic coalition partner nor the potential loss of the German chancellor’s credibility in her public demand for more compliance to cope with the European sovereign debt crisis can force the minister in charge to begin the implementation process” (König and Luig 2014, 505). Given the difficulty that the coalition party, the Commission, and the German Chancellor had in getting this minister to begin the transposition process, it is not hard to imagine that parliament would also struggle to influence ministers to begin the process or to involve them in the process when the minister is unwilling. This example also demonstrates the

important gatekeeping and proposal power that each minister has over transposition in her domain.

The Commission does regularly check on the transposition process in the member states. It first checks for whether or not each state has notified it of transposition by the deadline. If it has been notified of transposition, it may still check to see if the directive is being properly implemented. Other groups, including member states, citizens, and sometimes even opposition groups or politicians may report transposition violations to the Commission (Jensen, et al. 2013). If the Commission suspects a violation, known as infringement, it begins by sending a letter of formal notice to the member state in question and begins gathering information. It then writes a reasoned opinion (which are different in purpose from those that national parliaments send about subsidiarity), usually setting out a two-month deadline for a response. This formally begins infringement proceedings against the member state. If the Commission does not receive or is not satisfied with the member state's response, it can refer them to the Court of Justice of the EU. The Court will decide for or against the member state, and if it is the latter, it can impose fines for non-compliance. These can be lump sum fines, daily or monthly recurring sums, or both. Historically, there have been about 2000 open cases per year, spread across these phases (Clipperton 2015).

### **5.3 NATIONAL PARLIAMENTARY INVOLVEMENT AND THE CHOICE OF LEGAL INSTRUMENT**

There is substantial variation in the arrangements between national parliaments and executives for how transposition should occur, whether and when it should involve the national parliament



and, relatedly, which type of national legal instrument they should use. From the perspective of parliamentary involvement, there are two main options: the executive can transpose the legislation on its own, using various forms of secondary legislation, or the executive can propose primary legislation that transposes the directive and passes through full parliamentary scrutiny. Due in part to pressure from the Commission to increase the timeliness of transposition, states increasingly seem to be using executive measures rather than primary legislation (Clipperton 2015). It is worth noting that some federal states also leave transposition in certain policy areas to subnational actors, but this type of transposition is beyond the scope of the current project.

The European Parliament gathered some of the most detailed and consistent explanations of how member states generally transpose legislation through a survey in 2007 (Batta 2007). Twenty-four of the then twenty-seven national parliaments responded. The first question asked parliaments whether or not they delegate transposition to their governments. The responses indicate a somewhat more restrictive understanding of delegation, with the parliaments only considering it to be delegation if there was explicit delegation for the executive to transpose a specific or small set of directives. They did not consider previous delegation or institutional arrangements that grant ministers the right to use secondary legislation in certain policy areas or for certain types of policy-making to be delegation as such. For example, Spain responded, “Although it is seldom done, it is also technically possible for Parliament to delegate the transposition of EU Directives to the Government. Be aware that the transposition may not always require the enactment of a law (as the subject matter of the directive may not need to be regulated by law). In these cases, the Government is entitled to approve a royal decree, not as a delegation from Parliament, but in exercise of the Government’s power to enact statutory regulations, as established by the Constitution” (42). The Spanish parliament clearly cites

constitutional arrangements here, but other parliaments expressed the same broad understanding of the question, going beyond constitutional rules. Those that did not say that they delegate transposition still responded that the government and ministries use various types of secondary legislation to transpose directives. The sole exception was the Dutch parliament, which did say that it delegates to the government and data from the European Union show that they do use secondary legislation.

Half of the responding parliaments said that they delegated transposition to the government, by which they meant a conscious and active delegation of (relatively) specific transposition rights that suggest intermediate level of involvement between the government enacting secondary legislation entirely without parliament and passing primary legislation through parliament.<sup>107</sup> Most of these parliaments said that they delegate the right of transposition to the government for a specific policy area or a specific directive. In some cases, these are limited by time or to a single directive. In other cases, as in Denmark, they are not limited by time, and the government can automatically implement any subsequent directives that amend or appeal the original directive.

An explicit but extreme form of delegation exists in Ireland and the United Kingdom, which both passed acts around the time of their accession in 1973 that explicitly delegated transposition of (almost all) European legislation to the government. Ireland first anticipated that these regulations would be temporary until they were approved by parliament, but within a year decided that this was unmanageable and instead made it so that parliament has a year in which to annul this legislation. This type of blanket delegation represents a virtually complete removal of

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<sup>107</sup> Those who said they regularly delegate transposition included Denmark, Germany, Estonia, Spain, France, Italy, Ireland, Poland, Portugal, Romania and the UK.

parliament from the transposition process. One MP in the UK House of Commons remarked that they could not do anything even when they did not approve of the way that the legislation was being transposed, because they cannot amend government regulations or statutory instruments and they were not going to vote down the entire piece of legislation.<sup>108</sup> A member of the House of Lords thought that this was a bit of a lacuna, but that it would be very difficult to resolve. The only way to do anything would be through an inquiry, and then the statutory instruments committee would deal with the matter, in order to determine whether the secondary legislation reflects the goals of the primary (EU) legislation.<sup>109</sup>

Greece has a framework law that does not delegate all transposition responsibilities, but rather delegates certain aspects of transposition to the executive. This includes giving them the ability to take complementary measures necessary for the implementation of secondary legislation, such as the establishment of new bodies or posts; to establish criminal penalties; to establish punishable misdemeanors; and to amend or annul existing legislation that conflicts with a directive. Other “laws have been and continue to be passed in the Greek Parliament, through which particularly important Community directives are transposed” (Batta 2007, 41).

Italy uses the annual Community Act to monitor and approve the transposition activities undertaken on its behalf by its government. This act includes a statement about how Italian law currently conforms with EU law, a list of all directives being transposed through secondary instruments or subnational actors, any open infringement proceedings against Italy, an explanation of the reasons for failure to transpose any directives for which the deadline is approaching or has passed, and relevant case-law from the Court of Justice. It is hard to imagine

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<sup>108</sup> Member of Parliament. Personal Interview. November 25, 2014. House of Commons, London.

<sup>109</sup> Member of Parliament. Personal Interview. November 26, 2014. House of Lords, London.

that this act gives the Italian parliament many opportunities to influence the actual content of much of this transposed legislation, but it does provide a way for them to monitor how the government is transposing legislation.

Other parliaments engage in this sort of monitoring in other ways. Many parliaments have the government regularly submit reports on how they are implementing EU legislation or come to parliament (either to the European Affairs Committees or the plenary) to report on the progress of the transposition process for various directives. The Cypriot *Vouli ton Antiprosopon* receives a regular forecast of directives that have to be transposed in the next few months from the government, and every month it sends a letter in return, which notes the directives that have not been implemented by the deadline.

Parliaments, or at least those responding to the survey on their behalf, seem somewhat divided over what the normative preference over parliamentary involvement would be. A substantial number, especially those who said they did not delegate, highlighted that transposition follows the same legislative process as national legislation or mentioned the role of parliament in the process. However, as their answers progressed, many seemed to acknowledge the reality that much of the work is done by the executive. For example, the Belgian response begins by saying that “The transposition of a EU-directive follows a traditional legislative process. In principle the Government takes the initiative to draft a bill...” that is later “submitted to the Parliament... In other cases, other instruments... can transpose directives (royal decree, ministerial decree) and are not submitted to Parliament for transposition.” They spell out this disparity more clearly in response to the subsequent question, in which they discuss the types of legal instruments are used. They provide an itemized list, with the first category labeled as what happens “in principle”, which have an “implication of parliament,” and then the second category

acknowledges that “the bulk of transposition is however done by” legislative instruments that are “exclusively by the executive power (governments)” (Batta 2007, 26). In contrast, the Czech parliament responded, “the Government is generally responsible for the transposition of the *acquis*. Nevertheless, in some cases the cooperation of the Parliament is inevitable” (31).<sup>110</sup>

This mix of opinions also existed among members of parliament with whom I spoke. Some MPs seemed to feel that there was very little that they could do to impact the legislation and that things were already set out by the EU. One MP in the Flemish Parliament, discussing subnational transposition in Belgium, acknowledged that an MP “can ask questions or try to make changes if you have time to read it all, but often you cannot really change things. If you do ask, they may make a note of it, but they will not follow up or through on it.”<sup>111</sup> One of his counterparts at the federal *Chambre des Représentants* agreed that they may not have much impact, but did not think that it excused them from making more of an effort. “There is usually not much debate when confirming transposed legislation, but this is a pity and is stupid. It is usually just the opposition against the majority and we do not spend much time, because we think it is already accepted. It is a bit lazy.”<sup>112</sup> In a starker contrast, one MP in the Polish *Sejm* felt that they were “100% effective” during transposition, although his answer went on to acknowledge that parliament transposes it if it is a law, because the executive can only use secondary legislation for things that are already in law.

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<sup>110</sup> The full body of EU law is known collectively as the *acquis communautaire*, sometimes abbreviated to the “*acquis*”.

<sup>111</sup> Member of Parliament, personal interview, November 13, 2014, Flemish Parliament, Brussels.

<sup>112</sup> Member of Parliament, personal interview, June 5, 2013, Belgian *Chambre des Représentants*, Brussels.

One of the most frequently mentioned reasons for why MPs thought it was important that they be involved in transposition, or at least for why the government was not doing it well, was the issue of “gold-plating”. This term describes situations where ministers add national provisions to the transposition measure, which are more detailed, restrictive, or in some way go further than what the directive requires. If parliaments or other ministers assume that the responsible minister is simply doing what is necessary to meet EU obligations, they may miss these additions. One example from the Return Directive (RD) was that the responsible minister “extended the entry ban period from five to up to ten years in special circumstances – clearly exceeding the five-year maximum of Art 11 RD” and introduced “sanctions for entry bans, meaning that illegal stay could be punished under criminal law. While this is not regulated within the directive, it gold-plated the RD in a restrictive way” (Dörrenbächer, et al. 2015, 2010). A member of the UK House of Lords discussed gold-plating as a common problem because the English prefer “certainty” in their laws, so they will often go further than the directive requires. He used an example of a directive that set out rules on safety for working at heights, but the UK expanded this to many areas they did not have to, such as applying it to mountaineering courses.<sup>113</sup> Another explained how ministers might add things that would not get through parliament to legislation that transposes a directive, and that “if they can make it sound European, they might get away with it.”<sup>114</sup> The House of Lords did try at one point to get the government to identify which clauses in statutory instruments come from EU legislation to allow them to better monitor the transposition process, but the government refused. He did suggest

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<sup>113</sup> Member of Parliament, personal interview, December 9, 2014, UK House of Lords, London.

<sup>114</sup> Member of Parliament, personal interview, November 17, 2014, UK House of Lords, London.

that one could use a parliamentary question to ask about which parts of a law the EU requires.<sup>115</sup> The fact that they could not persuade the government to give them the information regularly shows how difficult it may be for parliaments to engage if the government does not give them the opportunity and how difficult it may be to change the institutions surrounding transposition. However, there are some possibilities to use other tools in place of formal involvement in transposition, such as a parliamentary question about it.

Given these different arrangements and norms, it should be clear that institutions play a considerable role in determining how legislation is transposed in different countries. The main things that determine what legal instrument is chosen for a specific directive is the precedent of how other, similar directives have been transposed and the existing set of national customs and laws establishing the transposition process and the legislative process more broadly. If these do not make it clear, then it is by choice, usually of the relevant minister (Clipperton 2015). The type of legal instrument will, in turn, determine the amount of parliamentary involvement. If it does come to ministerial choice, one would expect that the minister will most often choose what gives her the most latitude and is the simplest tool to use, and therefore will often choose executive measures. This means that parliamentary involvement is even more dependent on precedent, customs, and laws – or on institutions. In this way, transposition is very institutionalized and is not easy for the parliament to change. In terms of individual directives, the parliament may have very little say over how it is transposed, either because existing institutions mean that they will or will not be involved, or because if the institutions do not say, then the minister will likely make the choice of legal instrument without consulting parliament. In the long term, if parliaments want to be more involved in the process, they will have to do

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<sup>115</sup> Member of Parliament, personal interview, December 2, 2014, UK House of Lords, London.

something to alter the existing institutions. They will have to effectively create or strengthen the “transposition tool” in order to use it more often, in contrast to something like parliamentary questions, for which they simply need to redirect the tool toward European issues.

#### **5.4 WHAT DELAYS AND INFRINGEMENTS CAN TELL US ABOUT PARLIAMENTARY INVOLVEMENT**

Much of the existing research on transposition has focused on member state delays in transposition and non-compliance. There are many examples of non-compliance, when member states do not transpose directives, at least for a time. Eventually, they may do it of their own accord or may be forced to do so by the Court of Justice, but scholars have viewed noncompliance as a form of “opposition through the backdoor” (Falkner, et al. 2004, Thomson, et al. 2007, König 2009, among others). This is certainly one reason for noncompliance, but it is not always about reiterating objections previously made in the Council. Sometimes it also occurs when the member state’s executive did not oppose it, such as when there are administrative shortcomings, interpretation problems, or problems of issue linkage. It may also occur when there is preference divergence between the relevant minister and others at the national level. This could include other individuals or parties within the executive or in the parliament. While non-compliance and delays are not the focus of this project and are not explicitly considered here, some of the findings from this body of research have important implications for parliamentary involvement.

There are two main types of non-compliance that can lead to infringement proceedings at the European level. The first is delayed or late transposition, in which the member state has not



notified the Commission that it has put national measures in place by the deadline for transposition. Examining data on the EU-15<sup>116</sup> from 1978-2009, König and Luig (2014) find that the non-notification rate ranges from eighteen to twenty-two percent in most policy areas, except for transport (26%), interior (28%), and finance (38%). The second type of non-compliance is substantive non-compliance, which occurs when the member state has notified the Commission of the relevant national legislation, but the Commission determines that these measures and their implementation do not fully or properly enforce it. For example, in June 2016 the Commission began infringement proceedings against seven different member states for their failure to properly implement the directive on driving licenses. Some of the issues included that Cyprus had not ensured that licenses from all member states were recognized equally and that Denmark had not defined several license categories properly.<sup>117</sup>

Clipperton (2015) points out that these two types of non-compliance cannot occur at the same time, since a state cannot be cited for substantive non-compliance until it has notified the Commission about which measures implement the directive. While one may follow the other, there is no clear reason to expect that one type of non-compliance is related to the other. Clipperton finds that the relationship between the two types has decreased over time. Additionally, some states that have a poor reputation for compliance, like Portugal, have fewer open substantive infringement cases than those with better reputations. Between 2002 and 2009, Portugal had 201 substantive infringement cases under investigation, while Germany had 286 and the United Kingdom had 216. Other scholars have also found that the two are unrelated

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<sup>116</sup> This term refers to the fifteen states that were members of the EU prior to the 2004 eastern expansion. These include Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Luxembourg, Portugal, Spain, Sweden, and the UK.

<sup>117</sup> Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (Recast)

(Mastenbroek 2007), or that it is likely negative (Thomson, et al. 2007, König and Mäder 2013), suggesting that there is a tradeoff. Thomson, et al. (2007) find that on twenty-one controversial directives, states often implemented legislation quickly but later had infringement proceedings brought against them over substantive issues. Similar tradeoffs may exist in terms of bringing the legislature into the transposition process. It would have the potential to reduce ministerial drift or (hopefully) increase the likelihood of producing substantively correct legislation, but it could certainly act as a delay and reduce the timeliness of transposition.

This type of research has identified several important factors leading to one or both types of non-compliance. The first and strongest is the preference of the minister in charge of the transposition process. The example above about the change in German ministers is a clear demonstration of why ministerial preferences can be particularly important. Ministers who disagree with a directive may act as gatekeepers and not start the transposition process (König and Luig 2014), or they may draft legislation that does not comply with all aspects of the legislation, in an example of how they may use transposition as a form of “opposition through the back door.” These studies all emphasize the power that the relevant minister has over the process, including whether or not to begin it. Looking more broadly at member state preferences, despite some evidence that member states whose preferred policy positions were not included in the legislation do still comply (Falkner, et al. 2004), there is evidence that “legal noncompliance” becomes more likely when member state preferences are far from the outcome (König and Leutgert 2009). It is not clear how minister or member state preferences on the substance of the legislation should influence the choice of legal instrument and involvement of the parliament, but the relevant factor here is how much power belongs the individual minister in charge of transposition. That minister is going to lead the drafting of whatever legislation

transposes the directive, so if institutions provide them with any choice over what type of legal instrument to use, they will be the ones that get to make this choice. They may even be able to draft the legislation in a certain way in order to be able to use a certain type of legal instrument.

While ministerial preferences have been found to be one of the most important factors due to their gatekeeping powers, ministers do transpose legislation and they cannot and do not always do it unilaterally, so the preferences of other actors, especially veto players, are also important. The work that has included veto players has had a variety of expectations and conclusions, depending on how they were conceptualized and measured (Franchino 2004, Börzel, et al. 2007, Toshkov 2007, Mbaye 2011). The most consistent finding from this literature is that more veto players leads to delays in transposition (Treib 2008, Steunenberg and Rhinard 2010), although Borghetto, et al. (2006) find that this does not hold for Italy. Since veto players have the ability to block legislation, by definition, it is not surprising that more veto players lead to greater delays. However, finding further evidence of a tradeoff between delay and substantive infringement, some research has shown that having more veto players may cause compromise and better quality legislation, leading to fewer substantive infringements down the road (Börzel, et al. 2003, Borghetto, et al. 2006, Steunenberg 2007). However, Clipperton (2015) argues that combining more veto players with increased pressure from the Commission to transpose legislation in a timely fashion can lead states to quickly pass incorrect legislation in an effort to appear to comply. The parliaments effectively function as another veto player if they are brought into the process, so one reason for less parliamentary involvement would be to allow for speedier transposition. Some of the above evidence suggests that their inclusion might help produce better legislation, but further study would be necessary to demonstrate this effect.

Qualitative work has tended to find that institutional capacity increases the timeliness and compliance of transposed legislation, although quantitative work seems to have struggled to demonstrate significance, possibly because of measurement issues (Angelova, et al. 2012). Administrative capacity of the bureaucracy does not lead to clear expectations for parliamentary involvement, as states with weak administrations likely also have parliaments with weak administrations. Below, I do find an effect of EU-focused parliamentary staff, which makes parliamentary involvement more likely, suggesting that governments may be more likely to include parliaments that have the administrative support to engage on European issues.

Additional directive-level factors that studies have found may matter for compliance are complexity, length, and the amount of discretion granted by the directive. All of these may tend to make transposition take longer, as one might expect (Thomson, et al. 2007). When there is more discretion in the directive, it may make it easier to write legislation that is substantively compliant. However, it may also make it more difficult to come to an agreement on what should be in the legislation and increases ambiguity, which thereby leads back to the problem of delays (Steunenberg and Toshkov 2009). From the perspective of parliamentary involvement, discretion makes it more normatively important that parliaments have a say in the process, since there is more actual policy to be determined. Complexity is usually one of the reasons that parliaments delegate to the better-informed executive, so one might expect that more complex directives might be less likely to include the parliament, especially if these are more technical.

The policy area of the directive may also matter for both compliance and parliamentary involvement. Some policy areas, like social policy, are more salient than others, such as agricultural policies. Policy area also matters because some are more likely to be redistributive and some are more likely to be regulatory, with the former generally being more salient and

more sensitive. The more salient policy areas are more likely to be transposed late, and there are clear differences across sectors. Some of the latest directives to be transposed are directives on Health and Safety, which are likely to require larger changes to embedded social and economic systems (Haverland, et al. 2011). Other policy areas that tend to face delays in transposition include transport, interior, and finance (König and Luig 2014). Similarly, salient and more redistributive policy areas would be more likely to be areas where parliamentary involvement is more important and likely, while policy areas that tend to see more regulatory and technical directives could be more easily left to the executive. Evidence supports this, with parliaments being involved in transposing about fifty percent of EU directives in home affairs and taxation, but only five percent of those in agriculture (Franchino and Hoyland 2009).

Finally, there is some evidence of how parliamentary involvement effects compliance. Due in large part to the variety of preferences that may be present in parliament and its status as an additional veto player, parliamentary involvement has generally been found to be a cause of transposition problems and delays (Mastenbroek 2003, König and Leutgert 2009, Steunenberg and Kaeding 2009). In some cases, the opposition has managed to slow the process enough to create transposition delays (Falkner, et al. 2004, Martinsen 2007). These types of political delays are magnified by the extra procedural steps involved in passing primary legislation, which often simply requires more time than does passing secondary legislation. Bicameral parliaments with different majorities may be particularly “problematic” from a timeliness perspective. For example, in 1991, the SPD was in opposition, but had substantial power in the upper chamber, the *Bundesrat*. They were able to veto the legislation transposing the Packaging Directive in the *Bundesrat*, but as a result, Germany eventually faced infringement proceedings over the final legislation (Haverland 2000). Saalfeld (2005) includes parliamentary preferences into his formal

model of delegation and parliamentary stalling during the transposition process, and argues that parliaments stall when they are dissatisfied with the actions of their executives. These findings suggest a substantial challenge to greater parliamentary involvement in transposition, especially given increased pressure from the Commission to transpose directives in a timely manner.

## **5.5 EXPLAINING PARLIAMENTARY INVOLVEMENT IN TRANSPOSITION**

There has been much less research into whether and why parliaments are involved in transposition. Studies measuring parliamentary involvement by type of legislative instrument have found that the EU-15 parliaments were involved in about one in seven directives (Franchino and Hoyland 2009) or about seventeen percent (König and Luig 2014). The highest levels of participation were in Austria, Germany, and Finland, whose parliaments were involved in about one-third to one-fourth of all directives. On the lower end, Britain, Ireland, and Portugal only involved their parliaments in the transposition of less than 5% of directives.

Research into two East European parliaments, the Czech *Poslanecká sněmovna* and the Slovak *Národná rada* examined the extent to which these parliaments actually scrutinized legislation that was part of the transposition process. Zbíral (2016) finds that there is less debate about these bills than there is about “purely domestic” legislation, but there is not a significant and substantial difference in other types of scrutiny. These other scrutiny measures include the number of committees that consider the bills, the number of amendments from committees, amendments by MPs, “yes” and “no” votes on the final legislation, and the length of the legislative process. These findings suggest that transposition is more than a formality and that parliaments are not simply passing this legislation without scrutinizing it. It is worth noting that

he chose two parliaments that tend to involve the parliament in the transposition process more often (by using primary rather than secondary legislation), but it suggests that when parliaments have the opportunity to be involved, they are willing and able to seize that opportunity. Dörrenbächer, et al. (2015) come to the same finding regarding the involvement of the German, Austrian, Dutch, and French parliaments in the transposition of the Return Directive. This was a particularly salient directive and may represent a best case for involvement, but they find that all four of these parliaments fully scrutinized the transposing legislation and all amended the draft legislation substantially.

### **5.5.1 Intra-coalition monitoring**

Much of the research into why parliaments are and should be involved has focused on parliamentary involvement as a way for one or more parties in a coalition government to control ministers from other parties. This theory is based on the formal work of Martin and Vanberg (2004, 2005), who use a principal-agent approach, in which the executive is an agent of the parliament and each individual member of the cabinet is also an agent of the cabinet as a whole. They contend that the legislature is a tool used by members of the cabinet to control their fellow ministers. They argue that each individual minister tends to have a lot of influence over their own policy area, so the other ministers may be at a major informational disadvantage in terms of understanding the effects of policy in that area. While the parliament is also likely to be at an informational disadvantage toward the minister in charge, they may be better off than the other ministers, since they can use committee hearings and expertise to gain some information. This informational asymmetry is likely to be even greater for EU legislation than it is for domestic legislation, given the experience of the relevant minister and her administration at Council

meetings and working groups (Franchino and Hoyland 2009). Thus, members of the parliament are important actors for oversight, potentially regardless of the party to which they belong.

In support of this argument, Franchino and Hoyland (2009) find that legislative involvement increases as conflict between the respective minister and her coalition partners increase. It also increases as there is more discretion allowed by the directive, leading them to conclude that, “far from being irrelevant, national parliaments are appreciably involved in the transposition of directives. More importantly, such an involvement occurs when it matters most: when the minister in charge of implementation has an *incentive* to exploit the *opportunity* for drift offered by a measure” (619). This finding is echoed by similar research (König and Mader 2008).

Dörrenbächer, et al. (2015) find more mixed evidence. They do find that parliamentary involvement tends to pull the outcome toward the coalition median, but they also find evidence that intra-party disagreement was a cause of policy adjustment. They conclude that there is not a clear linear relationship with coalition conflict. Rather, it may be a sufficient but not necessary condition, at least given a certain level of salience of the legislation.

However, König and Luig (2014) begin to raise what I consider to be a particularly valid concern about the microfoundations of this approach – the control that the responsible minister has over the process. They emphasize the gatekeeping role of the minister, and therefore conceptualize it as a two-stage decision, where the minister first decides whether to initiate the transposition process. They find that coalition conflict does not matter at this stage, and that the main factor is whether the minister’s party agrees with the directive. The compliance literature has demonstrated the key role that the relevant minister has over initiating the transposition process and, less clearly, the agenda-setting role that they have. In the situation where a minister



has divergent views from the coalition or parliamentary median, the directive allows for considerable discretion, and institutions allow for flexibility in the type of legal instrument to be used, prior research leads us to believe that the minister would be the one with the ability to make this choice and would therefore choose the legal instrument that gives her the most discretion. Absent constraining institutions, a rational minister would do the opposite of what this research predicts. Yet, much of this work seems based on the idea that decisions about what kinds of legal instrument to use are being made independently for each directive, and that some actor other than the relevant minister is making this decision.

König and Luig (2014) do set their second stage as being the decision “of the coalition partner to challenge the ministerial proposal” (502), but this seems most relevant if the ministerial proposal is already for primary legislation that would go through the parliament. They acknowledge, “principal-agent problems in coalition governments will intensify as long as parliaments themselves lack the right to initiate the implementation process” (503). Given the fact that these coalition-monitoring models are based largely on the idea that parliament may be better able to reduce the information asymmetry possessed by the minister than are other members of the government, it seems unlikely that they would be aware on every directive whether they disagree with the minister. I would argue that institutions must play a key and constraining role here, so that ministers with divergent preferences are forced to use primary legislation and give the parliament an opportunity to represent the views of the coalition partners. Countries that generally have coalition governments and face issues controlling the other members of the coalitions should be more likely to establish institutions that increase the use of primary legislation and parliamentary involvement. Additionally, governments that have this problem may introduce new institutions that accomplish this goal.

A theory based on these institutional microfoundations would also lead to the expectation that when governments have more divergent preferences, they are more likely to involve the parliament. However, it would expect this to be more of a country-level or long-term effect, rather than something that varies with every directive. Some of this work do find an interaction with the level of discretion granted by the directive (Franchino and Hoyland 2009, König and Luig 2014), but the ways that they measure this suggest that institutions could also largely account for this effect. For example, one way they measure discretion is whether it is a Council (and European Parliament) directive, which tend to be a rough equivalent to primary legislation, or whether it is a Commission directive, which are a rough equivalent to secondary legislation. Therefore, these types of regulations are going to be different in how regulatory they are, whether they are based on a previous directive, and how much domestic change they are likely to require. All of these differences could be institutionalized, rather than decided anew with every directive. The other measure they find expected significance for is the how much time there is before the transposition deadline, with the idea that those that offer more time will allow for greater room to maneuver and for parliamentary involvement. This, too, could be institutionalized.

### **5.5.2 Parliamentary and executive strength**

One of the other main findings of this body of literature, as discussed in the theoretical parliamentary tools chapter, is that the overall balance of power between the legislature and the executive is an important predictor of parliamentary involvement in transposition (Franchino and Hoyland 2009, König and Luig 2014). Where stronger parliaments have a greater right to be involved in the legislative process generally, this follows over into transposing legislation.

Stronger parliaments have also been able to win greater rights in terms of transposition. Franchino and Hoyland (2009) find that this effect is magnified as intracoalition conflict increases.

## 5.6 HYPOTHESES

In line with this previous research, the parliamentary tools analysis presented here expects that the overall balance of power between the parliament and executive should matter most for formal and institutionalized types of involvement, like transposition. The ability for parliaments to be involved depends on their general involvement in the legislative process, with many of the constitutional and institutional arrangements regarding what can be passed as primary legislation and what can be passed as secondary legislation following into how directives are transposed. Additional institutions are likely to echo this balance of power. These institutions will largely determine how involved parliaments are, and changing them is likely to be the only way for parliaments to gain influence over transposition. If these institutions do leave room for choice, it will likely be the government that decides whether or not parliament will be involved, since the government is responsible for transposition and generally has the right to initiate legislation. Parliaments need to pre-arrange for any involvement they want and will need to largely rely on formal institutions to get it for them. It is exactly this type of tool for which institutional strength is the most important.

*H1: Stronger parliaments will be more involved in transposition.*

Since these institutions will be slow to change, parliamentary involvement should also be more sensitive to time-invariant factors, rather than time-varying ones.

*H2: Parliamentary involvement in transposition will be more affected by time-invariant factors than time-varying ones.*

Parliamentary involvement in transposition, or at least in successful transposition, requires majorities in the parliament. Once parliament is involved, legislation must pass through one or both chambers in order to be successfully transposed. It also requires the participation of the government, who must first initiate the transposition process and do so in a way that involves parliament. Transposition is therefore one of parliament's tools that requires the approval of the greatest number of actors. This should make it more difficult for more fragmented parliaments to use this tool successfully. When there are more potential points of opposition and actors that must be coordinated, governments will be less willing to bring transposed legislation in front of the parliament and face possible delays or ultimate failure to pass the legislation.

*H3: More fragmented parliaments will be less likely to be involved in transposition.*

Due to the evidence in favor of the theory that governments involve parliaments include parliament as a way to monitor other coalition members, I add an additional expectation for this chapter. I look at the fragmentation of the government, and expect that more fragmented governments will be more likely to involve the parliament. However, due to the importance of institutions, I expect that long-term average fragmentation will be more important than short-term variation. Those countries for which coalition governments are common will be more likely to develop institutions that help them monitor their coalition partners than those for whom coalition partners seem like a short-term problem. A government that expects to have sole power or coalition dominance again in the near future is not as likely to want to lose the expediency of passing secondary legislation.

*H4: Greater government fragmentation should lead to more parliamentary involvement in transposition, with the long-term average being more important than short-term variation.*

Transposition is a relatively non-public form of parliamentary involvement. The average citizen is not likely to notice the difference between primary legislation and secondary legislation, or potentially to understand the difference even if they do notice it. I therefore expect Euroskepticism to be less important than for more public tools, such as parliamentary questions. To the extent that it matters, I do expect that those countries with higher levels of Euroskepticism will be more likely to involve the parliament. MPs are more likely to feel a need to monitor what the government is doing in regards to transposition if their public is opposed to this legislation. Governments may want to seek parliamentary support and make it clear that other parties have also supported any legislation that might prove to be unpopular.

*H5: Greater public Euroskepticism will lead to greater parliamentary involvement in transposition.*

## **5.7 DATA AND METHODS**

The dependent variable measures how often each country uses primary legislation to transpose directives, and therefore how often the parliament is involved in the process. It is measured at the country-year level, so the actual variable is the proportion of directives each year that were passed as primary legislation. Since the dependent variable does not vary at all by chamber, these observations are at the country level rather than the chamber level. The data covers all years from 2001 to 2015. All twenty-eight countries are included, starting from their first full year in the European Union for those who have joined since 2001.

As discussed above, every member state is responsible for notifying the Commission of the national measures that it has used to transpose the legislation into national law. These are all included on the European Union's legal database.<sup>118</sup> Data for every directive passed between 2001 and 2015 and all of the national implementing measures were collected from the website. Following similar research (Franchino and Hoyland 2009, König and Luig 2014), each national implementing measure was first coded for whether it was primary or secondary legislation.<sup>119</sup> In line with Franchino and Hoyland (2009) but in contrast to König and Luig (2014), I drop any implementing legislation that was adopted prior to the adoption of the directive. This is necessary because states will sometimes list earlier primary legislation, passed well before the directive, that had already implemented some aspects of the directive or that give the ministers the ability to pass secondary legislation. This overstates the involvement of parliaments.

Each country-directive observation was then coded as a binary variable for parliamentary involvement, which takes a value of one if one of the national instruments used to pass the directive was primary legislation and takes a value of zero if they were all secondary instruments. From these, country-year observations are calculated that represent the proportion of all directives on which national parliaments were involved.

Following Franchino and Hoyland (2009), I drop all country-directive level observations for which there are no national implementing measures. König and Luig (2014) criticize this decision, arguing that this drops all observations for which the minister in charge never chose to

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<sup>118</sup> This database is currently available at: <http://eur-lex.europa.eu/homepage.html>.

<sup>119</sup> For the EU-15, this coding was based on the appendix provided by Franchino and Hoyland (2009). For the additional thirteen countries that have acceded since, coding was done by the author, based primarily on the member state pages describing the types of legal instruments and the legal process for each country that are available at the EU's e-justice website. These are currently available from: [https://e-justice.europa.eu/content\\_member\\_state\\_law-6-en.do](https://e-justice.europa.eu/content_member_state_law-6-en.do).

initiate transposition and that there is inherent selection bias. They therefore include these and use a selection model. However, this is problematic because their outcome variable for the first stage does not accurately measure the decision of the minister to initiate transposition, which is what they want it to measure. States notify the Commission of the relevant measures after they have already been passed, not at the beginning of the legislative process. So any involvement by other actors, including parliament, that caused delays in transposition past the current date or that blocked transposition entirely would be coded as never having begun the process. Additionally, the selection bias that they do find for the second stage is not particularly problematic. Their results for the second stage are in line with the findings of Franchino and Hoyland (2009), so any selection bias does not substantially change the results. They argue that the selection effect has the most impact on the effect of coalition conflict on parliamentary involvement. At the upper bound of conflict, they find that the probability of increases from 82% in the non-selection model to 90% in the selection model and that it is similar at the lower bound. Thus, any selection effect makes it harder to achieve significance on this variable. Again, following Franchino and Hoyland (2009), I also drop any country-directive observations for which the directive was adopted prior to a country's accession to the EU, since procedures and incentives are different during this period.

The mean level of parliamentary involvement across countries is twenty-five percent and the median is twenty-one percent. This is somewhat higher than data for the EU-15 found by earlier studies (Franchino and Hoyland 2009, König and Luig 2014), which found involvement to be fourteen to seventeen percent suggesting that parliamentary involvement has increased somewhat in more recent years. However, there is no significant difference between the EU-15

and the new member states, suggesting that this difference is an overall development over time, rather than due to the addition of the new member states.

I use mixed random and fixed-effects models similar to those in the previous chapters, which allow me to include both time-varying and time-invariant variables in the model. I include year fixed effects in all of these models, but results do not change substantially in models without these. The independent variables are also similar to those in previous chapters. The first variable, which accounts for the overall institutional balance of power between the parliament and executive, is a binary variable for whether or not the parliament can replace the executive without the approval of any other actors. This variable should have a strong positive effect, since transposition is such an institutionalized tool.

The next two variables measure parliamentary fractionalization, using the effective number of parties in the legislature, according to seat share (Laakso and Taagepera 1979). Since variables are now at the country level rather than the chamber level, I use the fragmentation for the lower chamber. There is both a mean fragmentation variable and variation around that mean. The data come from the Comparative Political Data Set (Armingeon, et al. 2015), and are updated for 2014 and 2015 by the author. More fractionalized legislatures are expected to be less involved in transposition, since the government may have a harder time predicting the outcome or navigating the parliamentary process.

In models three and four, I introduce a new variable to account for the bargaining power fragmentation of the government. This variable is from the European Representative Democracy dataset (Andersson, et al. 2014) and is calculated using the Powerslave Power Index Calculator (Pajala, et al. 2002). Since this variable varies with time, I include both mean and mean deviation variables. More fragmented cabinets should be more likely to use the parliament in



order to monitor the actions of ministers from other parties. Therefore, parliamentary involvement should tend to increase as cabinets become more fragmented. Due to the institutional nature of transposition, I expect the mean variable to be more significant than the variable for the variation around that mean. I leave these variables out of models 1 and 2 so that these can more easily be compared to the models in other chapters.

The next set of variables account for public Euroskepticism. While transposition is a relatively not public action, I would overall expect more Euroskepticism to have an increased effect on parliamentary involvement. There are mean and mean deviation variables, which are calculated from each year's second Eurobarometer survey, subtracting the percentage of people who said that the EU conjured up a positive image from the percentage of those who said it conjured up a negative image.<sup>120</sup> Again, since transposition is so institutionalized, I expect that long-term, average Euroskepticism will have more of an effect than short-term variation around that mean.

Instead of an upper chamber variable, which was included in the other chapters, I here use a variable for whether the parliament is bicameral. Since these observations have to be at the country rather than chamber level, this is the closest possible variable to those models presented in other chapters. It is a binary variable, which takes a value of one if there are two chambers. Qualitative evidence suggests that upper houses, in which the government may not have a majority, tend to pose additional hurdles for governments and require more changes to transposed legislation. The example of the *Bundesrat* blocking the German government's

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<sup>120</sup> The question is posed to respondents as: "In general, does the European Union conjure up for you a very positive, a fairly positive, neutral, fairly negative, or very negative image?" I combine the very positive and fairly positive responses together, and combine the fairly negative and very negative responses together.

attempts to implement the Packaging Directive, discussed above, is one example. The French parliament, which would theoretically have had minimal involvement in the transposition of the Returns Directive because of the single party majority government, instead provided noticeable opposition in the *Senat*, where the government did not have a majority. In the end, the parliament ended up making some substantial changes to the legislation (Dörrenbächer, et al. 2015). Therefore, I expect governments to be more likely to try to avoid parliamentary involvement that they will have less control over, as in the case of upper chambers.

As in the previous chapters, I include a variable for judicial review, which has given the *Bundestag* more power than it might have had without a Constitutional Court. I would expect that these types of courts would tend to find in favor of parliamentary involvement, and that countries with courts should therefore be likely to see more parliamentary involvement in transposition. This is a binary variable, which comes from the Comparative Political Data Set (Armingeon, et al. 2015).

I also include a variable for the number of European Union committee related staff, who can help with transposition and can increase the administrative capacity of the parliament. I would expect this to have a positive relationship with parliamentary involvement. From a theoretical view, this may be more of a matter of having sufficient staff to ensure that including parliament in the process does not slow the transposition process too greatly. This variable is based on a survey of national parliaments in 2013, produced by COSAC, so it does not vary with time. Since data is not included for the Swedish *Riksdag*, the Czech *Poslanecká Sněmovna*, and the Finnish *Eduskunta*, I include this variable in models 1 and 3, but leave it out of models 3 and 4.

Finally, I include variables for time to the next national election, both in terms of the mean and the deviation around that mean. I would expect that parliamentary involvement decreases around the time of an election, as the government and parliament are both more likely to be focused on domestic and electoral politics than they are on transposition. To the extent that the government needs to focus on transposition in order to meet Commission deadlines, it will likely wish to use the most expedient legislative instrument. In general, the longer average time between elections, the more likely executives will make this choice at different times and the more likely they may be to put institutions in place that allow them to transpose legislation quickly.

## **5.8 RESULTS**

The results of these models are presented in Table 4. As expected, the variable representing parliamentary strength, measured by whether they can replace the executive unilaterally, is significant and positive in all of the models. Stronger parliaments are on average about twelve percent more likely to be involved in the transposition process. This confirms the findings in the literature that institutional strength matters, and also confirms the expectation that institutionalized tools will be most affected by institutions. The effect of this variable is opposite to its effect on parliamentary questions, providing evidence of a tradeoff between how parliaments use different types of tools. Weaker parliaments make use of tools that do not require a change of institutions or particularly strong institutions, such as questions, while stronger parliaments make use of tools that require strong institutions, such as transposition.

**Table 4.** Determinants of Parliamentary Involvement in Transposition

VARIABLES	(1) Model 1	(2) Model 2	(3) Model 3	(4) Model 4
Replace Executive	0.1179** (0.0443)	0.1205** (0.0429)	0.1445** (0.0452)	0.1230** (0.0405)
Effective # Parties Mean	-0.0154 (0.0119)	-0.0174 (0.0131)	-0.1337** (0.0507)	-0.1148** (0.0425)
Effective # Parties Mean Deviation	-0.0125 (0.0103)	-0.0099 (0.0103)	-0.0251 (0.0138)	-0.0200 (0.0134)
Mean Cabinet Fragmentation			0.1028** (0.0390)	0.0872** (0.0329)
Mean Deviation Cabinet Fragmentation			0.0158 (0.0113)	0.0128 (0.0096)
Euroskepticism Mean	0.7506*** (0.1273)	0.7828*** (0.1392)	0.7116*** (0.1110)	0.7442*** (0.1251)
Euroskepticism Mean Deviation	-0.0896 (0.0796)	-0.1308 (0.0721)	-0.0890 (0.0734)	-0.1248 (0.0658)
Bicameral	-0.0276 (0.0443)	0.0161 (0.0426)	-0.0323 (0.0369)	0.0067 (0.0389)
Judicial review	-0.0529 (0.0662)	-0.0588 (0.0539)	-0.0682 (0.0459)	-0.0985 (0.0506)
EU Staff	0.0026* (0.0010)		0.0029*** (0.0007)	
Mean Time to Next National Election	-0.0005* (0.0002)	-0.0002 (0.0002)	-0.0003 (0.0002)	-0.0001 (0.0002)
Time Between Nat. Elections Mean Dev.	0.0003*** (0.0000)	0.0003*** (0.0000)	0.0003*** (0.0000)	0.0003*** (0.0000)
Constant	0.4280*** (0.1003)	0.4888*** (0.0921)	0.5351*** (0.0959)	0.6153*** (0.1014)
Observations	324	354	321	351
Number of Countries	26	28	25	27

Robust standard errors in parentheses

\*\*\* p&lt;0.001, \*\* p&lt;0.01, \* p&lt;0.05

Hybrid Fixed and Random Effects Regression. See text for information on variables.

Parliamentary fragmentation only achieves significance in the models that include cabinet fragmentation. One would expect a correlation between these two variables, since parliaments that include more parties are also likely to have to include more parties in their cabinets. Since the effect of parliamentary fragmentation is expected to be negative and the effect of cabinet

fragmentation is expected to be positive, it is not surprising that parliamentary fragmentation does not achieve significance on its own. However, once both sets of variables are introduced, the mean variables work in the expected directions. It makes sense that given a certain number of parties in the government, they would be less likely to send legislation through the parliament if there are a greater number of parties, since it would increase uncertainty and might decrease government control.

The fact that the variable for the mean amount of cabinet fragmentation is significant while the mean deviation variable is not significant supports my argument about the microfoundations underlying the theory behind using parliament as a way to control other members of the cabinet. It is not that governments are somehow deciding this for every directive, depending on the individual minister and the discretion provided in the directive. It seems that it is not even policy set by a specific government depending on the amount of disagreement or fragmentation in that cabinet, since this would also be captured by deviation from the mean. Rather, it is the long-term trend of how fragmented cabinets tend to be that leads them to set up institutions that allow for parliamentary monitoring of coalition partners. Similarly, it is the mean of parliamentary fragmentation that also matters, further suggesting the importance of long-term institutions in determining parliamentary involvement in transposition.

Euroskepticism also matters in terms of the long-term, average level of Euroskepticism. Countries that have higher overall levels of Euroskepticism are more likely to involve their parliaments in the transposition process. There is no effect of deviation around the mean, providing further support for the importance of institutional arrangements. Unlike with parliamentary questions, parliaments cannot quickly respond to an uptick in Euroskepticism by getting more involved. Rather, where consistently high levels of Euroskepticism lead citizens to

be more concerned with European politics, members of parliament are likely to feel more of a need to monitor European legislation and individual ministers may be less likely to want to shoulder the blame.

There is no effect of bicameralism or judicial review. However, the effect of European Union-focused staff is positive, as expected, meaning that those parliaments with more EU staff are more likely to be involved in transposition. This suggests an argument in favor of the idea of institutional capacity, and that governments are more willing to involve parliaments if they are better able to process European-based legislation.

The results of time to national elections are mixed. The average time to national elections is negative, suggesting that those countries that tend to have more time between elections are less likely to involve parliaments. This effect is only significant in the models that include the EU staff variable, but it is not clear what this connection would be. The two variables are only correlated at .12. However, the variable for deviation around the mean time to national elections variable works in the expected direction, although the effect is small. When a country is further away from a national election, directives are more likely to be transposed with the involvement of the national parliament. As an election gets closer, governments seem to prefer to transpose legislation more quickly without using valuable time that could be spent on important electoral issues or campaigning, and therefore transpose more directives through secondary legislation.

## 5.9 CONCLUSION

Institutions dictate parliamentary involvement in transposition. General institutions that govern when governments can use secondary legislation as opposed to when they must use primary legislation and involve the parliament in the process often also govern transposition. In addition to these institutional rules, countries have established additional institutions that may give the government certain additional rights, such as in Greece, or an almost universal right to transpose legislation on their own, as in Ireland and the UK. The results presented above strongly confirm that long-term variables that would be more likely to affect institutions are what matter for parliamentary involvement, rather than short-term fluctuations. The institutional strength of parliament as compared to the executive is of particular importance. This confirms the main expectation about this type of tool, which is that institutions and institutional strength matter most for institutionalized tools, such as transposition. While other factors, such as parliamentary fragmentation and public Euroskepticism do matter, they only matter in their long-term forms.

Long-term or average fragmentation of the cabinet is also what matters, not deviation around the mean. This supports institutional microfoundations to the coalition monitoring view of transposition. Governments as a whole do not necessarily have the information, time, or power to decide how each directive is transposed on its own, given the informational advantage and gatekeeping power of the individual minister in charge of transposition. Parliaments certainly do not have this power. Therefore, both governments and parliaments must rely on institutions to ensure that parliament is involved when it should be and as a way to monitor coalition partners. The evidence supports that these decisions are not being made in the short term, but rather are institutions being established in response to long-term patterns.

From a normative standpoint, parliaments should be involved on the most controversial and salient legislation, as well as on the legislation that allows governments the most discretion. They should also have the ability to limit gold-plating or other forms of ministerial drift. In order to have these powers, institutions that grant them will have to be continued or developed. Recent efforts at sharing best practices in transposition across countries may help to strengthen these types of institutions and increase the democratic legitimacy of European legislation, especially as it is implemented in the member states.



## **6.0 CONCLUSION**

This dissertation has examined national parliamentary involvement in European Union policy-making through three of the main tools that parliaments have at their disposal – questions, resolutions and opinions, and transposition. It has argued that tools have three main characteristics that make them useful in different situations, which are their level of institutionalization, the number and type of actors that are required to use them, and their level of publicity. I have shown that stronger parliaments to make better use of more institutionalized tools. More fragmented parliaments make more use of individualized tools. Euroskepticism matters the most for more public tools, and for these public tools, short-term and long-term Euroskepticism have opposite effects.

### **6.1 PARLIAMENTARY TOOLS**

Much of the existing work on national parliamentary involvement in European Union affairs has tended to focus on the formal, legal, and institutional capacity for parliaments to be involved, such as through the rights they have to information or how their European Affairs Committees were structured. The field has only recently begun to more closely examine actual involvement, rather than simply the capacity for involvement. Formal rights are important in that they present an opportunity for involvement, but members of parliament and parties have to want to make use

of these rights or opportunities in order for them to have a substantial impact. Therefore, the important next step is to understand whether parliaments are making use of the opportunities available to them and under what circumstances they choose to do so.

The existing research has also generally not drawn clear distinctions between different types of involvement in European affairs or set out different expectations for them. However, not all types of involvement are the same. I have therefore presented a parliamentary tools approach to understanding why and how parliaments try to influence European policy-making. Parliaments and their members have a set of tools at their disposal, and certain tools will be better suited to achieving different objectives. For example, if a member of parliament wants to be able to demonstrate to an interest group that she has made a statement advocating one of their positions, speaking privately to a minister may be less effective than asking a parliamentary question or speaking in a debate. With either of the latter tools, the interest group would have evidence that she had in fact advocated for their position and they could in turn share a quote or video with their supporters. However, if a constituent has a tangible problem that needs to be resolved, such as a delayed request for paperwork or services, speaking to the relevant minister privately may be the most expeditious and efficient way to resolve the problem. I therefore establish three main characteristics of tools that help differentiate one type of tool from another: how public the tool is, what type and how many actors are required to use it, and how public it is.

### **6.1.1 Institutionalization**

The first main characteristic is how institutionalized a tool is, or more specifically, how much institutions need to be changed for that tool to be used for European affairs. One can also think about this as automaticity, in terms of how automatically a tool can be repurposed for Europe

without needing to change institutions. Of the three tools discussed here, parliamentary questions are the least institutionalized and the most automatic. There are generally very few constraints on what MPs can ask questions about, making it easy for an individual MP to decide to ask their question about Europe. While it would be possible to create new institutions that could increase parliamentary question asking as a tool for European affairs, such as creating additional question periods devoted to European issues, these are not necessary.

Resolutions and opinions sent to the European Commission as part of the political dialogue or the Early Warning System are somewhat more institutionalized and less automatic. The establishment of this process represented the creation of a new institution at the European level. Instituting it within national parliaments did not necessarily require new institutions, as existing procedures for passing resolutions or opinions could be used to issue European opinions. However, many parliaments did set up new institutions, such as enabling some European Affairs Committees to send these opinions without the approval of the entire chamber. Reasoned opinions sent under the Early Warning System are somewhat more institutionalized than opinions under the political dialogue, especially at the European level. When the Constitutional Treaty failed, the Commission was still able to set up the political dialogue system ahead of the Treaty of Lisbon. However, instituting the Early Warning System required a change to the treaties. Since these opinions carry more weight, the rules and institutions surrounding their use at the domestic level are also often stricter. For example, some parliaments allow the committees to pass political dialogue opinions on their own, but require plenary approval for reasoned opinions.

Transposition is the most institutionalized and the least automatic. To an extent, it is different in character as well as by degree, since parliaments cannot simply decide to use this

tool on their own. Given the informational advantages, gatekeeping powers, and agenda-setting prerogatives of the minister in charge of transposing a bill, parliaments have to rely on institutions to give them a role. They can only become more involved in transposition by changing the institutions that govern what legislation can be passed as secondary legislation and what must be passed as primary legislation, requiring parliamentary control.

The key expectation related to this characteristic was that overall parliamentary strength, as compared to the executive, would matter most for more institutionalized tools. Stronger parliaments will have an easier time changing these institutions, especially where the cooperation or consent of the government is required to change them. Much of the existing research has focused on institutions and institutionalized tools, so it had tended to find that the institutional strength of the parliament was a key factor.

Institutional strength did matter most for transposition, where it was positive and significant at the .01 level for all models. Stronger parliaments were involved in transposing EU legislation more often. The relationship was similar for the political dialogue and Early Warning System, although it was somewhat less significant for this less institutionalized tool, at the .05 level. Questions, which are the least institutionalized, were actually negatively related to institutional strength. It is weaker parliaments that tend to ask more questions, providing evidence of a substitution of tools. When weaker parliaments do not have as much access to other tools or when these tools are not as strong as they are in stronger parliaments, the weaker parliaments will make more use out of less institutionalized tools.

The other expectation related to the institutionalization of a tool is that more institutionalized tools will be less responsive to short-term variation of other explanatory variables. Institutions tend to be established and then tend to be “sticky” or relatively resistant to

change, so these types of tools will tend to respond to long-term trends. In most of the models, there are three sets of variables that include a long-term average for the chamber or country and short-term variation around that mean: the fragmentation of the parliament, the level of public Euroskepticism, and the time between national elections. For questions, the least institutionalized tool, both short-term and long-term Euroskepticism matter, as did both forms of the time to elections variable. For resolutions and opinions, the only short-term variable that mattered was time to elections, and that did not matter for reasoned opinions, which are the more institutionalized type. Some of the models for transposition add cabinet fragmentation as a short and long-term variable, but it is still only the long-term version of these that matter, except for time to elections, which also matters in the short-term. This provides further evidence that the institutionalization of a tool matters, and that members of parliament will use them in different ways. If there is a short-term uptick in Euroskepticism, they will respond by using a flexible tool like questions, rather than by changing the long-term institutions involved in transposition.

### **6.1.2 Types and quantity of actors necessary to use a tool**

The second main characteristic of parliamentary tools is how many and what types of actors are required to use them. Some tools can be used by an individual MP, some by a group, some require a majority, and some require party or government support. Some tools can be used by the opposition, or are primarily tools of the opposition, while those in governing parties mostly or always use other tools. The number of individuals required is particularly important for European involvement while MP interest in the EU remains relatively low. Those who are interested in the EU can actively use individual or committee tools for European affairs, while others continue to focus on domestic issues. For majority tools, however, interested individuals

or groups must convince others that these issues are worth their attention. Whether the opposition can use them is also particularly important since, for the most part, Euroskeptic parties still tend to be small and are often not in government. Since MPs from these parties are some of those most likely to pay attention to Europe and to choose to get involved, they will be more likely to use individualized tools.

The main expectation tested here was that more fractionalized legislatures would be more likely to use individual or small-group tools, while less fractionalized ones would be better able to use tools that require groups or majorities. Questions are the most individualized, since they are an individual tool. The opposition has access to them, and they may primarily be a tool of the opposition. Opinions and resolutions either require committee or plenary approval, so they are somewhere in the middle. Transposition at least requires a majority in parliament to pass the legislation, but also requires the cooperation of the government to begin the transposition process and, potentially, to pass it using primary legislation.

Parliamentary questions provided weak support for this expectation, as long-term fragmentation was only significant in one model and short-term variation was significant in none of them. However, in the model where it was significant, it was positive, supporting the idea that more fragmented legislatures make more use of parliamentary questions. More fragmented legislatures (in the long-term) made more use of opinions sent to the Commission under the political dialogue, which often only requires committee approval. For reasoned opinions under the Early Warning System, which often require a plenary resolution, there was no effect. For transposition, where majorities and government support are required, the opposite occurred - more fragmented parliaments were less involved. This relationship was only significant when

controlling for cabinet fragmentation, but this makes sense, as the expected (and actual) effect of cabinet fragmentation was positive and these two variables should be correlated.

### **6.1.3 Publicity**

The final characteristic considered here is whether the use of a tool is relatively apparent to the public, or at least to interested parties. Apart from televised debates and campaign events, much of the information that citizens get about politicians come through the media or interest groups, so for the use of a tool to be public, it must at least be visible to these interested groups. Whether or not a tool is public can matter depending on a politician's aim. If their main motivation for a certain action is to influence policy or deal with an issue for an individual constituent, then they may not need a public tool. However, if they want to win votes with an action or if their main political power can come from swaying public opinion, then using a public tool is essential.

Parliamentary questions are the most public tool discussed here, as some question periods are broadcast on television, the media pay some attention to question periods, and members of parliament can always advertise their use of a question since it will be recorded on the record and there may be video of it. Resolutions and opinions are in the middle, as they are posted publicly on the Commission's website and may be posted publicly by the parliament itself. Ones passed in plenary will have a recorded vote and might have an associated debate. Members of parliament could share their activities with citizens, interest groups, or the media, but the media is drastically less likely to actively keep track of or report on these types of actions than they are about questions. In cases where reasoned opinions require a plenary vote and political dialogue opinions do not, the former will be more public and potentially accessible to the media. Transposition, by itself, is the least public. While legislation passed through parliament is

recorded in the record and is publicly available, people are unlikely to notice whether legislation was primary or secondary. However, to the extent that passing legislation through the plenary leads to debates or other public actions, it may increase the use of other public tools during the process.

The main expectation in terms of publicity was that parliaments would want to use public tools discuss the EU when Euroskepticism became more problematic, since this would be a way to show citizens that they were taking care of their concerns and to potentially win votes. The results for parliamentary questions were particularly interesting. Both long-term, average Euroskepticism and short-term variation around that mean matter for how many questions are asked about Europe. However, the effect goes in opposite directions. Where Euroskepticism is generally high, it actually leads to fewer questions. I hypothesize that this is because most of the main parties, and therefore many members of parliaments, are pro-European, and where their publics are not, they may want to downplay Europe as an issue. However, within countries, when Euroskepticism increases in the short-term, then the effect is positive and politicians do respond by asking more questions about Europe. For less public (and more institutionalized) forms of involvement, only long-term trends matter. The effect is positive, as expected. A possible reason for why this is different for public questions than less public tools like opinions or transposition is precisely because members of parliament have more say over who will find out about their actions on Europe. They can advertise these actions to those groups or types of constituents who will approve of such actions, without having them be as likely to be picked up by the media and used in ways the member of parliament would not prefer.

Overall, these findings make it clear that different members of parliament use different types of tools in different ways and for different reasons. The same variable can have a negative effect on



one type of tool and a positive effect on another type. It is therefore important that scholars consider the different types of tools they are studying and to think explicitly about how the characteristics of those tools affect expectations.

## **6.2 MP INTEREST IN EU AFFAIRS AND POSSIBLE PATHS FORWARD**

A key prerequisite to parliamentary use of these types of tools is that members of parliament be interested in using these tools to get involved in European policy-making and/or that they see some benefit to doing so. While some MPs that I spoke to thought that national parliaments were already involved enough in European affairs, most thought that national parliaments should be doing more.

First, some MPs or their staff had positive things to say about the current role. A staff member for a Land ministry, who worked closely with preparations for Bundesrat meetings on Europe, described the current role as “constructive” and as “fitting for their role in the whole system.”<sup>121</sup> Similarly, a member of the UK House of Lords thought that this chamber “fulfills its role well. It has always been good at committee work, especially on the EU, and performs careful scrutiny of both major and minor matters.”<sup>122</sup> Additionally, many MPs felt that there had been improvement over recent years, especially since the Treaty of Lisbon came into force and brought with it the opportunity for dialogue with the Commission and a formal role in the Early Warning System. This was a “good role for the national parliaments”, allowing them to

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<sup>121</sup> Staff member, Personal Interview, Land Representation to the Federal Government, Berlin, October 23, 2014.

<sup>122</sup> Member of Parliament, Personal Interview, UK House of Lords, London, December 8, 2014.

“turn on the yellow light”.<sup>123</sup> Other MPs discussed their role in subsidiarity control as their “most important role”.<sup>124</sup> These responsibilities were not taken lightly and they celebrated their successes, both in gaining more tools and in the instances of successful use of those tools.

Another area of recent improvement, and potential improvement for the future, was cooperation between parliaments and with the European Parliament. For example, a member of the Polish *Senat* discussed the “important strategic discussions” they can have with other national parliaments and the EP at COSAC, which can help them find a common position that the EP can express at the European level and various national parliaments can bring back to their governments.<sup>125</sup> However, others were less satisfied with these types of improvements. One MP commented, “we have COSAC and the Early Warning System – that is okay” and they overall function well, but indicated that much more was needed.<sup>126</sup>

Of those who thought that parliaments should play a larger role, some did acknowledge the challenges to this. Some were practical, such as too short timelines or difficulties in getting agreements between two chambers of a bicameral parliament.<sup>127</sup> This problem is magnified in federal states with subnational parliaments, like Belgium, and certainly across the EU, given the total number of chambers and parliaments.<sup>128</sup> Others were more fundamental, such as a MP from the UK, who discussed how for many citizens there, the UK had become a “proxy for racism”. When they try to explain the truth and benefits of Europe to citizens, they “simply

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<sup>123</sup> Senator, Personal Interview, Polish *Sejm*, Warsaw, September 9, 2014.

<sup>124</sup> Senator, Personal Interview, Polish *Senat*, Warsaw, September 25, 2014.

<sup>125</sup> Senator, Personal Interview, Polish *Senat*, Warsaw, September 25, 2014.

<sup>126</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, November 7, 2014.

<sup>127</sup> Member of Parliament, Personal Interview, Belgian *Chambre des Représentants*, Brussels, November 14, 2014.

<sup>128</sup> Member of Parliament, Personal Interview, Belgian *Sénat*, Brussels, November 13, 2014.

aren't listening, but this is probably our fault", indicating parliament and the establishment for its tendency to blame Europe for unpopular policies.<sup>129</sup> An MP from Denmark also cited the problem of the British press: "there the press is horrible; the people know very little and they will believe ridiculous things." While he thought that the "Danish press cannot really be blamed, as they still cover the EU more than the public wants them to", this problem of public apathy was a serious concern. He said that when he plans to talk about the EU, he does not announce the subject ahead of time because they "do not want people to stay away". He thought that the two main reasons MPs do not get involved in European affairs is because the people do not want to hear about it and because most parties are split internally over EU affairs.<sup>130</sup>

Others thought that it was not so much specific challenges, but rather that it was a slow process and would take time. One MP acknowledged, "we need to strengthen the national parliamentary role, we need to develop this... but when you look at how well national parliaments are fulfilling their current role, they will need time to follow up on an expanded role." She added, "even in Denmark", which is considered to be one of the more active parliaments on EU issues, they still have things to work on, such as getting the sectoral committees more involved.<sup>131</sup>

Despite these types of challenges, many cited the democratic deficit as the main reason why national parliaments need to be involved and need to be more involved than they are currently. "National parliaments have an important role, because their job or task is to bring the

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<sup>129</sup> Member of Parliament, Personal Interview, UK House of Commons, London, December 12, 2014.

<sup>130</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, November 6, 2014.

<sup>131</sup> Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, November 7, 2014.

discussion from Brussels to the member states and its citizens”. She thought that it was disgraceful that MPs do not take responsibility for EU legislation and that it was no longer acceptable to blame the EU, as MPs now “have the opportunities for influence, even if they don’t win every time”. She then cited a recent negative example of EU legislation that had banned a certain type of lamp, for which German politicians blamed Brussels. However, in truth, German politicians had asked for that legislation. Despite still negative examples like this, she saw signs of change, with the EU’s proposed free trade agreements with Canada and the US being discussed in the *Bundestag* in public debate. She thought that the use of public tools like this had the potential to enhance the opinion of and support for EU decision-making.<sup>132</sup>

The democratic deficit facing the European Union is one of its most substantial problems, and it may have led to issues such as the recent UK “Brexit” referendum, at least indirectly. As some of the above quotes highlight, politicians have had a tendency to blame Europe for unpopular policies and to the democratic deficit has left people uninformed, leaving them vulnerable to misinformation and campaigns to tie the EU to issues of racism or economic insecurity. However, my qualitative research suggests that many MPs feel that they have either recently made progress or need to make further progress toward changing this, despite the real challenges. The broader findings of the dissertation highlight the importance of considering different tools. If one looks only at transposition, one might be concerned that some countries are much less involved and the democratic deficit might become exacerbated in those countries, leading to a more asymmetric democratic deficit. However, the research here shows that when members of parliament cannot get sufficiently involved via one tool, such as transposition, they may be more likely to use another, such as parliamentary questions. Similarly, when high

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<sup>132</sup> Member of Parliament, Personal Interview, German *Bundestag*, Berlin, October 21, 2014.

Euroskepticism makes them reluctant to use public tools like questions, they may turn to other tools that are less public but have greater potential to influence legislation, such as transposition. Exploring different types of tools and the reasons why parliaments use different ones can produce substantially different understandings of parliamentary involvement in European affairs.

### **6.3 FUTURE RESEARCH**

As these quotes demonstrate, the motivations and interest in European policy-making among members of national parliaments varies substantially. In order for parliaments to participate in European affairs, their members have to want to participate. Additional work therefore needs to be done at the individual level, to better understand what motivates individual MPs to engage with the EU. This work should also examine more closely how they choose the proper tool.

Throughout the projet, I have demonstrated the importance of looking at different types of parliamentary tools, and that the explanations for the use of these tools vary. This dissertation has certainly not considered all of the parliamentary tools, so future research should examine other types of tools and their use. I have also chosen what I think are the three most important characteristics of these tools, but there are certainly other characteristics that may matter, and future research could develop these. My findings have indicated that there is a tradeoff between tools. For example, stronger parliaments are more involved in transposition but are less likely to use parliamentary questions. Future research could more explicitly examine this tradeoff and how the use of one tool affects use of other tools.

This additional research will be important for better understanding the role that national parliaments can play in reducing the EU's democratic deficit. Additional work on tools would

not have to explicitly focus on EU involvement, and could more broadly examine the ways that parliaments and MPs make use of various tools for different aspects of domestic or foreign affairs. The findings here also speak to the potential for parliaments to remain involved as more decisions are made at an international level, whether through the EU or through other international and supranational organizations. The EU is the most advanced of these so its democratic deficit is the most pronounced, but others face similar problems that will be exacerbated as they grow in strength. Future research could examine whether and how parliamentary involvement varies across different types of these organizations

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