

UACES 42nd Annual Conference

Passau, 3-5 September 2012

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**Sub-national Parliaments in a Multi-level Parliamentary System –
Reform Processes in the German *Länder* in the Post-Lisbon Era**

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Paper presented at the UACES Conference, Passau, 3-5 September 2012

Panel: National Parliaments at the EU

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Abstract:

The Lisbon Treaty endowed parliaments with new rights as part of an overall endeavor to democratize the EU. While most research focuses on the European Parliament and national parliaments, the role of subnational parliaments in an evolving multi-level parliamentary field is so far widely neglected despite the fact that the Lisbon Treaty's subsidiarity protocol takes the vertical division of competences in the member states into account and it recognizes a specific role of sub-national parliaments for the first time. Thus, most current research restricts itself to a two-level perspective and does not fully address the multi-level nature of the ongoing (re-)parliamentarization process.

The newly granted rights are of particular importance for those subnational parliaments in federal states which are entrusted with legislative competences, above all the Germany Länder parliaments. Responding to the long-lasting overall trend of deparliamentarization and to the opportunity structure provided by the Lisbon Treaty and the Lisbon ruling of the German Federal Constitutional Court, there are currently reforms underway in all German Länder.

The paper addresses the following questions: What are the parliamentary functions sub-national parliaments, i.e. the German Landtage fulfill in EU affairs? How do they respond to the opportunities in the post-Lisbon era? What implications do the observable changes in parliamentary functions at subnational level have for the conceptualization of a multi-level parliamentary field? Finally, what lessons can be drawn for subnational parliaments in general?

INTRODUCTION

European integration is widely thought to weaken parliaments and to strengthen governments. Does the Lisbon Treaty make a difference? The Treaty declares that ‘The functioning of the Union shall be founded on representative democracy’ (Article 10). For this propose it endows parliaments with new rights. This holds true for the European Parliament but also for national parliaments (see Articles 5 and 12, Protocols 1 and 2 of the Lisbon Treaty). Thus, recent studies detect signs of a (re-) parliamentarization process of European integration. Cooper in a even regards national parliaments as a ‘virtual third chamber’ of the EU which *collectively* fulfil legislative, representative, and deliberative functions.¹

The role of *national* parliaments in EU policy-making and their ‘politics of adaptation’² have been studied for many years.³ Strategies and instruments, interaction of parliaments with each other and across different levels have been scrutinized.⁴ Simultaneously, *subnational* parliaments have been widely ignored. This leads to (1) conceptual and (2) empirical shortcomings:

- 1 I. Cooper, ‘A “Virtual Third Chamber” for the European Union? National Parliaments after the Treaty of Lisbon’, *West European Politics* 35/3 (2012), pp. 441-465.
- 2 K. Auel and A. Benz, ‘The Politics of Adaptation: Europeanisation of National Parliamentary Systems’ (*Legislative Studies*, Special Issue 11/3-4, 2005), pp.372-393.
- 3 See S.S. Andersen and T.R. Burns, ‘The European Union and the Erosion of Parliamentary Democracy: A Study of Post-parliamentary Governance’, in S.S. Andersen and K.A. Eliassen (eds.), *The European Union: How Democratic Is It?* (London: Sage, 1996), pp.227-251; A. Benz and K. Auel, ‘Expanding National Parliamentary Control: Does It Enhance European Democracy?’, in B. Kohler-Koch and B. Rittberger (eds.), *Debating The Democratic Legitimacy Of The European Union* (Lanham: Rowman & Littlefield, 2007), pp.57-74; J. Dieringer, ‘Entparlamentarisierung oder Renaissance der Volksvertretungen? Zur Rolle nationaler Parlamente im europäischen Integrationsprozess’, in K. Beckmann, J. Dieringer, U. Hufeld (eds.), *Eine Verfassung für Europa* (Tübingen: Mohr Siebeck, 2005), pp.235-257; K.H. Goetz and J.-H. Meyer-Sahling, ‘The Europeanisation of national political systems: Parliaments and executives’, *Living Reviews in European Governance* 3/2 (2008), <http://www.livingreviews.org/lreg-2008-2>; A. Maurer and W. Wessels (eds.), *National Parliaments on their Way to Europe. Losers or Latecomers?* (Baden-Baden: Nomos, 2001); P. Norton, ‘National Parliaments and the European Union’, *Journal of Legislative Studies* (Special Issue) 1/3 (1995); T. Raunio, ‘Always One Step Behind? National Legislatures and the European Union’, *Government and Opposition* 34/2 (1999), pp.180-202; J. O’ Brennan and T. Raunio (eds.), *National Parliaments within the European Union. From “Victims” of Integration to Competitive Actors?* (London: Routledge, 2007); H. Pehle and R. Sturm, ‘Die Europäisierung der Regierungssysteme’, in O.W. Gabriel and S. Kropp (eds.), *Die EU-Staaten im Vergleich: Strukturen, Prozesse, Politikinhalt*, 3rd ed. (Wiesbaden: VS Verlag, 2008), pp. 155-178. For gaps despite the rich body of literature see: T. Raunio, ‘National Parliaments and European Integration: What We Know and Agenda for Future Research’, *Journal of Legislative Studies* 15/4 (2009), pp.317-334.
- 4 See, for many, G. Abels and A. Eppler (eds.), *Auf dem Weg zum Mehrebenenparlamentarismus?*; Auel and Benz, ‘The Politics of Adaption’; A. Benz, ‘Path-Dependent Institutions and Strategic Veto Players: National Parliaments in the European Union’, *West European Politics* 27/5 (2004), pp.875-900; A. Benz and K. Auel, ‘Expanding National Parliamentary Control’; K.H. Goetz and J.-H. Meyer-Sahling, ‘The Europeanisation of national political systems’; R. Holzhaacker, ‘National Parliamentary Scrutiny over EU Issues: Comparing the Goals and Methods of Governing and Opposition Parties’, *European Union Politics* 3/4 (2002), pp.459-479; J. Karlas, ‘Parliamentary control of EU affairs in Central and Eastern Europe’, *Journal of European Public Policy* 18/2 (2011), pp.258-273; A. Maurer and W. Wessels (eds.), *National Parliaments on their Way to Europe*; A. Maurer, *Parlamentarische Demokratie in der Europäischen Union. Der Beitrag des Europäischen Parlaments und der nationalen Parlamente* (Baden-Baden: Nomos, 2002); P. Norton, ‘National Parliaments’; T. Raunio, ‘Always One Step Behind?’; J. O’ Brennan and T. Raunio (eds.), *National Parliaments within the European Union*.

(1) The parliamentarization of the EU is conceptualized in terms of an evolving “multi-level parliamentary field” (Crum/Fossum) or of “Mehrebenenparlamentarismus” (multi-level parliamentarism; Maurer).⁵ Claiming to be *multi*, these concepts remain de facto limited to a *two*-level analysis (national/supranational). (2) The Lisbon Treaty takes the vertical division of competences in the member states into account: The ‘Protocol on the Application of the Principles of Subsidiarity and Proportionality’ (Protocol no. 2), which outlines the technical and procedural matters of the so-called early warning system,⁶ also mentions a specific type of *regional* parliaments by declaring: ‘It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, *regional parliaments with legislative powers.*’ (Article 6 of Protocol no. 2, emphasis added) Such parliaments can be found in eight out of the 27 EU member states: in the three federal states Austria, Belgium, and Germany, in highly regionalized states such as Spain, Italy, and the UK, and even in two unitary states, Portugal and Finland.⁷

In this paper I claim that the Lisbon Treaty, as the first EU treaty ever to recognize the rights of subnational assemblies, provides an opportunity structure for subnational legislatures to negotiate their powers in EU affairs vis-à-vis ‘their’ governments. Yet, if subnational parliaments exploit this opportunity, how they do that and the outcomes depends on a number of national as well as regional contextual factors. I will illustrate this taking the example of the 16 German *Länder* parliaments. They are a clear case of subnational legislatures endowed with shared and in some policy areas, i.e. culture and education, even exclusive law-making powers. Their legislative competences are increasingly impeded by European integration. While the governments of the *Länder* have augmented their EU related legislative and scrutiny competences at

5 A. Maurer, ‘Mehrebenen Demokratie und Mehrebenenparlamentarismus: Das Europäische Parlament und die nationalen Parlamente nach Lissabon’, in S. Kadelbach (ed.): *Europäische Integration und parlamentarische Demokratie* (Baden-Baden: Nomos, 2009), pp.19-57; B. Crum and J.E. Fossum, ‘The Multilevel Parliamentary Field: a framework for theorizing representative democracy in the EU’, *European Political Science Review* 1/2 (2009), pp.249-271; For a more extensive discussion of these concepts see K. Auel, ‘Europäisierung der parlamentarischen Demokratie – theoretische Perspektiven und methodologische Herausforderungen’, in G. Abels and A. Eppler (eds.), *Auf dem Weg zum Mehrebenenparlamentarismus?*, pp.65-77, and A. Eppler ‘Vertikal und horizontal, bi- und multilateral: Interparlamentarische Beziehungen in EU-Angelegenheiten’, in G. Abels and A. Eppler (eds.), *Auf dem Weg zum Mehrebenenparlamentarismus?*, pp.297-314.

6 The details are spelled out in Protocol no. 1 on the role of national parliaments and in Protocol no. 2. National parliaments and each chamber of a national parliament can issue a reasoned opinion on draft legislative proposals of the European Commission based on subsidiarity concerns. If one-third of the parliaments or parliamentary chambers (the threshold is currently 18 votes) object, then the Commission must review the draft (in the area of freedom, security and justice one quarter of the total of 54 votes is sufficient) or justify, why it believes that the proposal complies with the subsidiarity principle. The exact rules for the participation of regional parliaments are to be laid out by national law.

7 The latter ones have such parliaments in select regions far away from the mainland: Madeira and Azores in Portugal, Åland Islands in Finland. See CoR, *The Role of Regional Parliaments in the Process of Subsidiarity Analysis within the Early Warning System of the Lisbon Treaty* (Brussels: CoR, 2009).

national level via the *Bundesrat*,⁸ the powers of the state parliaments have by and large been diminished or are at least severely restricted.⁹

Since 2009 the German *Länder* parliaments have widely utilized the Lisbon Treaty to reinvigorate their long-term calls for enhanced legislative and control rights in European affairs. A supportive *national* factor was the Lisbon Ruling of the German Federal Constitutional Court (GCC). On 30 June 2009 the GCC declared that parliamentary law-makers at federal level have a special ‘responsibility for integration’ (Integrationsverantwortung).¹⁰ According to the GCC European integration is a step-by-step process requiring tight parliamentary scrutiny to advance in a democratic fashion. It saw the rights of the German *Bundestag* and *Bundesrat* violated by the so-called ancillary laws (Begleitgesetze) to the Lisbon Treaty. Consequently these were completely overhauled and the respective article in the German Basic Law (Article 23 GG) was changed accordingly; in addition, a so-called Integration Responsibility Law (Integrationsverantwortungsgesetz, IntVG) was passed. In effect, the scrutiny and legislative rights of the *Bundestag* and *Bundesrat* vis-à-vis the federal government are notably strengthened. Even though the GCC Ruling did not mention the *Länder* at all in its decision,¹¹ the Ruling and especially the new legal concept of ‘responsibility for integration’ were politically interpreted by the German *Länder* parliaments as a (renewed) call also for stronger parliamentary rule at state level.

This contribution analyses the *political* momentum of the debate over the role of Landesparlamente in EU affairs. In the aftermath of the Lisbon Treaty and the Lisbon Ruling *all* German *Länder* parliaments have begun to instigate reform processes, yet with different speed and outcome. In terms of strategies and instruments, on the one hand these reforms model the development observed at the federal level; on the other hand they follow the path already chosen when reforms were first initiated in response to the 1992 Maastricht Treaty.

The paper develops this argument in two steps: After a brief discussion of parliamentary functions challenged by European integration, I focus on the historical development of state parliamentary involvement in EU affairs and sketch out the recent reform processes in the *Länder*

8 The *Bundesrat* is de facto a second chamber. Unlike Senates it is not an elected chamber, but it comprises delegates of the governments of the German *Länder*. Depending on the size (in terms of residents) of the *Länder* the number of votes each state government has ranges between three and six votes.

9 See A. Lenz and R. Johne, ‘Die Landtage vor der Herausforderung Europa: Anpassung der parlamentarischen Infrastruktur als Grundlage institutioneller Europafähigkeit’, *Aus Politik und Zeitgeschichte* 60/6 (2000), pp.20-29; R. Johne, *Die deutschen Landtage im Entscheidungsprozess der Europäischen Union: Parlamentarische Mitwirkung im europäischen Mehrebenensystem* (Baden-Baden: Nomos, 2000); O. Schmuck, ‘Die deutschen *Länder* und der europäische Reformprozess’, in O. Leiß (ed.), *Die Europäische Union nach dem Vertrag von Lissabon* (Wiesbaden: VS Verlag, 2010), pp.255-268.

10 BVerfG, 2 BvE 2/08, 30 June 2009; for an in-depth discussion of this ruling see the contributions in: *German Law Journal* 10/8 (2009).

11 Due to the state-like quality of the *Länder*, the GCC is not entitled to decide on how parliamentarianism in the *Länder* is to be organized as long as the constitutional principle of democracy is fulfilled.

and the differences between them. I demonstrate that the focus of reforms lies primarily on the expansion of legislative and control functions. In the conclusions I evaluate the key findings and briefly assess them with regard to the role of subnational parliaments in EU affairs.

PARLIAMENTARY FUNCTIONS IN EU AFFAIRS

There is broad consensus that European integration and concurrent centralization of powers within German federalism severely affects the competencies of state parliaments.¹² In consequence this may even endanger ‘the constitutionally guaranteed sovereignty of the Länder’¹³, emaciate the constitution ‘guarantee in perpetuity’ (Article 79 GG) safeguarding federalism¹⁴, and jeopardize the balance of powers within the *Länder*.¹⁵ The German *Länder* parliaments were never very powerful legislatures; nevertheless, the pincer movement of European integration and centralization of federalism clearly works against them and affects almost all functions of the Landesparlamente.

12 See K. Auel, ‘Die deutschen Landtage im europäischen Mehrebenensystem’, in U. von Alemann and C. Münch (eds.): *Landespolitik im europäischen Haus: NRW und das dynamische Mehrebenensystem* (Wiesbaden: VS Verlag, 2005), pp.133-151; M.W. Bauer, ‘Europausschüsse – Herzstück landesparlamentarischer Beteiligung in Angelegenheiten der Europäischen Union?’, in Europäisches Zentrum für Föderalismus-Forschung (ed.): *Jahrbuch des Föderalismus 2005* (Baden-Baden: Nomos, 2005), pp.632-647; P. Bußjäger, ‘Frühlingserwachen? Über die aufkeimende Liebe der regionalen und nationalen Parlamente an der Mitwirkung in der Europäischen Union’, in Europäisches Zentrum für Föderalismus-Forschung (ed.): *Jahrbuch des Föderalismus 2009* (Baden-Baden: Nomos, 2009), pp.503-513; F. Greß (ed.), *Die Rolle der Bundesländer in einem geeinten Deutschland und geeinten Europa. Eine Herausforderung für Landesparlamentarismus und Föderalismus* (Wiesbaden: Hessischer Landtag, 1992); S. Hölscheidt, ‘Die neuen Bundesländer und der Parlamentarismus in der Europäischen Union’, *Zeitschrift für Parlamentsfragen* 32/2 (2001), pp.325-339; M. Hummrich, ‘Die Europafähigkeit von Landtagen am Beispiel Rheinland-Pfalz’, in K.-H. Lambertz and M. Große Hüttmann (eds.): *Europapolitik und Europafähigkeit von Regionen* (Baden-Baden: Nomos, 2009), pp.157-170; Johne, *Die deutschen Landtage*; R. Johne, *Landesparlamentarismus im Zeichen der europäischen Integration* (Frankfurt/M. et al.: Peter Lang, 1994); A. Kiefer, ‘Gesetzgebende Regionalparlamente und ihr europäischer Verband: die CALRE’, in Europäisches Zentrum für Föderalismus-Forschung (ed.): *Jahrbuch des Föderalismus 2006* (Baden-Baden: Nomos, 2006), pp.606-639; Lenz and Johne, ‘Die Landtage vor der Herausforderung Europa’; Schmuck, ‘Die deutschen Länder’; W. Reutter, *Föderalismus, Parlamentarismus und Demokratie* (Opladen: Leske + Budrich, 2008); P. Straub and R. Hrbek (eds.): *Die europapolitische Rolle der Landes- und Regionalparlamente in der EU* (Baden-Baden: Nomos, 1998); U. Thaysen, ‘Parlamentarismus vor dem Hintergrund der europäischen Integration. Die deutschen Landesparlamente: “Hauptverlierer” ohne Alternative?’, in G. Breit and P. Massing (eds.), *Parlamentarismus in der Bundesrepublik Deutschland. Eine Einführung* (Schwalbach i.Ts.: Wochenschau Verlag, 2003), pp.135-152; H.P. Volkert, ‘Landesparlamentarismus im Prozeß der europäischen Einigung’, in D. Merten (ed.): *Föderalismus und Europäische Gemeinschaften unter besonderer Berücksichtigung von Umwelt und Gesundheit, Kultur und Bildung* (Berlin: Duncker & Humblot, 1990), pp.251-261.

13 Johne, ‘Die deutschen Landtage’, at p.15; my translation.

14 J. Link, ‘Haben die deutschen Landesparlamente noch eine Zukunft?’, *Zeitschrift für Politikwissenschaft* 14/4 (2004), pp.1215-1234, at p.1231.

15 See Johne, ‘Die deutschen Landtage’, at p.17; see also F. Greß, ‘Die Rolle der deutschen Landesparlamente’, in P. Straub and R. Hrbek (eds.): *Die europapolitische Rolle der Landes- und Regionalparlamente in der EU* (Baden-Baden: Nomos, 1998), pp.161-175, at p.162; H.A. Hölder, *Der Landtag von Baden-Württemberg in der Europäischen Union*, Doctoral dissertation, University of Tuebingen; Johne, *Landesparlamentarismus*; Papier, ‘Zur Verantwortung der Landtage’; Link, ‘Haben die deutschen Landesparlamente noch eine Zukunft?’.

Parliamentary functions can be divided into those focussing on the government ('regierungsbezogen') and those focussing on parliaments as representative bodies ('repräsentationsbezogen').¹⁶ The development of EU related rights primarily concentrates on the former; these will be at the heart of this paper. Yet the latter are also affected. Key functions of type I are legislation and control. The Landesparlamente are widely deprived of their *legislative* function, since more and more policy areas are regulated at either national and/or European level, leaving fewer areas within the competence of the *Länder*. While the state governments (Landesregierungen) serve as legislatures at the next higher level, i.e. the *Bundesrat*, there is no compensation for the loss of parliamentary power. The *control* function is affected as well since it becomes more and more difficult for the Landesparlamente to exercise control over government's behaviour either in the *Bundesrat* or directly in EU politics. The *budgetary* function is affected via the mechanisms of the EU stability pact and the constitutionally fixed debt limit effective from 2020 onwards. The *elective* function vis-à-vis the government is so far formally the least affected one, since European issues do not play a prominent role in electoral politics at *Länder* level.

Looking at type II functions the *communication* with the citizens is again formally not impacted on by European integration given the logic of electoral politics. Yet this could become more important for Landesparlamente; they could communicate EU politics to the citizens since they claim to be closer to them. *Networking* of parliaments with non-governmental or international actors is another function. Scholars have discussed the need of expanding classical, nation-based catalogues of parliamentary functions to include new or revised EU related functions; inter-parliamentary networking is one of them. Yet in addition also government-related functions need to be revised such as the development of Europeanized control modes, or gatekeeper functions.¹⁷

16 W. Patzelt, 'Parlamente und ihre Funktionen', in W. Patzelt (ed.), *Parlamente und ihre Funktionen. Institutionelle Mechanismen und institutionelles Lernen im Vergleich* (Wiesbaden: Westdeutscher Verlag, 2003), pp.13-49, at p.22; for a discussion on Landesparlamente see Link, 'Haben die deutschen Landesparlamente noch eine Zukunft?'

17 See Crum and Fossum, 'The Multilevel Parliamentary Field'; Eppler 'Vertikal und horizontal, bi- und multilateral'; Maurer, *Parlamentarische Demokratie*; Maurer, 'Mehrebenendemokratie und Mehrebenenparlamentarismus'; C. Sprungk, 'Ever more or ever better scrutiny? Analysing the conditions of effective national parliamentary involvement in EU affairs', *European Integration online Papers* 14/2 (2010), http://eiop.or.at/eiop/index.php/eiop/article/view/2010_002a (accessed 18 April 2012); T. Raunio, 'The Gatekeepers of European Integration? The Functions of National Parliaments in the EU Political System', *Journal of European Integration* 33/3 (2011), pp.303-321.

Länder parliaments are well aware of these challenges. They have responded to them by introducing institutional reforms which resemble those adopted by the *Bundestag* and *Bundesrat*.¹⁸ They continuously attempt to adapt to the requirements of the EU multi-level system with the goal of preserving and ultimately strengthening their functions in EU affairs. The remaining part of this paper is dedicated to an outline and analysis of this adaption process which goes back to the 1970s.¹⁹

Staging the debate at the Landtagspräsidentenkonferenzen

To reconstruct the political debate, it is helpful to look at the *Landtagspräsidentenkonferenzen* (LPK), i.e. the annual conferences of the Presidents' of State Parliaments. This institution usually meets annually; it serves as a driver and a transmission belt for reform initiatives. The European political developments are closely followed by and discussed on these conferences since the 1970s.²⁰ Treaty reforms have consistently provided a space for uttering demands that Landesparlamente must play a greater role in EU affairs.²¹ In the context of the negotiations on the 1986 Single European Act this question became more prominent and again with the 1992 Maastricht Treaty.²² The series of treaty reforms since the mid-1990s – above all the European Convention negotiating the constitutional treaty – until the 2009 Lisbon Treaty provided ample opportunities for raising concerns at these conferences.²³ In addition, in the year-long debate over the reform of German federalism (especially the so-called *Föderalismusreform I*) the issues of parliamentary involvement in domestic and EU politics was raised.²⁴

Between 1991 and 2011 a total of 41 resolutions, decisions and declarations were adopted by the LPK concerning EU affairs, most of them advancing a stronger role of the *Länder*

18 Cf. the discussion of instruments in Johne, *Die deutschen Landtage*, at pp.351-362; see also Lenz and Johne, 'Die Landtage vor der Herausforderung Europa'; S. Mielke and W. Reutter (eds.), *Länderparlamentarismus in Deutschland* (Wiesbaden: VS Verlag, 2004), at pp.30-34.

19 Methodologically, the analysis is based on a combination of document analysis (parliamentary documents, laws, agreements, declarations, etc.) and, especially regarding recent reforms, telephone interviews with staff members in the secretariats of the Committees on European Affairs and the parliamentary administrations.

20 See Thaysen, 'Parlamentarismus vor dem Hintergrund der europäischen Integration', at p.142.

21 See Johne, *Die deutschen Landtage*, at p.157; C. Mellein, *Subsidiaritätskontrolle durch nationale Parlamente: Eine Untersuchung zur Rolle der mitgliedstaatlichen Parlamente in der Architektur Europas* (Baden-Baden: Nomos, 2007), at p.328; H. Schneider, *Länderparlamentarismus in der Bundesrepublik* (Opladen: Leske + Budrich, 1979), at p.139.

22 See Auel 2005, 'Die deutschen Landtage', at p.138.

23 Frequently, these conferences are organized together with the Presidents of the state parliaments of Austria; resolutions are often jointly adopted; sometimes, since 1997, the regional parliament of South Tirol (Italy) also participates in these conferences. This is in itself an interesting case of transnational inter-parliamentary cooperation of German-speaking parliaments at regional level.

24 See Link, 'Haben die deutschen Landesparlamente noch eine Zukunft?'

parliaments in EU affairs.²⁵ At the heart of these debates are the issue of subsidiarity, the safeguarding of *Länder* competences at domestic and at EU level (i.e. right of access to the European Court of Justice) especially by securing and expanding the rights of Landesparlamente, and, finally, routes for more intense inter-parliamentary cooperation.

The 2003 Lübeck meeting of the LPK was groundbreaking. With an eye on the European Constitutional Convention and the joint Federal and *Länder* Commission on Federalism the Landesparlamente organized a first ‘federalism convention’ dedicated to the motto ‘Strengthening the Länder and their parliaments!’²⁶ In contrast to the regular LPKs also the leaders of the political party groups from all Landesparlamente participated in this convention. The idea was to give a strong signal to the governments, to voice the cross-*Länder* concerns, and to find a broad non-partisan consensus in the light of the anticipated changes both at domestic and European level. The ‘Lübeck Declaration’ entitled ‘Pledge to federalism and subsidiarity – Strengthening Länder parliaments’ supports the idea discussed in the European Convention to introduce an ex ante control mechanisms for subsidiarity. It also it calls for the participation of regional assemblies in such a system, for their right to bring suits to the European Court of Justice, and for their stronger position vis-à-vis their governments.²⁷ The federalism convention set up a ‘negotiating committee’ with a mandate to make these claims public and to engage in a dialogue with the national Federalism Commission and with the European Convention. Henceforth, the participation of the Landesparlamente in the upcoming early warning system for the control of the subsidiarity principle – an instrument developed by the European Convention – became a focal point in the debate and was taken up frequently.

At the 2004 Quedlinburg meeting the presidents voiced their concern that the EU constitutional treaty may have disadvantageous effects on the division of competencies of the *Länder* in general and the Landesparlamente in particular; they called for an amendment of Article 23 of the Basic Law (the so-called EU Article) to find a constitutional solution for the participation of the Landesparlamente in the early warning system. This demand was discussed again in 2005 in a joint declaration of the German and the Austrian Landesparlamente (‘Innsbruck Declaration’). At this point the topic of subsidiarity control was given more and more attention and a first stock-taking on the situation in the German states was done, later on followed

25 Several declarations were adopted jointly with the presidents of the Austrian (and South Tirol) regional parliaments. For a complete list of all LPK declarations, resolutions and decisions since 1991 see: <http://starweb.hessen.de/starweb/LIS/elbibparlappkentscheidungen.htm>.

26 Cf. Thaysen, ‘Parlamentarismus vor dem Hintergrund der europäischen Integration’, at pp.145-147.

27 Präsident des Schleswig-Holsteinischen Landtags (ed.), *Föderalismuskonvent der deutschen Landesparlamente, Dokumentation: Bekenntnis zum Föderalismus und zur Subsidiarität – Landesparlamente stärken! Lübecker Erklärung der deutschen Landesparlamente angenommen auf dem Föderalismuskonvent der deutschen Landesparlamente*, 31 March 2003 (Lübeck).

by others.²⁸ At the 2007 Düsseldorf meeting the Conference welcomed the European Commission's initiative to introduce the early warning system, despite that fact that it was so far not a legal requirement given the failure to adopt the Constitutional Treaty. However, the LPK declared that it was now up to the state governments to find procedures for involving their parliaments; they proposed that formal inter-institutional agreements should be settled.

Since the 2008 'Berlin Declaration', when the Lisbon Treaty became more real, the subsidiarity issue is even most prominent.²⁹ Procedures that work in practices, requirements and constraints in terms of resources and strategies for inter-parliamentary cooperation became important issue. In immediate response to the Lisbon Ruling of the Bundesverfassungsgericht a special conference took place in Frankfurt in 2009. At this meeting the slogan of 'responsibility for integration' was taken up and demands were raised for procedural changes in the ancillary law regarding the involvement of the *Länder* (EUZBLG), which would allow the subnational parliaments to be effectively involved in decision-making at the *Länder* level. This point was taken up again in more detail at the follow-up conference in 2010.

The motto of the 2010 Stuttgart meeting was 'Legitimizing democratic decision-making at the EU and federal levels – Strengthening the influence and participation of the German Landesparlamente'. In the 'Stuttgart declaration' the *Länder* parliament presidents proclaimed that they saw their demand for participation in the inner-German decision-making process strongly supported by the Constitutional Court's Lisbon Ruling.³⁰ A speech by the former President of the Federal Constitutional Court, Hans-Jürgen Papier, delivered at this LPK further fuelled the debate. Papier maintains that the system of parliamentary democracy must be protected and secured in the *Länder*; he proclaims that 'the changing conditions [...] must be taken into account by changing the participatory rights of the regional parliaments in areas of federal legislation which were originally in the domain of the *Länder*', and he appeals to the *Länder* to 'demand

28 Abgeordnetenhaus Berlin/Europaausschuss 2010, *Synopse über die Mitwirkung der Landtage in EU-Angelegenheiten unter Berücksichtigung von Artikel 6 des Protokolls über die Anwendung der Grundsätze der Subsidiarität und der Verhältnismäßigkeit* (Länderumfrage auf Initiative der Vorsitzenden des EuroBundMedienBerlBra-Ausschusses des Abgeordnetenhauses von Berlin mit Schreiben vom 25.2.2010 – III EU – an die Vorsitzenden der für Europafragen zuständigen Ausschüsse der Landtage), As of: 5 May 2010, Berlin, online at: <http://www.landtag.ltsh.de/infothek/wahl17/umdrucke/0800/umdruck-17-0831.pdf> (last access: 29 Aug. 2011); Landtag Brandenburg, *Sachstandsbericht über die Aktivitäten der deutschen Länderparlamente in Fragen der Subsidiaritätskontrolle sowie über den Diskussionsstand auf der Ebene der Landtagspräsidenten*, Bundestag paper 4/4015 (2007).

29 Landtagspräsidentenkonferenz 2008, *Berliner Erklärung der Präsidentinnen und Präsidenten der deutschen Landesparlamente*, http://starweb.hessen.de/cache/laender/LPK_Berlin2008_haushaltspolitik.pdf (last access: 18 April 2012).

30 Landtagspräsidentenkonferenz 2010, *Stuttgarter Erklärung der Präsidentinnen und Präsidenten der deutschen Landesparlamente: Demokratische Willensbildung auf der europäischen und der bundesstaatlichen Ebene legitimieren; Einwirkungs- und Teilhabemöglichkeiten der deutschen Landesparlamente stärken*, in: Landtag von Baden-Württemberg: Press release 45/2010, 21 June 2010, Point 4.

compensatory regulations based on the constitution for the partially mandatory loses'³¹. This speech was grist to the mill of the assembled presidents of the *Länder* parliaments; they pronounced that they would strongly lobby for more parliamentary participation, for 'to the extent that the European Union has grown geographically, socially, culturally, and also administratively larger and more complex, they believe the participation of the Landesparlamente is a necessary and indispensable element of a Europe of the regions which is close to its citizens'³². They declared that the state parliaments are the natural supporters for the idea of responsibility for integration at *Länder* level. Keeping to the line set out in the declarations, they demanded a change to the EUZBLG³³ and complained self-confidently that it is

'the Länder's responsibility to shape the *relevant rules into Länder laws, preferably in Länder constitutional law*, such that the necessary possibilities for participation of the Landesparlament vis-à-vis the Landesregierung to uphold the responsibility for integration is ensured. These possibilities for participation include, in addition to the right to be informed, the possibility to include *in the Länder constitutions an obligation for the Landesregierung to be bound* in the way in which they cast their votes in the Bundesrat and in submitting complaints of unconstitutionality at the federal level'.³⁴

The presidents were clearly aware that this proposed mandating strategy involved stepping on 'virgin soil of constitutional law' as the President of the Landtag of Baden-Württemberg, Peter Straub, declared in an interview.³⁵

At the most recent meeting in Wolfsburg in 2011 the LPK declared that the *Länder* parliaments are an 'essential part of the parliamentary multi-level system of the EU' in which all levels have to participate in the decision-making processes over EU law.³⁶

The LPK serve as source of inspiration and conveyor of ideas for the European policy strategy debate. At the same time, it should be noted that there are still differences, even in core areas of the new rights such as subsidiarity controls, and also the speed and extent of reforms

31 H.-J. Papier, 'Zur Verantwortung der Landtage für die Europäische Integration', *Zeitschrift für Parlamentsfragen* 41/4 (2010), pp.903-908, at p.907; my translation.

32 Landtagspräsidentenkonferenz 2010, *Stuttgarter Erklärung*; my translation.

33 Ibid., point 6.

34 Ibid., point 5; my translation and emphasis.

35 Quoted in S. Menzenbach, 'Staatsrechtliches Neuland betreten', *Das Parlament* 38, 20 Sep 2010; from a legal perspective it is unclear if the Landesparlamente can impose a mandate on the Landesregierungen insofar as they are members of the *Bundesrat* which is a federal law-making body.

36 See Landtagspräsidentenkonferenz /Gemeinsame Konferenz der Präsidentinnen und Präsidenten der deutschen und österreichischen Landesparlamente des Deutschen Bundestages, des Deutschen Bundesrates und des Südtiroler Landtages, *Erklärung der Präsidentinnen und Präsidenten der deutschen und österreichischen Landesparlamente sowie des Südtiroler Landtages: Wolfsburger Erklärung: Starke Länder in einem starken Europa*, Wolfsburg, 7 June 2011.

differs. ‘Individual experiences and perceptions of the subsidiarity principle currently vary across regions.’³⁷ There is generally a high level of convergence between the German *Länder* in terms of strategies and specific instruments: ‘in order to facilitate the cooperation between governments and parliaments which is required for subsidiarity scrutiny, the regions have undertaken a number of legal, procedural and organisational adaptations’³⁸ since 2009. However, some states have been more active than others. In what follows, I will firstly outline the reforms of the 1990s and then introduce the recent changes and highlight differences between the *Länder* (see Appendix).

Reforms in the aftermath of the 1992 Maastricht Treaty

In the 1990s a number of Landesparlamente began to introduce organizational and legal reforms with the aim of improving the flow of EU related information from the *Länder* government to the parliament, and of increasing parliamentary scrutiny over governments’ EU politics at EU level as well as in the *Bundesrat*. Either in the *Länder* constitutions or by way of parliamentary decisions and ‘written agreements,’ the *Länder* governments now have a *requirement to inform* its parliament about EU affairs.³⁹ The parliaments have thereby often obtained the right to participate in determining the position of the government. As yet, no parliament has a veto right so as not to limit the governments’ manoeuvring room. It is therefore usually a mix of what Benz and Broschek have called a primarily ‘document-based’, ex-ante and ex-post strategy of testing and controlling.⁴⁰ In all Landesparlamente, EU related activities were largely concentrated on controlling governments and administrations, thus in questions of European policies the principle of democratic legitimacy is given less priority than the standard of efficiency.⁴¹

All state parliaments have established *European Affairs Committees* (EAC) which are considered to be the ‘core of *Länder* parliamentary participation’⁴²; in these committees, the parliaments control function over the European policies of the state government are concentrated.⁴³ However, their rights vary (e.g. the right to initiate legislation, the establishment of committee declarations on European policies which present the position of the parliament to the govern-

37 CoR, *The Role of Regional Parliaments*, at p.46.

38 Ibid., at p.47.

39 Mellein, *Subsidiaritätskontrolle*, at p.328.

40 A. Benz and J. Broschek, *Nationale Parlamente in der europäischen Politik: Funktionen, Probleme und Lösungen*, Internationale Politikanalyse (Berlin: Friedrich-Ebert-Stiftung, 2010).

41 S. Mielke and W. Reutter, ‘Landesparlamentarismus in Deutschland’, at pp.33-34.

42 See Bauer, ‘Europaausschüsse’.

43 See Lenz and John, ‘Die Landtage vor der Herausforderung Europa’, at p.22.

ment).⁴⁴ Key problems are the cooperation between the EACs and other committees as well as the use of rights of initiative.⁴⁵ Furthermore, the *Länder* parliaments have strongly supported efforts to obtain a direct presence at the EU level via the *Committee of the Regions*. They have also begun to build up networks within the Conference of European Regional Legislative Assemblies (CALRE) founded in the Landtag of Baden-Württemberg in 1997.⁴⁶ In addition, the *expertise in the parliamentary administration and the political groups* is being improved upon by the rising number of staff specializing in European affairs.

Despite manifold reforms, the extent to which these measures are putting a real halt to the erosion of competencies is viewed rather sceptically: ‘In general, in the Landesparlamente it can be seen that there is still a large amount of leeway regarding the parliamentary tools for making the parliaments’ European policies more efficient, faster, and more precise under the constraints of the European decision-making process.’⁴⁷ Furthermore existing rights are often not used to the full extent possible so that the ““voluntary” underuse of existing participatory possibilities is even the most consistent characteristic of the *Länder* parliaments’ work on European affairs’.⁴⁸ While these findings are true in general, a comparison between the German *Länder* parliaments is necessary.⁴⁹

Reforms adopted in 2010/11 in adaptation to the Lisbon Treaty

The year-long debate over a European constitution, its failure and the follow-up Lisbon Treaty were frequently discussed at the LPK. This process provided an opportunity structure for reinvigorating the essentially old claims for more powerful state parliaments. In contrast to previous rounds of reforms, the 2009 GCC’s Lisbon Ruling got the reform process going, because the legal concept of ‘responsibility for integration’ was transformed by the Landesparlamente into a political ‘battle cry’.

In anticipation of forthcoming treaty changes, discussion about the need for reform started approximately in 2005, yet most changes were not introduced until 2010/11. These reforms are discussed in the following. On some points, Baden-Württemberg will be looked at in

44 Auel, ‘Die deutschen Landtage’, at p.139.

45 Lenz and Johne, ‘Die Landtage vor der Herausforderung Europa’, at p.24.

46 Kiefer, ‘Gesetzgebende Regionalparlamente’.

47 Lenz and Johne, ‘Die Landtage vor der Herausforderung Europa’, at p.27; my translation.

48 Bauer, ‘Europaausschüsse’, at p.646.

49 See Mielke and Reutter, ‘Landesparlamentarismus in Deutschland’; for an overview of differences cf. M. Flick, ‘Parlamente und ihre Beziehungen zu den Regierungen’, in M. Freitag and A. Vatter (eds.), *Die Demokratien der deutschen Bundesländer: politische Institutionen im Vergleich* (Opladen: Leske + Budrich, 2008), pp.161-194; for a detailed description see the contributions in S. Mielke and W. Reutter, *Landesparlamentarismus. Geschichte – Strukturen – Funktionen* (Wiesbaden: VS, 2011²).

more detail, as its parliament has ‘more than just a symbolic role as a trailblazer’ in EU affairs, and this role was expanded further with the most recent reforms.⁵⁰ The basic trend of the recent reforms is clear: The new legal situation as laid out in the Lisbon Treaty and the ‘responsibility for integration’ serve as positive reference points for demands for parliamentary participation. The new instruments of subsidiarity control and the early warning mechanism are at the heart of ongoing reforms. The general strategy can be identified as a document-based control of the Landesregierungen and their administrations while strategies to bind the governments by mandates are only gradually being developed. Still, there remain vast differences among the 16 German *Länder* parliaments (see Appendix).

Regarding *general reforms* in terms of the participation of the Landesparlamente in EU affairs, a high degree of convergence can be seen at the *constitutional level*. In all of the state constitutions (Landesverfassungen, LV) – except in North-Rhine Westphalia and Hesse⁵¹ – there are references to the EU or the integration process; in some cases, European integration is listed as a prominent constitutional goal.’ In total, twelve out of sixteen *Länder* constitutions list EU affairs in the context of the government’s obligation to inform the parliament; with this, the obligation of the state government to inform the legislature is constitutionally anchored and EU affairs explicitly become a policy area with which the legislature is concerned. These regulations are, for the most part, modelled on the regulations for dealing with *Bundesrat* affairs.⁵² Currently, Baden-Württemberg is the only state which has actually changed its constitution. In 1995, with the introduction of Article 34a, it had already entered ‘unchartered constitutional-political territory’⁵³ and set out ‘a parliamentary right to participation to the greatest extent possible’.⁵⁴ This regulation became a ‘model’ for *Länder* parliamentary participation.⁵⁵ With the new Article 34a LV (in force since 15 February 2011), the control function of the Landtag of Baden-Württemberg has been considerably expanded and includes even a mandate-based component, which restricts in some cases of key concern the government’s action on the basis of a parliamentary mandate.⁵⁶ This accountability mechanism resembles stipulations

50 G. Riescher and B. Gebauer, ‘Der baden-württembergische Landtag’, in S. Mielke and W. Reutter (eds.), *Länderparlamentarismus in Deutschland* (Wiesbaden: VS Verlag, 2004), pp.54-77, at p.73; my translation; see also G. Abels and A. Eppler, ‘Die deutschen Landesparlamente nach Lissabon-Vertrag und –Urteil. Ein Problemaufriss entlang parlamentarischer Funktionen am Beispiel des Landtags von Baden-Württemberg’, in Europäisches Zentrum für Föderalismusforschung (ed.): *Jahrbuch des Föderalismus 2011* (Baden-Baden: Nomos, 2011), pp.457-470.

51 After 2002, there were suggestions here for a constitutional amendment, but the hurdles to achieve it are high, as it must be confirmed by a referendum (Article 123 (2) LV Hesse).

52 Bauer, ‘Europausschüsse’, at p.637.

53 Riescher and Gebauer, ‘Der baden-württembergische Landtag’, at p.73; my translation.

54 Lenz and Johne, ‘Die Landtage vor der Herausforderung Europa’, at p.21; my translation.

55 Mellein, *Subsidiaritätskontrolle*, at p.328.

56 See Abels and Eppler ‘Die deutschen Landesparlamente nach Lissabon-Vertrag und –Urteil’.

laid out in the ancillary laws at federal level regulating the participation of the *Bundestag* and *Bundesrat* in EU affairs.

In three *Länder*, Schleswig-Holstein, Baden-Württemberg and Bavaria, rights of participation are set out *by formally enacted laws*: In Schleswig-Holstein there is a law on the obligation to inform the parliament, yet a necessary reform has not yet taken place.⁵⁷ The law on the parliament's right to participate in EU affairs (EULG) in Baden-Württemberg is the most comprehensive. It further develops the agreement between the parliament and government in the spirit of the aforementioned 1996 constitutional change,⁵⁸ greatly expanding the obligation of the government to inform the parliament and making the processes for doing so more efficient. Its participation in internal decision-making processes is also extended, including participation in the subsidiarity control and the early warning mechanism. The Bavarian law on parliamentary participation in 2010 (until then an information law existed) also allows for more effective parliamentary rights and more stringent duties on the part of the government to take the parliament's positions into (serious) consideration; a legal obligation is not included, however. This kind of legal obligation is controversial both in many *Länder* and also among legal experts.⁵⁹

Between 2009 and 2011, ten *Länder* negotiated legally non-binding agreements in the form of *inter-organ agreements* between parliaments and their government (Brandenburg, Hamburg, Hesse, North Rhine-Westphalia, Rhineland-Palatine, Saarland, Saxony, Saxony-Anhalt, and Thuringia). Not all of these agreements are specific to the EU, yet overall they establish improved information and scrutiny rights for the parliaments in EU as well as in domestic affairs. In many, the information and participation rights are typically limited to those undertakings which are of *vital* importance for the *Länder*. In these cases, the government has great leeway in deciding which matters fit this criterion; thus, the central task of filtering relevant EU information remains with the government. The selection of information represents a serious challenge for the parliaments, and the inability to overcome the challenge cements the dependency on governmental expertise. Few activities have taken place in the Berlin thus far, but possible changes are expected after the recent parliamentary elections. In Lower Saxony, which had already cre-

57 S. Mielke and C. Bräuer, 'Landesparlamentarismus in Schleswig-Holstein. Vom disziplinierten Parlamentarismus zur Parlamentsregierung' in S. Mielke and W. Reutter, *Landesparlamentarismus. Geschichte – Strukturen – Funktionen* (Wiesbaden: VS, 2011²), pp.589-624, at p.618-619.

58 At the time, this was a novelty for *Länder* parliamentary participation; see Greß, 'Die Rolle deutscher Landesparlamente', pp.169-170 and pp.173-174; Riescher and Gebauer, 'Der baden-württembergische Landtag', p.72; W. Stächele, 'Die europapolitische Rolle der deutschen Landtage aus der Sicht Baden-Württembergs', in Straub and Hrbek (eds.), *Die europapolitische Rolle*, pp.177-185. On the handling of EU affairs in the parliaments see in detail Mellein, *Subsidiaritätskontrolle*, at pp.329-335.

59 See S. Kropp, V. Kaina and M. Ruschke, 'Der Thüringer Landtag', in S. Mielke and W. Reutter, *Landesparlamentarismus. Geschichte – Strukturen – Funktionen* (Wiesbaden: VS, 2011²), pp.625-665, at p.659; Mellein, *Subsidiaritätskontrolle*, at pp.332-3; Papier, 'Zur Verantwortung der Landtage'.

ated a parliamentary decision on the participation of the parliament in 1987 and secured it with a constitutional amendment in 1993 (Article 25 LV), discussions in the EAC on the need for reform have only just begun. In Schleswig-Holstein, negotiations are in progress; the question of the legal obligation resulting from parliamentary decisions is at the crux here; overall, the rights of the Landtag of Schleswig-Holstein currently lag behind those of other *Länder* parliaments.⁶⁰ The Bremen city parliament (Bürgerschaft) passed a decision on the rights of the Committee on European Affairs on questions of subsidiarity. In Mecklenburg-West Pomerania, multiple attempts by the opposition to create a law on informing parliament have failed so far. In Saxony-Anhalt, no need for reform is seen at the moment.

To implement new agreements and in particular in regard to the early warning system, in some *Länder* the *parliamentary bylaws* have been changed or changes are being discussed. This is primarily in regard to the role of the Committees on European Affairs and the procedures in the process of the early warning mechanism.

In general, the new regulations are still rather weak and lack a sanctioning mechanism; the positions and regulations are in most cases not legally binding. The early warning mechanism established by the subsidiarity protocol has great significance. If the *Länder* government decides to support subsidiarity objections or complaints in the *Bundesrat*, then the participation of the parliaments is seen to be particularly important. It remains partially controversial whether all documents are to be passed on to the Landesparlamente and in what manner they are to be 'prepared' by the governments. In other words, for example, whether a case report and assessment of how the government views the subsidiarity problem must also be included. The parliaments do recognize their dependence on governmental expertise and their overall lack of independent resources, which prohibits them from being able to conduct a comprehensive assessment of numerous documents on their own. Several parliaments (Baden-Württemberg, Bavaria, Hesse, Lower Saxony, North Rhine-Westphalia, and Schleswig-Holstein) are partners in the Committee of the Region's network for subsidiarity control and have participated in so-called test runs.⁶¹

How can we assess these reforms in comparative perspective? First of all, they are rooted in different *strategic orientations*. For the most part, the strategies are based on documents insofar as both quantitative and qualitative improvements of the parliaments' right to be informed are demanded. More comprehensive information offers the basis for both improved rights to control the *Länder* governments and also an improvement of the parliaments' right to

60 Mielke and Bräuer, 'Landesparlamentarismus in Schleswig-Holstein', at p.619.

61 G. Stahl and C. Gsodam, 'Das Subsidiaritätsnetzwerk des Ausschusses der Regionen', in Europäisches Zentrum für Föderalismus-Forschung (ed.): *Jahrbuch des Föderalismus 2008* (Baden-Baden: Nomos, 2008), pp.555-569. See: <http://portal.cor.europa.eu/subsidiarity/thesmnp/Pages/TheSMNPartners.aspx> (accessed: 2 Sept. 2011).

participation in the sense of a proactive role in creating policies dealing with Europe. For this strategy, the filtering of information is a key problem (see above), as it shows that information can be a double-edged sword: both too little and too much can incapacitate. The primary challenge for parliaments – not just in the *Länder*, but also at national level – is to find the right information and the right amount thereof. Various resources available to the Landesparlamente prove to be essential for filtering the information they receive. The parliaments in Baden-Württemberg, Bavaria, Hesse and North-Rhine Westphalia now have observers in Brussels who are to inform the parliament in a timely fashion via ‘reports from Brussels’; such a position is being discussed in Schleswig-Holstein.⁶² In most of the *Länder* parliaments, however, this kind of position is rejected purely for financial reasons (interviews). In all cases, these observers are based in the official *Länder* representations (Landesvertretungen) in Brussels – and thus with the executive.⁶³ To what extent they can contribute to at least partially breaking free of the dependency on governmental expertise is questionable and needs to be further researched.

Participation rights adopted in some *Länder* rely on a mandate-based strategy. In general, in the new agreements between parliaments and governments taking significant consideration of the position of the parliaments is encouraged; governments can deviate from parliamentary resolutions, but they must give justification. It is an exception to find parliamentary resolutions to which the executive is legally bound; they are strongest when the subject matter is vital to the *Länder* such as a transfer of *Länder* competencies to the EU level. The most comprehensive on this point are the regulations in Baden-Württemberg. The recently signed agreement between the parliament and government in Thuringia is similarly binding; after a ‘test run’ of two years, these are to be made into a legal regulation. The statements on the binding quality of the parliamentary decisions are weaker regarding other EU matters. In all cases, exceptions are made if the interests of the *Länder* make it necessary for the government to deviate from the parliamentary vote in order to have more leeway to negotiate. For these cases, as well, an ex-post control (requirement to give justification) and, if possible, giving information ex-ante is typically provided for. One can interpret this staggered construction according to the subject’s salience as the prevalence of efficiency considerations over democratic considerations. Likewise it is highly contested among legal experts if a binding mandate is constitutionally valid at all.

The interest in governmental control is predictably more prevalent amongst the opposition; the fractions holding the majority are more reluctant to agree on parliamentary participation

62 There is a system of observers in Berlin for informing the Landesparlamente on the work of the *Bundestag* Committee on EU Affairs.

63 The Hessian agreement on informing parliament made on March 22, 2011, even states explicitly that a personnel network between the parliament and representation in Brussels must be ensured.

rights.⁶⁴ In the current debates, however, there is frequently a broad non-partisan consensus in favour of stronger parliamentary involvement in EU affairs.

Some regulations clearly acknowledge that the early warning mechanism for subsidiarity control may be positive, but it is only a tool for prevention and is applied too late in the political decision-making process – that is, only when legislative drafts from the Commission are already put on the table. At this point in time it is difficult to have any influence. The new agreements and laws therefore also require the provision of information on all EU Commission and European Council Presidency activities. The Landesparlamente are to be informed much earlier, more comprehensively, and better about EU affairs. For example the Landesregierungen are to pass along a commentated work program from the Commission and reports about what foci the government intends to set in the future on matters of EU policy. These Europe Reports (Europaberichte) are usually only created once annually and are thus received too late to make any sort of control possible.

In some Länder options for an inter-parliamentary network are being considered. While their effectiveness is viewed sceptically in light of diverging interests of the German *Länder* and a lack of interest among MPs, it nevertheless illustrates the growing awareness for action.⁶⁵ The need for information exchange among parliaments is clearly stated and efforts have been made in this direction. Activities have thus begun in 2011 in order to more closely network the European experts in the parliamentary administrations, for example, and inform each other about best practices. Options for this include participation in the Committee of the Regions' subsidiarity network as well as the horizontal dimension of the networks of sub-national parliaments amongst each other – both nationally and transnationally. While national parliaments here have created several structures, 'particularly the regional parliaments are, to a large extent, still at the beginning' of this process.⁶⁶ Some networks do already exist such as NORPEC⁶⁷ and CALRE; however, they are not considered to be very effective as of yet. In addition, some propose building an internet platform called RegPex for sub-national parliaments (as a counterpart to IPEX).⁶⁸ If networking strategies help increasing the effectiveness of parliamentary involvement is an open

64 Auel, 'Die deutschen Landtage', at p.140.

65 See Eppler, 'Vertikal und horizontal, bi- und multilateral'; Kropp, Kaina and Ruschke, 'Der Thüringer Landtag', at p.657. The EAC of the Landtag of Rhineland-Palatine has even established a special sub-committee with a mandate of coordinate networking activities with other regional parliaments, which should in the long run foster participation in EU legislation; see S. Koch-Baumgarten, 'Der Landtag von Rheinland-Pfalz vom Entscheidungsträger zum Politikvermittler', in S. Mielke and W. Reutter, *Landesparlamentarismus. Geschichte – Strukturen – Funktionen* (Wiesbaden: VS, 2011²), pp.431-469, at p.463.

66 Bußjäger, 'Frühlingserwachen?', at p.513; my translation.

67 NORPEC (Network of Regional Parliamentary European Committees) has existed since 2002, but since 2005 it has apparently been inactive, cf. online at: <http://www.scottish.parliament.uk/business/committees/europe/norpec.htm> (accessed: 9 Sept. 2011). The only German member is Saxony-Anhalt.

68 IPEX is an Interparliamentary EU Information Exchange (www.ipex.eu/ipex/) set up by national parliaments.

question. According to Raunio there are clear limits to inter-parliamentary cooperation owing to a lack of an incentive structures.⁶⁹ Yet most studies focus on networking among the political parts of parliaments and conclude that MPs and political parties have no genuine motivation to cooperate given the nature of electoral campaigns, which do not sanction in favour of European activities. In other words: voters do not vote for parties and MPs because of their handling of EU affairs. This may be even more so in the case of *Länder* elections as opposed to national ones, since the former are generally considered to be ‘second order’ elections. Yet, given the partially technical nature of the early warning mechanism, the networking at administrative level is an issue that is so far not adequately explored in the literature and which is likely to provide an essential basis for political activities.

CONCLUSIONS

The Lisbon Treaty is the first treaty to recognize the role of subnational parliaments. It provides an opportunity structure for subnational parliaments to negotiate their powers vis-à-vis their governments. The German *Länder* parliaments are a good example. But similar reforms can be observed in many sub-national parliaments in EU member states.⁷⁰

From the very beginning, the German *Länder* parliaments have followed European integration very closely and discussed its effects. Treaty changes have always been used as an opportunity to revitalize the debate. The Treaty of Lisbon and furthermore the GCC’s Lisbon Ruling have been utilized by the Landesparlamente as a window of opportunity to give weight to their long-term demands for more powerful parliaments in EU affairs. The current reforms respond to these legal and judicial changes; the Landesparlamente continue to develop instruments and tools attempting to adapt to the Post-Lisbon era. While there is a high degree of path-dependency in terms of strategic and instrumental choices and many initiatives resemble reform processes at the federal level, there are also hints of change: Recent reforms continue for the most part to be *administration- and government-oriented*. This is caused by the fact that the dominance of the executive on EU affairs at the *Länder* level has prevailed. The reforms are aimed at the relationship between the Landesparlamente and their respective executives; *formal agreements* are adopted in which the next steps are regulated at a ‘higher’ level making them more legally binding. Future reforms would have to prove this hypothesis.

69 T. Raunio, *Destined for Irrelevance? Subsidiarity Control by National Parliaments* (WP), Elcano Royal Institut, Working Paper 36/2010 (Madrid: Elcano Royal Institut, 2010), at p.8.

70 Cf. Straub and Hrbek, *Die europapolitische Rolle*; CoR, *The Role of Regional Parliaments*.

The regulations now in place are mostly *document-based* like the previous ones, yet, they are much more comprehensive and precise regarding the governments' obligation to inform the parliaments. First and foremost, the scrutiny instruments are stronger. The high level of dependency on governmental expertise will certainly be maintained; effectively filtering the information remains a great challenge for the Landesparlamente. In addition, *mandate-based* regulations are being introduced for the first time; the degree to which mandates are binding on governments is staggered leaving room for manoeuvrability.

Participation in the early warning system on *subsidiarity control* is given the highest priority. Regarding subsidiarity objections raised in the *Bundesrat* the Landesparlamente strive for a stronger involvement. European Affairs Committees, which were in part given a higher status, often play an essential role in the early warning mechanism. Whether these efforts can be successful and effective is contested for many reasons. Bußjäger, for example, addresses procedural and resource-related restrictions, yet he is nevertheless optimistic that the system is feasible.⁷¹ Raunio scrutinizes the political incentive structure; he argues that the early warning mechanism will essentially remain a 'harmless procedure' due to the lack of real incentives in terms of voter pay-off.⁷²

Finally, *inter-parliamentary networking* is increasingly seen by the Landesparlamente as important. While this can be classified as a part of the communicative functions (type II), it is considered to be essential in order to gain access to information independent from government and thus improve the control function (type I). In fact networking is still only in its beginnings.

As a result, the form of *Länder* parliamentarianism with regards to EU affairs reflects in many ways the pattern to be found at the federal level. This is overall not so surprising given that 'the partisan domestication ... done by the governing majority for strategic reasons to gain more power'⁷³ is at work also in the *Länder*; *Länder* parliamentarianism is also subject to the logic of parliamentary governance. The starting position for the *Länder* parliaments involvement in EU affairs is, however, more difficult than for the *Bundestag* and the *Bundesrat* at the federal level. Besides that, it is not the same everywhere. The extent to which the executive dominates in the *Länder* varies; differences in internal relations between the parliaments and governments are likely to have an effect on policies towards the EU.⁷⁴ This requires further study.

The Lisbon Treaty and the responses to it provide an opportunity structure for scholars to address the complexity of parliamentarianism in the EU by integrating all three parliamentary

71 Bußjäger, 'Frühlingserwachen', at p.513.

72 Raunio, *Destined for Irrelevance*.

73 Bauer, 'Europausschüsse', p.646; my translation.

74 Flick, 'Parlamente und ihre Beziehungen', at pp.175-190.

levels. There is still a need for further comparisons between member states and also within member states. The German case clearly illustrates that the German *Länder* parliaments differ with regard to their reform ideas and capacities. What exactly determines more or less active policies is not clear. It would require further investigation. Cross-country comparisons with regional assemblies in other federal or regionalized EU states will be useful to identify national and regional, political and legal factors shaping the supranational opportunity structure. Our knowledge of this third level of parliamentarianism and its involvement in EU affairs is so far still very limited.

If one takes the concept of *multilevel* parliamentarianism seriously, it is indispensable to fully investigate the subnational level. Subnational parliaments are not only important for the vertical balance of power within the member states, but also within the EU multi-level system. So far conceptual debates on democratizing the EU via parliamentarization have been 'blind' towards the regional dimension. For the EU the nation state is still the bearer of sovereignty. Yet the question arises, if the democratic quality of the EU can be improved by attending to the role also of subnational parliaments. Even if not all member states possess subnational legislatures, they are no exception. In addition, regional assemblies yet with different functions can be found in more member states (e.g. also in France) and regionalization is underway in more member states.

Strengthening the European Parliament has been a key strategy for a long time in order to counter the EU democratic deficit. Yet, even though the European Parliament grew stronger over time, it cannot fulfil the whole catalogue of parliamentary functions in a sufficient way; especially the *communicative* function vis-à-vis the citizens is deficient. Also national parliaments experience a fundamental change of their classical functions. In a multi-level parliamentary field there is also room for subnational parliaments. Moreover, it calls for contemplating about a *level-specific* attribution or prioritization of parliamentary functions.⁷⁵ From this perspective, subnational parliaments have a lot to offer and deserve further scholarly attention.

⁷⁵ See Auel, 'Die deutschen Landtage'; Kropp, Kaina and Ruschke, 'Der Thüringer Landtag', at p.660; Koch-Baumgarten, 'Der Landtag von Rheinland-Pfalz', at p.464.

APPENDIX *Länder* Parliaments' Participation Rights on EU Affairs in Comparison (As of: March 2012)

<i>Länder</i>	EU Reference in the <i>Länder</i> Constitution (LV)	Enacted laws	Non-legislative inter-organ agreements	Changes in parliamentary bylaws	Year EAC established	Participation CoR-SNW**	Brussels-based Observers
Baden-Württemberg	Preamble; Article 34a LV*	Law on participation of parliament in EU affairs (EULG), 3 Feb 2011		planned	2006***	X	X
Bavaria	Article 3a LV	Law on parliamentary participation, am. 23 July 2010	Agreement on Law on Obligation to Inform Parliament, 3/4 Sept. 2003; amend. 1/2 July 2008		1990	X	X
Berlin	Article 50 LV*		Representatives' Declaration on strengthening House of Representative's role in European policy, 23 June 1994		1990		
Brandenburg	Preamble; Article 94 LV*		Agreement on Informing the Parliament pursuant to Article 94 of the Brandenburg LV, 7 Oct 2010	Para. 94 re: Article 94 LV	1994		
Bremen	Art. 65 LV; Art. 79 LV*		Declaration on the rights of the European Affairs Committee on subsidiarity 28 Jan 2010		1992		
Hamburg	Article 31 (1) LV*		Agreement on consultation of city parliament in context of subsidiarity test, 10 Jan 2011		1998		
Hesse			Agreement on informing Hessen parliament, 22 Mar 2011		1995	X	X
Mecklenburg-West Pomerania	Article 11 LV; Article 39 LV*		Parliamentary decision re: presenting an EU report, 20 Apr 2005; general agreement with chancellery on appropriation procedures		1994		
Lower Saxony	Article 25 LV *		Resolution, 14 Sept 1995; am. in progress			X	
North Rhine-Westphalia			Agreement on parliamentary information, 27 Apr 2010	Am. to subsidiarity control, 9 Jun 2010	1995	X	X
Rhineland-Palatinate	Article 74a LV; Article 79 LV; Article 89b (7) LV*		Agreement pursuant to Art. 89b LV on Government informing Parliament, 4 Feb 2010		1991		
Saarland	Article 60 LV; Article 76a LV *		Agreement on Parliament's participation and right to information from the Government on EU and SaarLorLux region, 6 May 2009		1990		
Saxony	Article 12 LV		Agreement on subsidiarity between Länder Government and Parliament, 20 Apr 2011	Am., 20 Apr 2011	1994		
Saxony-Anhalt	Article 1 (1) LV; Article 62 (1) LV*		Agreement on parliamentary information, 15 Apr 2005		1990		
Schleswig-Holstein	Article 22 LV*	Law on parliamentary information, Oct 17, 2006	under discussion		1995	X	under discussion
Thuringia	Preamble; Article 67 (4) LV*		Agreement on Parliament's participation in and right to information on EU affairs, 23 May 2011		1990		

* Duty of *Länder* government to inform parliament about EU affairs; ** Subsidiarity network of the Committee of the Regions (CoR-SNW); *** before 2006 European Affairs were assigned to the Permanent Committee (Ständiger Ausschuss); Am. = amendment

Sources: References and own research.