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"The European integration project and the UK, Denmark and Ireland accession to the European Union: how did they affect each other? A National Parliaments perspective"

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Introduction

The European Union integration project has progressively and consistently been expanded over the years. Initially the Community's activities were confined to the creation of a common market in coal and steel between the six founding members (Belgium, France, Germany, Italy, Luxembourg and the Netherlands); nowadays the EU has twenty-seven Member States (Croatia is expected to become the EU's twenty-eighth member on 1 July 2013), and its competences have been greatly extended by the successive rounds of Treaty changes.

Indeed, every time there has been a Treaty revision of the EU system, which is an evolving organization, it continually adapted itself to the changing political conditions of the world and introduced new policies and activities. The 1973 enlargement, however, turned out to be of paramount importance to the overall framework of the EU, as we know it today. This is so, not only because it was the first enlargement after the founding treaties had been signed, but also because the three new Member States (United Kingdom, Ireland and Denmark) deeply conditioned the future rounds of Treaty changes, EU decision-making, debate over the lack of democratic legitimacy of the European Union, principle of transparency and role of National Parliaments in scrutinizing the Governments' positions over EU laws and respect for the subsidiarity principle.

A clarification has to be made, however, from the outset: the three Member States (MS) have had a different degree of impact on the EU system. The DK accession to the EU clearly shaped the EU transparency and openness policy at the EU level; also, the Danish mandating system influenced the relationships between Government/National Parliaments in a number of EU Member States. The UK accession, besides being the traditional "Eurosceptic" voice for the EU project, has had, as a consequence, the creation of a strong and efficient scrutiny system in the domestic Parliament (both in the House of Commons and House of Lords) that in turn characterized the functioning of EU decision-making. In this scenario, then, the Irish attitude towards the membership of the EU has been more 'reactive' and, only in recent years (in the aftermath of the economic and financial crisis that seriously threatens the Irish economic situation), has the

national parliament created an internal system, aimed at scrutinizing the adoption of EU laws.

These different attitudes towards EU membership, and the consequences of membership at national and EU levels in the long-term can be seen – in a 40-years distance perspective – as one of the main positive characteristics of the EU project: contrary to the stereotypical images of a bureaucratic European Union, the unique goal of which is to deprive the NPs of their sovereign powers, we can clearly see how much Member States' characteristics have profoundly marked the EU project and how much the latter is strictly intertwined with the different national systems.

The paper is organized as follows:
The first part is devoted to the analysis of the modification brought about by the various rounds of Treaty reforms and the related effects on the role of National Parliaments. Indeed, as we will see, the role of the NPs has been constantly increased as a way to counter-balance the loss of their sovereign powers. In particular, in the analysis we will shed some light on the negotiations positions of the three MS examined and the consequences on the final texts finally adopted.

In the second part we will look in more detail at the functioning of the Danish, Irish and British parliamentary scrutiny system, in order to follow the legislative activity at the European level and the work of the related national Ministers in Brussels. As we will see, the three MS have constantly modified and improved the power of the NPs in order to cope with the increasing perceived 'democratic deficit' of the EU system. To date their scrutiny systems (especially in the UK and DK cases, as mentioned before) have turned out to be of great importance for the overall framework of the EU.
We will then look at the *practice* of the NPs' involvement in the EU affairs; this happens both *indirectly* via the control mechanism over their national Governments' activity within the Council, and *directly* via the "early warning system" check over the legislative proposals.

In the third part (which will be developed during the presentation), a substantive area of analysis will be singled out, namely, the Danish approaches to transparency and scrutiny of legislation, and how they affected the transparency debate in the EU. During the whole process of increasing integration of the EU, Denmark firmly set out the points of openness and transparency in the Community's decision-making process and the effective application of the principle of subsidiarity, as being of particular importance. The memorandum 'Denmark in Europe', submitted to other Member States following the Danish 'no' to the Maastricht Treaty in 1992, and the MS position held in the circumstances of the 'Guardian case' of 1994, is the first example of the national sensitivity towards those issues that have been confirmed in the successive ECJ case-law on transparency in the EU.

Part I: The European Project and the Role of the NPs

An immense literature exists on the effects that the steady process of European Integration has had on the role of the National Parliaments. The National Parliaments have always been seen as the victims of the European 'colonialist' project, at the beginning of which, the national Governments adopted regulations and directives within the Council in a growing number of policy areas, depriving the national legislatures of their sovereign powers. This picture summarizes, in a few words, the way in which the European Economic Community (EEC) has been functioning since the Treaty of Rome entered into force, and is at the heart of the well-know debate over the *democratic deficit* of the EU[1]. Since then, the functioning of the European Union (EU) has deeply changed; it has continued to grow in terms of competences and number of new MS of the EU, and also in terms of involvement of the national legislatures into EU affairs.

This latter aspect, indeed, not only characterized the negotiations in the various Intergovernmental Conferences, since the Single European Act, but was also strictly linked to the basic question of how the final 'democratic legitimizer' of the EU system should be: the European Parliament or the National Parliaments?

During the last 40 years, since and because of the accession of the UK and DK to the EU, the IGC negotiations started to dramatically see, at the core of the debate, the problem of the sovereign role of the national legislatures. The two MS, indeed, clearly pushed towards granting more power to the NPs, rather than to the EP. Because of their national positions in the occasion of the major IGC, indeed, the role of NPs has been steadily strengthened.

It is a common opinion that the 1973 accession of the UK, DK and IE to the EU was inspired more by national interests, rather than a deep and true involvement in the European integration project. United Kingdom saw the EC membership as an essential element to expand trade opportunities in Europe and to maintain its great-power status after the retreat from the Empire[2]. The economic advantages of membership also guided the Denmark accession to the EU; the accent was especially put on the expected benefits to Danish agriculture from the Common Agricultural Policy (CAP), while the EU membership was portrayed as 'customs union plus certain common policies in economic areas'. Economic issues also led to the Irish accession to the EU: at that time, in fact, Ireland's economy was struggling badly, the unemployment rate was very high and the agriculture was the country's most important trade sector. In this context, having access to the EEC's CAP was of the outmost importance.

This 'minimalist' approach, indeed, remained over the years and determined in particular the attitude of the UK and DK in the successive steps of the EU project, since 1980s. In this context, the Irish attitude towards the EU membership was more pragmatic: being one of the highest beneficiaries of EU funds, Ireland tended to be more constructive.

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[1] The expression was firstly used at the beginning of 1970s by a British Labour Party academic, David Marquand in describing the weakness of the democratic legitimacy of the EEC.

[2] See J. Bradbury, 'The UK in Europe', An Awkward or accommodating partner?, in R. Bideleux and R. Taylor (ed.), 'European Integration and Disintegration', London and New York, Routledge, 1996.

With the entry into force of the Single European Act in 1986, indeed, the EEC was granted new important competences, like the Single market, Social policy, Cohesion, monetary cooperation and the fixing of environmental standards. Moreover, through the new cooperation procedure, the directly elected EP could have a real say in the legislative bargaining for the adoption of a legal act vis-à-vis the Council of Ministers; and, as for this latter, the introduction of the QMV in the voting rules meant that national governments could no longer block Council decisions. In this context, National Parliaments did not have a formal place within the EU decision-making system and, consequently, they were involved in the EU matters *indirectly*, according to their first modest attempts to control the national governments trough the establishment of special parliamentary committees on EU affairs (see below, the DK EAC and the House of Commons parliamentary scrutiny reserve).[3]

Already in the occasion of the first Inter-parliamentary Conference of bodies specialized in European Affairs (COSAC) held in 1989, indeed, both the Folketing representatives and the representatives of the House of Lords and House of Commons explained their internal control system over the national government, while in some other MS, like LUX, BE, IT, GR, they did not even have specialized European Affairs Committees[4].

The Maastricht Treaty has been a turning point in the development of the EU project. The transformation of the former EEC in the EU brought about e new momentum to the EU integration project and important institutional changes, which followed the path of the SEA. Not surprisingly, therefore, the negotiations among MS, and the ratification process of the MT, have been very difficult.
The problem of democratic control was central to the UK, as reported by the Foreign Affairs Committee:

'*It would be wrong to pretend that the problem of democratic control of EU policies and EC legislation are in sight of a solution…Some, but certainly not all the changes desired by MEPs may indeed be conceded by the Twelve governments, either during the course of the forthcoming IGC or at some future date. Yet they leave out the other crucial channel of democratic accountability by ignoring the role of national parliaments, a matter of particular concern here at Westminster*'[5]…p. 251

The negotiations on the new co-decision procedure, in fact, created a situation in which the majority accepted in principle the EP request for co-decision powers vis-à-vis the Council, whereas UK and DK were strongly against it, and Ireland was not fully convinced. Denmark in particular clearly underlined that '*the EP*

[3] Denmark held a referendum on the SEA; the text was approved with 56.2% of votes in favour. In Ireland a referendum was necessary in order to approve an amendment to the Irish Constitution permitting to ratify the SEA; the result of the referendum was 69.9% in favour.

[4] The minutes of the debate can be find in the Cosac web site at: http://www.cosac.eu/

[5] House of Commons, Foreign Affairs Committee, Second Report '*The Operation of the Single European Act*' 14 March 1990 HC (1989-90) 82-I, xxi-xxii, as cited in E. Best, '*The UK and the Ratification of the Maastricht Treaty*, in The ratification of the Maastricht Treaty: issues, debates and future implications, Maastricht: European Institute of Public Administration, 1994.

can not replace MS's legislatures as custodians of legislative power'. As we all know, the co-decision procedure was finally inserted into the TEU, and the EP consequently gained more power in decision-making. Following the UK and DK 'red line' in the negotiations, however, the principle of subsidiarity made its first appearance within the EU settings. The concept was finally enshrined in article G(5)1, according to which, "*In areas which do not fall within its exclusive competence, the Community shall take action, in accordance of the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community*'. Moreover, the role of NPs in enhancing legitimacy in relation to legislation was enshrined in Declaration No 13 of the MT.

The final text of the Maastricht Treaty was profoundly conditioned by the unexpected rejection by the Danes at the first referendum on June 1992. The opposition parties, and the government, overcame the deadlock thanks to the adoption of the so-called 'national compromise', containing a list of points of particular importance for the acceptance of the new Treaty[6]. Among these points, the questions of more openness and transparency in the Community's decision-making process, and the effective application of the principle of subsidiarity, played a central role. The document was discussed during the Edinburg Summit of December 1992 where, also thanks to the intermediary role of the British Presidency, an agreement was reached[7]. Consequently, in the second referendum held in 1993, the Danes could approve the MT.

The deadlock, caused by the Danes 'no', and the resistance of the British negotiators during the IGC, as we have seen, *de facto* set the path for a clearer recognition of the principle of subsidiarity (and that of transparency) within the EU system[8].

Since the TEU came into force in 1993, both Conservative and Labour UK governments have headed calls to strengthen the subsidiarity principle and the mechanisms to enforce it at EU level. The British negotiations towards the Amsterdam Treaty have been disclosed in the UK White Paper "A partnership of Nations - The British approach to the 1996 EU IGC on March 1996". In the document, the national government stated that it did not share the idea that the democratic deficit of the EU could be reduced by the reinforcement of the EP; on the contrary, the role of NPs should be strengthened, and the principle of subsidiarity should become legally-binding. In this sense, the UK also presented a draft Protocol on the application of the subsidiarity principle.

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[6] The text of the compromise entitled "*Denmark in Europe*" is available at: http://www.eu-oplysningen.dk/emner_en/forbehold/

[7] See the Conclusions of the Presidency of the European Council; in particular see the annexes 1 on the Application of the subsidiarity principle of the Treaty on European Union and 3 on Transparency - implementation of the Birmingham Declaration. All documents are available at: http://www.europarl.europa.eu/summits/edinburgh/default_en.htm
See also, '*Denmark and the Treaty on EU*', in OJ C 348, 31/12/1992, p.1

[8] See, *among alia*, the Inter-institutional agreement of 25 October 1993 between the Parliament, the Council and the Commission on procedures for implementing the principle of subsidiarity, in OJ C 329, 6.12.1993, p. 135; the Commission reports to the European Council on the application of the subsidiarity principle starting from that of 1994 (COM(94)0533 - C4-0215/95).

Also, from the Danish side, the questions of openness, subsidiarity, the role of the NPs (and also environment and consumer protection) were at the core of the national positions during the negotiations of the IGC for the Amsterdam Treaty[9].
In the Memorandum "Bases for negotiations: an open Europe. The 1996 IGC" of December 1995, the Government stated that it intended to emphasize the question of subsidiarity and transparency, as well as the role of NPs by stating that: '*they should play a more important part; it suggests stepping up the flow of information between the Union institutions and the national parliaments, which should be forwarded the Commission's legislative proposals and white and green papers sufficiently early to enable to them to adopt their own positions*'. At the same time, however, the position of the Danish Government on the role of the EP within the EU system became more flexible; during the negotiations, in fact, it emphasized the need for a strengthened democratic cooperation between the NPs and the EP, and for a major role of the latter in EU decision-making.

In its "White Paper on Foreign Policy: 'External challenges and opportunities', of March 1996", Ireland had a reactive, rather than a proactive role. Being a small MS, Ireland insisted on having strong central institutions in the EU, with the European Commission as the sole initiator of EU legislative process, and a strong role of the EP. As for the matter of openness and transparency, the Irish Government supported the reinforcement of both aspects via the IGC. It also fully supported simplifying the Union's legislative procedures and reducing their number, and recognized that a higher profile for the national parliaments would help bring decision-making closer to the citizens.

Thus, according to the UK and DK negotiations positions, the 1999 Amsterdam Treaty placed further emphasis on the importance of subsidiarity, extending it from the Community to the Union, by including it in Article 2 TEU. The Treaty required that the Union's objectives should only be achieved "*while respecting the principle of subsidiarity as defined in Article 5 (formerly 3b) of the Treaty Establishing the European Community*". The Treaty of Amsterdam also annexed to the EC Treaty the 'Protocol on application of the principles of subsidiarity and proportionality' and the 'Protocol on the role of National Parliaments in the EU'. The overall approach to the application of the subsidiarity principle, agreed in Edinburgh in 1992, thus became legally-binding and subject to judicial review via the protocol on subsidiarity, which clarified the meaning and application.
It is worth noting that, in particular, besides the formalization of the information flows to the NPs, the Protocol introduced a *six-weeks time* window for national parliamentary scrutiny of legislative proposals.

Following the Laeken Declaration of December 2001 on the Future of EU and the works of the Convention for the Constitutional Treaty (and in particular, the activity of the Working Group IV devoted to the role of the National Parliaments), the Lisbon Treaty provided two major changes to the Amsterdam Protocols: the

[9] The debate within the country was also affected by the legal challange brought by a group of individuals before the High Court arguing that the MT violated the Danish Constitution, Judgement of 6th April 1998.

new Protocol on the role of NPs (Protocol No 1) now provides an *eight-weeks period* for national parliamentary scrutiny and, most importantly, the new Protocol on the application of the principles of subsidiarity and proportionality (Protocol No 2), provides for an *ex-ante* role of national legislatures in ensuring respect for the principle of subsidiarity, through the so-called "*early warning system*" according to the 'Yellow' and 'Orange Card'.

Part II: NPs involvement in the EU affairs

As we have seen, the various rounds of Treaty changes have granted the national legislatures more power in the EU decision-making process. The "early warning system" provided by the Lisbon Treaty allows them to *directly* participate in the process of adoption of EU laws, and to even block it.

Moreover, all NPs have set up internal control mechanisms over the Government positions within the Council (and the European Council), through which they can *indirectly* participate in the shaping of the national position in the EU negotiations over legislative measures. As we will see, the internal scrutiny mechanisms varies a lot in terms of efficiency, the way the NPs are involved in the process, and their degree of influence in the national Governments' EU policy.

In the following section, the data on the use of the early warning system by the Irish, British and Danish NPs, and the internal scrutiny systems set up in these three national legislatures, as well as the related practice, will be presented.

Several classifications have been created in order to group all EU parliamentary chambers in relation to their involvement in the scrutiny of the Government's position at the EU level[10]. According to the 2007 Report of COSAC on the practice of parliamentary scrutiny[11], the different scrutiny models can be roughly divided into two main categories by examining what national parliaments choose to focus on as part of their scrutiny procedures: the '*document-based system*', focusing on the scrutiny of documents and emanating from the EU institutions; and, the 'procedural' or '*mandating system*', focusing on the EU decision-making process, and, in particular, on the national governments' positions in the Council. There are also 'hybrid system', containing elements from both the document-based and the procedural models.

The UK system is the classical example of the first category; Ireland (even though as previously mentioned, it is currently reviewing its entire scrutiny system) has established a similar document-based system, while the DK system is the mandating parliamentary system *par excellence*.

A short description of the way in which the three systems work will better illustrate the effects that their accession to the EU have had on the overall functioning of the EU decision-making system.

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[10] Among alia, see Philip Kiiver, The National Parliaments in the European Union, Kluwer, 2006; the author divided NPs into three categories: mandate givers, systematic scrutinizers and informal influencers.

[11] Eight bi-annual report: Developments in the European Union, Procedures and Practices relevant to Parliamentary scrutiny, prepared for the XXXVIII Conference of Community and European Affairs Committees of Parliaments of the European Union, 14-15 October 2007.

Moreover, the entry into force of the Lisbon Treaty in December 2009, and the new Protocols examined above, brought about the necessity for internal reforms on the way in which NPs reviewed legislative proposals originating from the Commission, or a group of member states. All NPs have been concerned about such a necessity, in order to fully perform their tasks; it has been so, also in the case of the three national legislatures under examination.

The Danish Folketing:

The consideration of EU matters in the Folketing, based on the 1972 Danish Accession Act and the successive reports issued by the European Affairs Committee (EAC), is primarily the task of the EAC. It was created in 1972 (its initial name was 'Market committee', substituted with the current one in 1994) and its main objective is to consider items on the agenda of the Council of Ministers. The committee meets weekly on Fridays, when the relevant Ministers present the items on the agenda of the following week's Council meetings. A week before the meeting, the Government normally circulates a memorandum to the EAC and the relevant sectorial committee. During the weekly meeting, the matters on the agenda are divided into two categories, that of *considerable importance* and that of *major importance*: the Government must solely orally communicate the items falling into the first category, whereas for decisions of major significance, the Government presents its proposed negotiating position and asks for a negotiating mandate from the EAC.

The focal point in the Danish system relies on a *mandate* that the Government requests before presenting its position at EU level. The system, strictly linked to the tradition of a minority government of the Danish political system, was introduced after a political crisis, which occurred in February 1973, when the Minister of Agriculture agreed to a decision in a meeting of the Council of Ministers that was not acceptable to the majority of representatives in the Folketing[12].

Another important characteristic of the Danish mandating system is timing. Since the practice of the co-decision procedure has shown the importance of an early involvement of the NPs in order to effectively count on the negotiating process, the government and the EAC agreed that: "*The Government shall endeavor to avoid the combination of proposed mandate and A point when presenting Council meeting agenda items. In connection with potential agreements on matters of major significance at first reading, it shall endeavor to present its proposed mandate prior to Coreper granting the Presidency a mandate to enter into agreement with the European Parliament. Furthermore, when during the first information round the EAC has signaled a particular interest, the Government shall endeavor to present its proposed mandate even earlier*"[13].

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[12] The crucial provisions about the Committee's powers were established in the Committee's first report from 29 March 1973: "The Government shall consult the Folketing's Market Committee on matters of market policy of considerable importance; this consultation shall respect both the influence of the Folketing and the freedom of the Government to negotiate".

[13] Exchange of letters between the Foreign Minister and the Committee Chairman dated 27 June 2006 and 9 August 2006. A case of early presentation happens, for example, in the meeting of the European Affairs Committee on 14 January 2011, when the Finance Minister presented a request for a mandate on the Commission's so-called Six-Pack reform proposals aimed at strengthening the Stability and Growth Pact and preventing the kind of budget deficits which led to the debt

After every Council meeting, the Ministers are obliged to inform the Committee of the outcome of negotiations and, if it is the case, explain why he/she has not followed the instructions previously received.
Looking at the practice of the mandating system on average, the Danish Government present annually about 75 matters to the EAC, on which a mandate is sought.[14]
The involvement of sectorial committees in considering the EU matters, as we will see below, is another important aspect of the Danish scrutiny system. In the aftermath of the negotiation of the Amsterdam Treaty, in fact, the EAC put forward several reports asking for a more open and efficient Danish EU decision-making system; *inter alia*, the report proposed increasing the involvement of the specialized committee in the Folketing at an early stage. Currently, indeed, the sectorial committees have the option of early consideration of EU matters, within their respective spheres of competence, and it can also be asked to deliver an opinion to the EAC, in order to issue joint opinions on legislative proposals, or Green and White papers of the European Commission.

Looking at the Folketing subsidiarity checks, it is based on close cooperation between the European Affairs Committee (EAC) and the sectorial committee. The latter are responsible for initial consideration of proposed legislation, while the EAC adopts the final recommendation to the EU Institutions. The Secretariat of the EAC and the Government play an important role in concentrating the work of the EAC and that of the sectorial committees on the most important EU proposal.
It is worth noting that already in 2004, the EAC reported on the necessity to rethink the working method of the Folketing in the light of future reform of the role of NPs as regards the compliance of EU legislative proposals with the subsidiarity principle15. The table below clearly shows how the procedure works today:

Step	**Procedure**	
(1)	The Commission or a group of member states proposes a legislative act	
(2)	No later than **3 weeks** after the proposal becoming available in a Danish language	The European Affairs Committee (EAC) considers the legislative proposal, forwarding relevant proposals for consultation in the relevant sectorial committee(s) without delay. As regards the prioritized new proposals included in the overview, the Government will send a preliminary basic-cum-subsidiarity memorandum to the relevant sectorial committees and the EAC within 3 weeks of the proposal having been forwarded to the Council in a Danish language version. The Government's evaluation of whether the principle of subsidiarity ha been complied with has been incorporated in to the basic-cum-subsidiarity

crisis in several euro zone Member States.

[14] In 2010, for example, the Government asked for a negotiation mandate for the EU proposal regarding a new regulation on food and nutrition labelling in the EU.

[15] See the '*Report on reforming the Folketing's treatment of EU issues*', Report issued by the EAC on 10 December 2004. The Report, in particular stressed the importance of an early and systemized involvement of the sector committees.

		memorandum. The EAC's secretariat will publish the basic-cum-subsidiarity memorandum and the related proposal for electronic consultation on the EU Information Centre website. The relevant sectorial committee(s) is/are notified of any replies to the web consultation.
(3)	No later than **5 weeks** after the proposal becoming available in a Danish language	The relevant sectorial committee(s) has /have considered the proposal, following which they may have formulated and submitted an opinion to the EAC. Sectorial committee opinions are published on IPEX without delay while COSAC is notified in case the sectorial committee is of the opinion that there are problems in relation to the principle of subsidiarity.
(4)	No later than **8 weeks** after the proposal becoming available in a Danish language version	The EAC considers the proposal on the basis of the sectorial committee opinion, the Government basic-cum-subsidiarity memorandum, any replies to the web consultation and opinions from other parliaments/COSAC, if any. In case the opinions from the sectorial committee and the EAC differ, a joint meeting is called. The EAC's reasoned opinion is signed by its chair. It is then sent to the Government, the Commission, the Council, the European Parliament and the other NPs in the EU.

Source: Report on Consideration of EU matters by the Folketing in relation to subsidiarity checks, Report issued by the European Affairs Committee on 9 April 2010

Moving from the theoretical functioning to practice, in 2012, the European Affairs Committee released contributions on 3 legislative measures[16] and 1 reasoned opinion, regarding the proposal for a Council Regulation on the right to take collective action within the context of the freedom of establishment and the freedom to provide services[17]. In total, since the Lisbon Treaty entered in force, 7 reasoned opinions have been adopted, while other 14 EU proposals have been subject to subsidiarity check.

The Irish Oireachtas:

The Lisbon Treaty Protocols, on the role of the NPs and on the Subsidiarity checks, brought about significant modifications to the relationships between the Institutions of the EU and the NPs. As a consequence, all NPs rethink the way in which they conduct such scrutiny in relation to EU matters. The Houses of the Oireachtas (the Dáil Éireann and the Seanad Éireann) also did so. The Houses and its sub-committees have adopted a series of reports, in order to develop a more efficient scrutiny system, regarding not only the subsidiarity principle but

[16] CCCTB, COM(2012)452, 453

[17] COM(2012)130. To date, this is the only case in which the threshold for triggering the yellow card procedure has been met.

also the Government's activity during the negotiations in the Council of Ministers[18].

As for the subsidiarity checks, the European Act 2009 (which amended the previous European (Scrutiny) Act 2002) provides that "*Either Houses of the Oireachtas may, not later than 8 weeks after the transmission of a draft legislative act referred to in Article 6 of Protocol No. 2 of the TEU and the TFEU, send to the Presidents of the EP, the Council and the EC a reasoned opinion in accordance with that Article if the Houses concerned passes a resolution in respect of the draft legislative act concerned authorizing the House to so do*". A Resolution adopted by both Houses in December 2009 has given practical effect to these new powers. The system, nevertheless, had deeply changed, since the general election of early 2011. Under the centralized model of the previous legislature, the Joint Committee on the European Scrutiny (ESC) considered whether the draft legislative acts complied with the principle of subsidiarity. The current legislature (31st Dáil), by contrast, has adopted the '**mainstreamed model**', whereby each Joint committee considers EU matters within the remit of the relevant Department(s) and engages with Ministers in the context of the meetings of the Council of Ministers. According to such model, the sectorial committee considers whether the draft EU law complies with the principle of subsidiarity; if a breach of such a principle is found, the committee will report to the Houses, recommending the adoption of a reasoned opinion.

The table below clearly shows how the procedure works:

Scrutiny of documents coming from the European Union and monitoring compliance with the principle of subsidiarity Houses of the Oireachtas, Ireland		
Date	Responsible body or unit	Description of the procedure
Day 1	Transmission to the Oireachtas by the Commission or Council Received by the EU Coordination team in the Oireachtas	Assignation of the draft legislative proposal and the *lettre de saisine* to the Policy Clerk of the relevant Sectorial Committee. A Committee or Committees will be delegated with the power to consider whether any act of an EU institution infringes the principle of subsidiarity. These acts automatically stand referred to the Committee.
Within 20 days of published date of proposal	Government Department	Submission of Information Note highlighting subsidiarity concerns and implications for Ireland
Next meeting of	Sectorial Committee	If the Committee finds an infringement

[18] Among alia, see: House of Oireachtas, Joint Committee on European Affairs and Joint Committee on European Scrutiny, '*Review of the Role of the Oireachtas in European Affairs*', July 2010; House of Oireachtas, Joint Committee on European Affairs, *Annual Report of the operation of the European Union (Scrutiny) Act 2002*, July 2012; Houses of the Oireachtas Sub-committee on Ireland's Future in the EU, '*Ireland's future in the European Union: Challenges, Issues and Options*', November 2008.

Sectorial Committee		in relation to a particular act, it adopts a report to this effect and the Chairman tables a motion in the Houses. If the motion is adopted by the plenary of either House, the Chair of the House must notify the relevant Minister by sending him/her a copy of the resolution together with the report of the Committee.
Immediately after resolution and report adopted	EU Co-ordination Unit	Transmission of the subsidiarity objection to the presidents of the EU institutions.

Source: Fact sheet provided in by the Oireachtas section on the IPEX web site, available at: http://www.ipex.eu/IPEXL-WEB/home/home.do

Looking at the practice to date, the Oireachtas has adopted only 1 reasoned opinion in 2012 concerning the Commission proposal on a common consolidated corporate tax base[19], a very sensitive field for Irish policy. It was adopted according to the Interim Standing Order 103.
It is worth noting that, compared to the DK and UK scrutiny systems, the Oireacthas is not granted either the mandating power vis-à-vis its Government acting within the Council of Ministers, nor the scrutiny reserve resolution according to which, as we will see below, the UK Government must refrain to agree to something in the Council before the parliamentary scrutiny process is completed.

The UK Parliament:
Since its accession to the EU in 1973, both the House of Commons and House of Lords set up committees specialized in the scrutiny of the EU affairs. The European Scrutiny Committee (ESC) of the House of Commons and the European Union Committee (EUC) of the House of Lords, however, as mentioned above, partially differ in the way in which they perform their task.
The most significant characteristic of the UK scrutiny procedure is that the House of Commons has been the first national chamber in the EU that introduced, already on 1980, the '**scrutiny reserve'** (SR) mechanism in the relationship between the NP and the Government in dealing with EU affairs. Also the House of Lords introduced the same mechanism in its resolution of 1999. According to the latest versions of the resolution of the Committee's Scrutiny Reserve Resolution as agreed on 30 March 2010, "*no Minister of the Crown shall give agreement in the Council or the European Council in relation to any document subject to the scrutiny of the European Union Committee in accordance with its terms of reference, while the document remains subject to scrutiny*". Moreover, a particular importance is devoted to the legislative acts adopted through codecision; the SR resolution, in fact, adds that:
"Agreement in relation to a document means agreement whether or not a formal vote is taken, and includes in particular (…) in the case of a proposal on which the Council acts in accordance with the procedure referred to in Article 289(1) of the Treaty on the Functioning of the European Union (the ordinary legislative

[19] COM(2011)121

procedure), agreement to the Council's position at first reading, to its position at second reading, or to a joint text (…).
The increasing importance of the co-decision procedure in the EU decision-making, therefore, raised the question of the effectiveness of the NPs scrutiny also in the UK Whitehall[20].
A second common feature of the UK Houses is that, as previously mentioned, they scrutinize EU documents, to which the Ministers from the lead department Government attach an explanatory memorandum (EM) summarizing the content and the legal, policy and financial implications of the EU document.
After having examined the EMs and the associated documents, the ESC of the House of Commons reports to the House with recommendations as to the importance of each document, and on whether further consideration by a Standing committee or by the House is necessary. On average it examines every year 1,000 documents and it reports on approximately 500 each year[21].
Once the ESC has cleared the proposal in one of its Reports, or the House has agreed on a resolution relating to the document, the scrutiny mechanism is completed and the documents is cleared.
In the House of Lords, the Chair of the EUC conduct a '**sift**' of all the documents deposited for scrutiny and decide whether each document should be cleared or considered further by one of the Committee's 7 Sub-Committees. The scrutiny process is completed when the sub-committee interested has cleared the document, or, having conducted an inquiry, decides to report the document for information only or, as a third possibility, the Sub-Committee having reported on it for debate, the debate has taken place.
It must be added that the EUC may itself conduct inquiries. It rarely does so and its reports are always very topical. According to the data referring to the period 2010-2012, for example, the European Union Committee considered 12 EMs and related documents, while the 7 sub-committees considered, on average, 103 EMs[22].
If the Government overrides the scrutiny reserve, that is to say, it agrees to something in the Council before the scrutiny process is completed, then it must explain the reasons for overriding this as soon as possible. According to the last six-months review, the scrutiny reserve has been overridden in the House lords 46 times during the period January-June 2012.

The House of Lords and House of Commons have two different scrutiny mechanisms, also with regards to the subsidiarity checks of the EU proposals.
In the *House of Lords*, the European Union committee (EUC) is responsible for the initial scrutiny of each EU proposal for compliance with the subsidiarity principle. If the EUC, or the relevant sub-committee, finds that the proposal is in breach of the subsidiarity principle, then it publishes a Subsidiarity Assessment Report, setting out its reasoning. Such a report will be then debated in the House; if the latter so decides, then the report will then be sent to the EU Institutions as reasoned opinion of the House.

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[20] See, among alia, House of Lords, European Union Committee, 17th Report of Session 2008-2009, 'Codecision and national parliamentary scrutiny, HL Paper 125, 21 July 2009.
[21] C. Kerse, Parliamentary scrutiny in the UK Parliament and the Changing role of NPs in the European Union Affairs, in G. Barrett, 'National Parliaments and the EU", Clarus Press, 2008.
[22] House of Lords, European Union Committee, Report on 2010-2012, HL Paper 13.

The table below clearly shows how the procedure works:

Scrutiny of documents coming from the European Union and monitoring compliance with the principle of subsidiarity- House of Lords, United Kingdom		
Date	Responsible body or unit	Description of the procedure
Day 1	UK Government	The document is deposited in Parliament (i.e. sent to the House of Lords EU Committee)
A maximum of 2 weeks later	UK Government	An explanatory memorandum is sent to the Committee setting out the Government's view on the proposal, including on compliance with the principle of subsidiarity.
A maximum of 1 week later	Lords EU Committee Chairman	On advice from the Committee's clerk(s) and legal advisers, the Chairman will allocate the document and Explanatory Memorandum to a specific sub-committee for examination.
Throughout the period from Day 1 (or before) to the Committee's consideration of the document	Lords EU Committee secretariat	As soon as a concern has been identified, the Committee secretariat will begin analyzing the document promptly in order to be able to advise the relevant sub-committee on whether the subsidiarity principle has been breached. (Where relevant, the appropriate Committees from the UK devolved institutions (the National Assembly for Wales, Scottish Parliament and Northern Ireland Assembly) will be consulted for their views on subsidiarity)
A maximum of 1 week later	Lords EU Sub-Committee	The sub-committee will meet to discuss the proposal and consider whether a Reasoned Opinion should be recommended to the House. If so, the sub-committee will prepare a draft Subsidiarity Assessment Report, setting out their reasoning
Within 1-2 weeks	Lords EU Committee OR Lords EU Committee Chairman	The full Select Committee will consider the draft Subsidiarity Assessment Report prepared by the sub-committee. The Select Committee will agree whether or not the report should be published If, given time constraints, it is not possible for the Select Committee to consider the proposal in time to meet the deadline, the Chairman may present the sub-committee's draft Subsidiarity Assessment Report on behalf of the Select Committee
Within the 8-week deadline	House of Lords	Once a Subsidiarity Assessment Report has been published, the House will hold a debate on the committee's report and decide whether or not it should be sent to the EU institutions as a Reasoned Opinion of the House
Within the 8-week deadline	Lords EU Documents Office	If the House agrees that the committee's report should be sent to the EU institutions as a Reasoned Opinion of the House, the Lords EU Documents Office will arrange for the prompt transmission of the Reasoned Opinion to the institutions.

Source: Fact sheet provided in by the House of Lords section on the IPEX web site, available at: http://www.ipex.eu/IPEXL-WEB/home/home.do

Even though the *House of Commons* is one of the most active parliamentary chambers in scrutinizing the EU proposals in the light of the principle of subsidiarity, it is currently reviewing its working method, in order to modify and clarify it [23]. So far, in fact, the scrutiny process for the subsidiarity checks is similar to the one used by the European Scrutiny Committee (ESC), when recommending documents for debate in European Committee, or on the floor of the House.

It can be summarized as follows. According to the Standing Order No 143, the ESC examines *all* EU documents and identifies those presenting significant legal and political aspects. Since the entry into force of the Protocol 2 of the Lisbon Treaty, the ESC also scrutinizes every EU document to ensure that it complies with the principle of subsidiarity, and identifies those legislative proposals with respect to which the House may wish to send a reasoned opinion to the EU Institutions. If it is like this, the ESC sends to the House its conclusion in a report with a draft reasoned opinion attached. The report is then debated in the House or, more often, in a European Committee[24] that considers any such document on a *motion moved by a Minister*, to which amendments may be tabled and moved. Before the debate, a member of the ESC and a Minister, on behalf of the Government, make a statement and responds to questions of the members of the Committee. The motion for the reasoned opinion is then adopted by the House and sent to the EU Institutions.

The major shortcoming with the above process, highlighted since 2004, is that, as it is for other motions related to EU document, "*a Minister must move the motion, either in a European Committee or on the Floor of the House, whether or not the Government agrees with the ESC's view that the legislative proposal does not comply with the principle of subsidiarity. This can lead to a situation in which a Minister must move a motion but then speak against it*", as actually happened in the case of the reasoned opinion issued on the Directive proposal on investor-compensation schemes.

The House is currently debating how its working method should be modified in order to improve scrutiny and UK influence in Brussels. In particular, it has been suggested that the House of Commons should adopt a '**mainstreamed approach**' towards the EU affairs, whereby Departmental select committees (DSC) would be granted a formal role in the scrutiny process. To date, in fact, the ESC regularly forward EU documents to relevant DSC; the latter is under no obligation to follow up with more intense scrutiny. Moreover, the ESC rarely uses its power to request an opinion from the relevant DSC on particular EU issues[25].

Looking at the practice, the UK Parliament is very active in the subsidiarity check provided by the early warning system mechanism. The UK House of Commons

[23] In particular, the Modernization Committee in 2004 and the European Scrutiny Committee in 2008 examined the procedures by which motions for reasoned opinions on subsidiarity should be decided on by the House and highlighted some shortcomings.

[24] There are three European Committees: A-B-C

[25] House of Commons, 'European Scrutiny in the House of Commons', Written Evidence, Session 2012-2013, February 2013.

have adopted 8 reasoned opinions[26], and it also released 3 contributions on EU legislative proposals; the UK House of Lords has adopted 4 reasoned opinions[27] in total and has considered other 8 EU documents as regards subsidiarity concerns. It is to be noted that both chambers have adopted reasoned opinions on the same legislative proposal in two cases: the Commission proposal on the Fund for European Aid to the Most Deprived,[28] and the proposal on improving the gender balance among non-executives directors of companies listed on stock exchanges and related measures[29].

Provisional concluding remarks

The above analysis (although it is far from being exhaustive) has shown that there is a clear thread that links the 1973 accession of the United Kingdom, Denmark and Ireland to the European Union to the current regulation of the role of the NPs within the EU system, and also to the transparency policy at EU level. The 'minimalist' approach that characterized the membership of the three MS has *de facto* positively affected the various rounds of Treaty changes, in order to render the EU level more open and accountable to the national legislatures and, in the end, closer to citizens.

The current 'early warning system', provided by the Lisbon Treaty, in this sense, is clearly the result of the Danish and British aim to grant the NPs a stronger role in EU decision-making. The debate over the democratic deficit, and the questions regarding who should be considered the 'legitimizer' of the EU system, have seen the two MS putting the accent on the role of NPs rather than on that of the EP. The positive result of such a debate is that, after 40 years, the EU multi-level system provides that '*the functioning of the EU is founded on representative democracy, where the EP directly represents the citizens at EU level and the Member States (MS) are accountable to their NPs*' (Title II of the TEU, 'Provisions on Democratic Principles'). Put simply, after an initial period in which the two parliamentary dimensions were competing on who should be the most important one in the EU context, they have grown together; and, now more than ever, the European Union project needs a reinforced cooperation between the EP and NPs in order to attain a legitimate and integrated EU. In the aftermath of the recent economic and fiscal crisis that has been affecting the EU, NPs have reacted in different ways. While in some Chambers the adoption of EU crisis managements measures has implied deep discussions (other than a referendum

[26] Investor-Compensation Schemes, 25 October 2010 – CCCTB, 11 May 2011 - Prudential Requirements for Credit Institutions, 9 November 2011 - Common European Sales Law, 23 November 2011 - Public Procurement and Procurement by Public Entities, 6 March 2012 - The posting of workers and the right to take collective action, 22 May 2012 - Fund for European Aid to the Most Deprived, 18 December 2012- Gender balance on corporate boards, 7 January 2013.

[27] Distribution of food products to the most deprived persons in the Union, 3 November 2010 - conditions of entry and residence of third-country nationals for the purposes of seasonal employment, 20 October 2010 - Gender balance among non-executive directors of companies listed on stock exchanges and related measures, 11 January 2012 - Fund for European Aid to the Most Deprived, 19 December 2012.

[28] See, COM(2012)617.

[29] See, COM(2012)614.

in Ireland, regarding the ratification of the Fiscal Compact; court challenges, regarding the ratification of the ESM Treaty; and constitutional reforms in a number of MS), other NPs seem to have more or less passively accepted the loss of part of their sovereign power for the sake of Euro survival. However, since then, all NPs have been developing greater awareness of the importance of their role in multi-level budgetary exercises and, all in all, in ensuring legitimacy of EU Economic Governance. In this sense, a stronger cooperation between the EP and the NPs will certainly be the key-word in the coming years, also looking at the application of the Protocol N°1 of the EU Treaties and Article 13 of the TSCG in practice[30].

In this scenario, the British and Danish parliamentary scrutiny system over EU policy-making can be seen as an example worth following for other MS. We have seen that UK and DK have 'created' the two parliamentary scrutiny models, which exist in the EU. Actually, all other MS (especially Eastern European MS) have 'copied' one of the two models: the parliaments of Czech Republic, Cyprus, France, Germany, Italy, Ireland, Portugal, the Belgian Senate, the Netherlands Eerste Kamer, the Bulgarian Narodno Sobranie's and the Luxembourg Chambre des Députés have established document based scrutiny systems similar to the one established in the UK Parliament; while Estonia, Finlandia, Latvia, Lithuania, Poland (Sejm), Slovakia, Slovenia, Sweden have adopted a mandating system similar to that of Denmark.

If Denmark and UK can still offer a helpful and practical guidance as to how improve the NPs role in the EU matters, Ireland, in the aftermath of the reforms brought about by the Lisbon Treaty, and above all as a consequence of the economic crisis that dangerously affected the country, is rapidly putting in place the necessary reforms to effectively strengthen the Oireachtas parliamentary scrutiny. In this sense, maybe the failure of the Danish referendum in the 1992 has shown us how to create something constructive out of difficult situations.

To conclude, in the author's opinion, the current identity crisis, regarding the EU project, needs a major participation and constructive role of those parliamentary actors that, more than others, are challenging the role of the European Union today.

[30] As we all know, DK and UK are not Euro-zone members; while both IE and DK have ratified the Fiscal Compact.

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