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The European and National Parliaments

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1. Materially-Constitutional Regulation of the Parliament's Participation in EU Legislation

1.1 Does the constitutional regulation impact directly or indirectly on the relations between the European parliament and the national parliament?

The constitutional provision on Parliament's involvement in EU affairs¹ does not cover these issues. Nevertheless, the sole incorporation of parliamentary participation in European affairs indirectly affects the relationship as it

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** The Parliament of the Czech Republic is a bicameral one consisting of the Senate and the Chamber of Deputies. When no reference is being made to either one, the observation is applicable to both or the Parliament as such. While by "Chamber" with a capital "C" the Chamber of Deputies is meant, the general term chamber(s) refers to either or both. Likewise, if, while describing a practice or procedure, no particular chamber is mentioned, the statement applies to both.

¹ Article 10b of the [Constitution of the Czech Republic](#); each chamber has its own standing rules that contain separate and independent implementing provisions thereof (see 1.3).

recognizes the Parliament as an actor contributing to the formulation of Czech negotiation positions on European legislative proposals. These are therefore legitimated not only by the European Parliament but—to a lesser degree—by the Czech Parliament. Apart from this, one can consider the relationship between the EP and the Czech Parliament only in terms of the implementing provisions of the standing rules of both chambers² (see 1.3: mainly the right of Members of the European Parliament elected in the Czech Republic to participate at the meetings of Czech parliamentary committees and the possibility to communicate Parliament's opinions to the EP).

1.2 Did the decisions of the Constitutional Court or the Supreme Court concerning membership touch the problem of relations between the European parliament and the national parliament?

No, the decisions of the Czech Constitutional Court in relations to membership of the Czech Republic in the EU have not elaborated on these relations in particular. The closest to the issue at question the Court ever found itself was the mention on complementary legitimization of the EU through the two level parliamentary representation of citizens in the second decision on the compatibility of the Lisbon Treaty with the constitutional order of the Czech Republic.³

1.3 What is the statutory regulation of the relation between the European parliament and the national parliament?

There are provisions contained in both chambers' standing rules allowing all Members of the European Parliament elected in the Czech Republic to participate in the meetings of the respective EU Committees.⁴

In connection to the Lisbon Treaty the President of the European Parliament was added, in both chambers' standing rules, as one of the recipients of resolutions containing a reasoned opinion finding breach of the subsidiarity principle. The Standing Rules of the Senate allow, in addition to the above, communication of its opinions to EU institutions directly, and without limitation to merely opinions regarding the principle of subsidiarity.

On an even more technical level, there are provisions on incompatibility of the mandate of a Member of the EP with the mandate of a Deputy or a Senator.⁵

² Part XII of the [Standing Rules of the Senate, Act No. 107/1999 Coll.](#), and Part XV A of the [Rules of Procedure of the Chamber of Deputies, Act No. 90/1995 Coll.](#)

³ Available at <http://www.concourt.cz/file/2506>

⁴ § 119c of the Standing Rules of the Senate and § 109a(6) of the Rules of Procedure of the Chamber of Deputies.

⁵ Act No. 62/2003 Coll., on elections to the European Parliament, § 53(2).

1.4 Is there a by-law regulation of the parliament concerning its functions in respect of the European affairs?

Parliament's functions with regard to European affairs are defined by the constitutional and statutory provisions mentioned above. Namely the chambers' standing rules constitute the core of regulation of Parliament's involvement in EU affairs.

Additionally, there are several government ordinances further detailing this process vis-à-vis the government. These are "Government Directive on procedure for forwarding of the draft legislative acts of the EC/EU and materials of the European Commission to the Chamber of Deputies and the Senate of the Parliament of the Czech Republic" and the "Statute of Government's EU Committee."⁶ The former sets the rules i.a. for forwarding EU documents to the Parliament, assigning them to the ministry responsible for delivering the memorandum and raising parliamentary scrutiny reserves. The latter establishes that representatives—on administrative level, not parliamentarians—of the Senate and the Chamber of Deputies have status of associate (non-voting) member of the Government's EU Committee. Attached to the Statute, there are forms for instructions for working groups of the Council and for Corepers and mandates for the Council of the EU containing compulsory rubric "State of negotiations in the Parliament."

Finally to the core of the question, the only by-law regulation of the Parliament concerning its functions in respect of European affairs seems to be the procedural resolution of the Senate regulating actual division of scrutinized agenda between Senate committees.⁷

1.5 How did the statutory regulation evolve and how substantive was the impact of changes on the activity and efficiency of the parliament?

All the so far discussed provisions were incorporated in the run-up to the Czech Republic's accession to the European Union. While the sub-statutory instruments were subject to periodic revisions that aimed at strengthening the oversight mechanisms available to the Parliament in relation to EU related activity of the Government, the standing rules of both chambers have only been amended once. This was in connection with the ratification of the Treaty of Lisbon (see answers in 1.9). The Senate, moreover, adjusted its procedures with regard to the significant year to year increase in EU documents debated in the committees and the Senate Plenary, some specific practical issues that two

⁶ Government's working body charged with co-ordination of the Czech Republic's positions in the EU. It meets regularly both on ministers' level and on the level of senior officials.

⁷ In the Chamber of Deputies, no such formal division exists, nevertheless in practice, the Committee on European Affairs deals with I. and III. Pillar issues whereas the Committee on Foreign Affairs focuses on II. Pillar.

years of experience exposed, as well as in connection with the establishment of direct communication between the Commission and the national Parliaments in September 2006 (so-called Barroso Initiative). This adjustment took the form of an interpretative resolution regarding its Standing Rules⁸ stipulating that regime of dealing with the documents committed to the Senate directly by the bodies of the European Union is analogous to that of the EU documents submitted by the Government.⁹

1.6 How structured is the organization of the national parliament in the scope of European affairs (e.g. is there a 'European Committee', is the European Affairs Committee's composition regulated and how &c.)?

Both chambers establish by statutory obligation—their respective standing rules—committees specialized in EU agenda. The committees' composition is on based on proportional representation (see 5.2). In the Chamber of Deputies, the Committee on European Affairs is entrusted with scrutiny of all EU topical areas. The Senate establishes a slightly differently named Committee on European Union Affairs. In the Senate, however, the Standing Rules only speak of “designated committee(s)” when outlining committee competences with regard to European agenda. Historically, the Senate has since the EU accession until now repeatedly authorized two of its committees as designated committees: the Committee on European Union Affairs and the Committee on Foreign Affairs and Security to be the principal actors in (roughly) I. Pillar, and II.+III. Pillar agenda respectively. This is done every two years when the Senate sits for the first time, after election of 1/3 of its members, via a procedural resolution on establishment of Committees and Commissions of the Senate.¹⁰

This arrangement will be subject to reassessment and possible revision with the view of the coming into effect of the Lisbon Treaty and its new institutional re-alignment (see 3.9).

In the Senate, as opposed to the Chamber of Deputies, resolution of the designated committee on an EU dossier has to be approved by the Plenary, should it be regarded as the position of the whole chamber. In the Chamber of Deputies, on the other hand, resolution of the Committee on European Affairs shall be regarded as the whole Chamber's resolution, unless it is tabled on the programme of the Chamber's next meeting.¹¹

⁸ 180th Resolution of the Senate delivered on the 7th session held on 19 July 2007

⁹ This adjustment was incorporated to the Lisbon amendment of the Senate's Rules of Procedure.

¹⁰ The latest resolution of this kind is the 11th Resolution of the 7th Senate Term delivered on the 1st session held on 26 November 2008.

¹¹ § 109a(4) of the Rules of Procedure of the Chamber of Deputies. Such plenary debate happens very seldom.

1.7 What are the mechanisms of cooperation between the 'European committee' and the regular committees of the parliament in cases of overlap of the subject of prospective legislation?

The EU Committees, by definition, most of the time deal with European legislation that falls subject wise under the remit of one or more other committees. Both chambers therefore have mechanisms for the involvement of other committees in scrutiny. In the Senate, the designated committees (i.e. Committee on European Union Affairs and Committee on Foreign Affairs and Security, see above) in their respective fields of competence are responsible for selection of documents for scrutiny. They can pass resolutions—usually done in the document selection phase—asking one or more of the other Senate committees (which would have subject-matter jurisdiction should a bill be deliberated) to provide their opinion. After a committee's opinion is supplied the designated committee uses this expertise in formulating its own resolution. While the designated committee is free as to how much it will reflect the solicited opinion, in overwhelming majority of cases it defers to the opinion and if the solicited opinion so recommends, submits the dossier to the Plenary (see above). Also in the Chamber of Deputies the Committee on European Affairs may forward any proposal to another competent committee. Unlike in the Senate's Designated Committees, in the Chamber this happens after substantial deliberation of the document. In practice, however, only some of the addressed committees submit any opinion.

1.8 In cases of a bicameral parliament – what is the division of competences in European affairs between both chambers; what are the procedures of coordination; who has the 'last word'; is there any consensus-reaching mechanism?

The Constitution of the Czech Republic contains provision¹² allowing for the two chambers to establish a joint body for the purposes of European scrutiny. This provision has never been invoked and, for the time being, the immediate and medium-term prospects for its invocation seem to be rather dim. Hence, there is no formal division of competences or coordination mechanisms in place to assure compatibility and save the Government from a "Sophie's dilemma" in case the chambers' opinions go against each other. This problematic situation does occasionally happen¹³ and is often party-driven—

¹² Article 10b(3) "An Act on the principles of conduct and relations between both Chambers and in their external relations, may entrust the exercise of the competence of the Chambers under Subsection 2 to a joint body of the Chambers."

¹³ It happened in case of the Proposal for a Regulation of the European Parliament and of the Council establishing a European Institute for Gender Equality, COM (2004) 81. The Senate recommended the Government to refuse the Proposal whereas the Chamber later supported it.

member of a minority caucus in one chamber, but wielding majority in the other, is over voted in the former, subsequently incites deliberation on the issue in the latter one, where opposite opinion is rendered. There is no reconciliation mechanism and the Government chooses between several options depending on whether it too has a strong opinion on the subject, on the state of negotiations in the Council, on domestic political situation, or even on the comparative quality of chambers' arguments. The Government can side with one of the chambers, it can enter into negotiations with one or both and/or it can seek to find a compromise solution.

1.9 Are there any regulations concerning specific procedures or *modus operandi* depending on the area (e.g. the question of the principles of subsidiarity and proportionality, or the issues of vetoing the European Council's initiatives to authorise the so-called 'simplified revision procedure' or proposals for the amendment of the Treaty)?

Specialized procedures are currently employed only to accommodate the differences in the legislative process on the European level (i.e. Second Pillar). Principles of subsidiarity and proportionality are essential scrutiny factors present in consideration of every European document in the area of shared competence. As to the situation after the coming into force of the Lisbon Treaty, significant amendments have been introduced in this respect. The "Lisbon amendments"¹⁴ of the Standing Rules of the Senate and of the Rules of Procedure of the Chamber of Deputies:

a) implement new powers entrusted to national parliaments by the Lisbon Treaty, in particular their right to veto decisions of the European Council authorising the Council to act by a qualified majority instead of unanimity¹⁵ and decisions determining aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure,¹⁶ and their right to bring an action before the Court of Justice of the European Union.¹⁷ In addition to the Treaty provisions, the amendments require the Government to obtain the approval of the Parliament before granting consent on behalf of the Czech Republic in application of the provisions where parliamentary veto is possible. As a result, even though no national parliament vetoes the decision in six month period and thus it can be put to vote in the European Council/Council, the Czech Government cannot give its consent without obtaining Parliament's approval.

¹⁴ Act of 6 May 2009 No. 162/2009 Coll. amending Act No. 90/1995 Coll., the Rules of Procedure of the Chamber of Deputies, as amended, and Act No. 107/1999 Coll., on the Standing Rules of the Senate, as amended.

¹⁵ Article 48(7) TEU, so called general passerelle.

¹⁶ Article 81(3) TFEU.

¹⁷ Protocol No. 2 on the application of the principles of subsidiarity and proportionality, Article 8.

b) seek to re-establish balance between executive and legislative power defined by the Constitution¹⁸ which has been shifted by the Lisbon Treaty containing relatively open-ended provisions on simplified Treaty revision pursuant to Article 48(6) TEU, on extending the powers of the Union (flexibility clause) or changing the special legislative procedure to ordinary one (passerelles) all of which necessarily diminishes the powers of the Parliament as a powerful actor in the process of ratification of international treaties.¹⁹ Therefore, amended Standing Rules of the Senate and of the Rules of Procedure of the Chamber of Deputies establish a duty of the Government to obtain approval of both chambers prior to granting, on behalf of the Czech Republic, consent in the Council/European Council in cases of application of those provisions.²⁰ Moreover, the deliberation on decisions of the European Council to amend the provisions of Part Three of the Treaty on the Functioning of the European Union under Article 48(6) of the Treaty on European Union shall be subject to the same regime as an international treaty.

2. The Document- and Procedure-Based Model and Practice of Parliamentary Scrutiny.

2.1 Would the overall system in place in your country correspond to the document-based or the procedure-based model of scrutiny of EU lawmaking and governments' position?

If this was the dichotomy, the Czech system of scrutiny would be document-based. Some qualification would have to be made in that both chambers receive information from ministers and debate in their presence the Czech positions regarding upcoming European Council meetings and some EU Council meetings. Also, the Second Pillar scrutiny is more topical than document-oriented.

2.2 Are the scrutiny procedures sector- or policy-specific (e.g. depending on area or voting method?)

¹⁸ Article 10a(2) of the Constitution: An approval of the Parliament [of a three-fifths majority of all Deputies and of a three-fifths majority of Senators in attendance] is required to ratify an international agreement [providing for a transfer of certain powers of bodies of the Czech Republic to an international organization or institution] unless a constitutional law requires approval by referendum.

¹⁹ Explanatory Memorandum to Act of 6 May 2009 No. 162/2009 Coll., amending the Standing Rules of the Senate.

²⁰ The consent has to be obtained in cases of decisions pursuant to Article 31(3) TEU, Article 48(6) TEU, Articles 153(2), 192(2), 312(2), 333(1) and (2) TFEU and Article 352 TFEU save for measures necessary for the functioning of the internal market.

There is one general procedure employed for all sectors and policies. Specific accommodating differences relate to certain policies (e.g. Second Pillar). Area and voting method are important political factors considered, but as the rules stand they do not trigger varying procedures.

2.3 Is the scrutiny formalized by the possibility of ‘mandating the government’ or of announcing a ‘scrutiny reserve’? How is the government’s conduct in relation to the instruments of parliamentary scrutiny sanctioned in law and practice?

As to formalized obligation of the Government how to act upon an opinion of one of the two chambers, two observations must be made. First, the formal statutory powers of the two chambers differ here in that only the opinion of Chamber of Deputies has statutorily²¹ defined consequences for the Government—it must “take the opinion into account.” The Senate Standing Rules, though more detailed than Chamber’s, do not contain an analogous provision. Second, and notwithstanding, in practice the Government treats opinions of both Chambers in the same manner. Governmental implementing measures²² specify that parliamentary opinions shall be taken into account without specifying chamber.²³

As a corollary of the Government’s obligation to take into account parliamentary opinion, there is an obligation to raise parliamentary scrutiny reserve in the Council whenever the Chamber or the Senate has started scrutiny on a given proposal. The Government is barred from voting on it until parliamentary scrutiny has been finalized.

Available sanctions are purely political. If a chamber suspects that the Government has not properly taken its opinion on board—it is usually the EU Committees that follow and check the Government’s conduct—relevant minister can be asked to provide explanation²⁴ and/or a formal resolution reprimanding the Government may be passed. All the above options have taken place in

²¹ [Rules of Procedure of the Chamber of Deputies, Act No. 90/1995 Coll.](#)

²² Government’s Directive on procedure of forwarding of the draft legislative acts of the EC/EU and materials of the European Commission to the Chamber of Deputies and the Senate of the Parliament of the Czech Republic, Article 6(8).

²³ The Senate Standing Rules’ “open endedness” is a result of fierce resistance in the Chamber of Deputies in the 2004 debates to confer on the second chamber any significant EU scrutiny powers. Note that the Senate Standing Rules, as opposed the Chamber’s Rules of Procedure, shall be passed if and when approved by both the Chamber of Deputies and the Senate. The Standing Rules of the Senate even contain a provision (repealed by the recent “Lisbon amendments”) limiting the Senate’s scrutiny procedures to just 35 days from the receipt of a proposal, as after this time the Government did not have to wait for the outcome of Senate procedures in order to proceed with negotiations. This limit became obsolete soon after 2004 and was never applied. As part of the “Lisbon Amendments” the time limit has been replaced with reference to the Protocol on the Role of National Parliaments, i.e. currently eight weeks.

²⁴ This can be done through a letter of the committee Chairperson to the minister expecting reply by the same means or by invitation to appear before the committee (or more, if several committees had been involved in preparation of the opinion).

practice, at least in the Senate. The Senate Committee on European Union Affairs also analyzes on a yearly basis all dossiers the scrutiny of which in the past resulted in Senate's opinion (up until they become law) and informs on the Government's conduct in negotiations on each of these dossiers—legislative proposals and important non-legislative documents. This exercise also often results in feedback for the Government.

Lastly, the "Lisbon amendments" provide for significant increase in the use of parliamentary mandates in specific situations (see 1.9 above).²⁵

2.4 Is there any substantial difference between parliamentary scrutiny over the European and domestic issues?

Yes, there are special procedures employed (see above, below, and all over) reflecting the unique European law-making process. The constitutional role together with formal and practical powers of the two chambers in European agenda significantly differs from that relating to domestic issues.

2.5 Does and should the constitutional sensitiveness of Justice and Home Affairs Policy lead to an increased activity of the parliament in this area?

It already has. It has been declared by different Senators to be an area of special sensitivity and interest to the Senate. This was underscored by extra close and lengthy scrutiny of many JHA/AFSJ dossiers (e.g. Europol transformation,²⁶ PNR, Prüm) in the Senate.

2.6 Have there been any proposals to reform parliamentary scrutiny in your country? What are the grounds (reasons) of such proposals? Which are the directions of the proposals? Who presented the proposal – parliamentary committees, the government, the public, legal or political scientists, &c?

The scrutiny system has only been operating some five years. Nevertheless, that is a long enough period for assessment of its functionality. Ratification of the Lisbon Treaty provided occasion for all the relevant actors to think over any adjustments or even a reform. Judging by the "Lisbon amendments" of the standing rules (see 1.9 above), the process is more incremental, drawing upon experience and resulting in fine-tuning of the system, rather than an overhaul.

²⁵ Although the term "imperative mandate" is commonly used for the procedure of obtaining the consent of the Parliament in cases described under 1.9 (passerelles, flexibility clause, simplified treaty revision) it would be more correct to speak about "compensation clause" since by giving its consent, the Parliament does not actually define the mandate of the Government for further negotiations.

²⁶ The Senate was the last chamber lifting parliamentary scrutiny reservation on the eve preceding political agreement in the Council at the end of Slovenian Presidency.

Proposals for adjustment have come from within the Parliament, who even jointly drafted them without much Government's input.

2.7 What are the specific measures adopted by the national parliament to meet requirements concerning efficiency of the scrutiny?

1. *Periodic review of Government's conduct regarding dossiers on which the Senate has given opinion (see 2.3 above).*
2. *Calling the Government to account every time the Senate feels its opinion was inadequately taken into account.*
3. *Direct communication with the Commission with notice given also to the European Parliament and the Council.*
4. *Sharing of information (state of scrutiny, resolutions) via IPEX database.²⁷*
5. *Co-ordination within the framework of COSAC²⁸ which enables to concentrate attention²⁹ and exchange information and some best practices.*

On the other hand, what may be the biggest possible efficiency measure—the establishment of a joint body of the Chambers for purposes of EU scrutiny pursuant to Article 10b(3) of the Constitution—seems to be blocked politically. Inter-chamber substantive cooperation in European agenda is also very weak.

2.8 How can the practical effects of parliamentary scrutiny be assessed? What criteria should apply in such assessment? What lessons – if any – can be drawn from such assessment?

This question has two prongs.

One is national. Building upon what was explained above, if the procedure is to be efficient and parliamentary opinions duly incorporated into national

²⁷ Interparliamentary EU Information Exchange containing i.a. information on state of affairs of the national scrutiny process including the direct communication of the national parliaments with the Commission (Barroso initiative).

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

²⁸ Conference of Community and European Affairs Committees of Parliaments of the European Union

<http://www.cosac.eu/>

²⁹ Pilot subsidiarity checks have been conducted within the COSAC in the anticipation of the Lisbon Treaty coming into the force. The dossiers to be checked used to be chosen annually from Commission's Legislative and Work Programme. Although this enabled the concentration of attention the quora necessary to trigger yellow/orange card procedures have never been reached. The last check under the pilot regime, the Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession, COM(2009) 154, is currently under way. The deadline for national parliaments' opinions is 17th December 2009. After that, the results will be available on [COSAC website](#). As for the future role of the COSAC in this field, national parliaments are far from being unanimous. The debate on this will have to be conducted under Spanish presidency.

positions by the Government, the Parliament needs to actively check the Government with regard to all the dossiers on which it has issued opinions and take measures at its disposal—essentially political—in order to hold the Government accountable every time the latter does not deliver. This is of course very demanding on the Parliament’s resources and political focus, but as the Senate’s initial experience shows—and though significant improvements can be envisioned—it can be done. Better coordination between the chambers would be beneficial and the successful parliamentary dimension of the EU Presidency showed that there is potential even for that.

Second prong is the assessment of parliamentary scrutiny on the European level. This is even more, much more, difficult to evaluate. Naturally, the parliaments’ inputs at this level are significantly diluted and there is not much that can be said besides the general and obvious. Parliaments’ involvement in EU agenda remains, and will remain even after Lisbon, primarily internal matter of the Member States. Some will retain or establish stronger levels of scrutiny, in some the parliaments will continue to defer to their governments. But due to the fact that there is scope and to the extent that it is used, governmental positions and consequently Council decisions acquire greater legitimacy and the end results are more likely to expect fewer problems with implementation of secondary legislation as the process contributes to building ownership by national parliamentarians.

2.9 Are there any mechanism of checking the effectiveness of the scrutiny within in the national parliament? Is there any formal regulation in this respect (by-law of the parliament; regulations of the European committee, &c.)? What would be the criteria that could apply to checking the effectiveness of scrutiny?

Generally see answers immediately above. There are no other mechanisms than the ones described—namely the periodical review and individual dossier follow-up. Statistics are kept and updated, but these do not make a good proxy to effectiveness as they say little about the depth of exchange and argument in the opinion. The sole (with difficulty) detectable criterion of effectiveness is the accommodation of the Government’s position to the subsequent opinion of the Parliament.

Important contributing factor when evaluating parliaments’ effectiveness is whether it is ready to use other channels of influence than through its government. These may be the direct communication with the Commission, exchange and scrutiny coordination with other national Parliaments (COSAC, IPEX) or even with the European Parliament.

3. The Government-Parliament Informational Asymmetry

3.1 What were the deficiencies of the mechanism of submitting the Commission's legislative proposals to the parliament by the government in your country?

There were some minor practical deficiencies like the fact that the Government chose to forward to the Parliament all documents received from the Council on a daily basis. This ranges between 600-900 documents weekly while the bulk of it is useless for the purposes of parliamentary scrutiny. Both chambers had to accommodate to such conditions.³⁰

3.2 Based on the regulation that legislative initiatives should be sent directly to national parliament, how effective is the mechanism of requiring the government to submit additional information deemed essential to take a proper decision or issue an opinion by the parliament and its bodies?

It does not make much practical (as opposed to symbolic) difference whether the documents are transmitted directly from the Commission or through the Government. It is a given practice that the Parliament, when deciding upon receipt whether it will scrutinize a document, does not have any preliminary Government position and has to rely on informal information, its own expertise or extraneous indices as to the significance and scrutiny-worthiness of the document. This is actually one of several instances where practice does not follow the word of the standing rules; especially that of the Chamber which presumes that European legislative proposals be presented with a preliminary Government position.

Nevertheless, the Government's position is essential for scrutiny and the Parliament will not put the dossier on the agenda until it receives the Government memorandum. The Government has an obligation to submit its memorandum in 14 days after the Parliament's decision to scrutinize. Government's delay results in postponement of Parliament's deliberation and with it postponement of eventual lifting of Parliamentary scrutiny reserve.

3.3 How and to what extent is the government obliged to explain the detail of a legislative initiative both for the country and for European integration? Are there any criteria applicable to such explanations? Is there any mechanism to force the government to present more detailed information and explanation?

³⁰ Both chambers employ electronic document sift systems designed to separate only scrutiny relevant documents.

There is a special form that the Government has to follow when preparing a memorandum for the Parliament. It contains such rubrics as Legal Base, State of Play, Positions of Member States, Positions of other Institutions, etc. The amount of detail and quality of information differs in individual cases and with responsible ministries.

If the Parliament is not satisfied, it is regular practice whenever it is felt needed to point to the deficiencies and ask for a new or rewritten memorandum.

3.4 Is there a formal hearing of the ministers before the Council's meetings?

There is formal hearing of the Prime Minister or Minister for European Affairs before and after each European Council meeting. In exceptional cases other ministers are invited for hearings before EU Council meetings. These are usually held by EU Committees.

3.5 In case of 'instructions' for the ministers on voting in the Council, what are and what were the criteria of this kind of decision of the parliament or its committees?

The mandates given to ministers are usually formulated more broadly. There is no formal procedure to be followed. The Parliament's resolutions rarely bare the minister from voting for or against a proposal, though it has happened.³¹ It usually provides a series of points of concern, sometimes with possible solutions, where the minister must seek changes. It is then up to her to apply the criteria and judge whether the compromise Council version will be palatable to the Parliament. The minister is aware that she can be called to account after the Council vote.

3.6 Do parliamentarians have access to relevant administrative research, diplomatic services' information, or other relevant policy-making props?

Specialized departments are at the service of parliamentarians dealing with European agenda in both chambers. These can also solicit information through their counterparts at different ministries incl. Foreign Affairs Ministry. The background materials prepared for Senators include information and positions from the widest possible sources and stakeholders.

³¹ For example, in its 370th Resolution delivered on the 13th session held on 23 April 2008 on the Proposal for a Council framework decision on the use of Passenger Name Record (PNR) for law enforcement purposes the Senate recommended the Government to adopt a negative position to the Proposal should it be approved in the wording submitted by the Commission. The Senate however, while expressing what provisions in the proposal are of serious concern (it was clear that it was unlikeable as a whole), did not specify which changes to the original wording should be made.

3.7 What kind of timing and management mechanism and instruments are to be implemented to avoid the risk of EU documents overflow?

The Parliament cannot scrutinize every document. It must prioritize. It must also try to plan ahead so that at times of heightened activity, it can be sure to pick-up the most sensitive dossiers. This is why it is dependent on the Commission's legislative planning that has unfortunately been everything but reliable. The Senate for example scrutinizes³² around 130 documents yearly.³³ This is its capacity under current conditions. Should the need for more extensive scrutiny arise, political will shall be needed to increase the number of members working on European scrutiny together with strengthening of the administrative apparatus. Under stabilized conditions, the greater the number of inflowing documents, the stricter the selection procedure must be.

3.8 What are the requisites for the parliament to be able to perform the new tasks effectively, e.g.:

- human and material resources (including access to communication, &c.);
- improvement of the dialog between the national parliament and the national government;
- new procedures that would allow for influencing the content of the European legislation and policy at an early stage;
- extensive use of information-flow as a basic instrument of influence on legislation and policy-making?

All bullet points mention salient issues that need to be constantly reassessed in order to maintain effective scrutiny or to improve it. Especially the third point alluding to "upstream" scrutiny deserves special attention. However the parliaments' influence in the pre-proposal phase is not a developed concept and while governments are struggling with it, the parliaments are in an even more difficult position to be successful on that front.

3.9 What consequences will the changes adopted in the Lisbon Treaty have on the organization of parliamentary scrutiny in your country?

The Lisbon amendments of the Standing Rules of the Senate and of the Rules of Procedure of the Chamber of Deputies have been described in 1.9 above. Moreover, as the current division of responsibilities for carrying out parliamentary scrutiny is based upon the pillar structure (see 1.6), there is a

³² The substantive scrutiny is concluded either by designated committee (in cooperation with other committees) or also by Plenary.

³³ For latest statistics see <http://www.senat.cz/evropa/nasenatu2008-eng.pdf>

legitimate reason to reconsider this practice, at least in case of the former third pillar.³⁴ However, the political decision³⁵ on this issue has not been adopted yet.

The other procedural modification, or rather adherence to the wording of the standing rules³⁶ in practice, comes from the necessity of observing the deadlines set for triggering the yellow/orange/red card procedures. Although the Standing Rules of the Senate even before the Lisbon amendments imposed on the President of the Senate duty to call special plenary meeting so that it may commence not later than within thirty two days³⁷ of the delivery of the proposal for legislative act to the Senate, it never happened in practice, EU dossiers are always debated at regular Plenary sessions.

4. Democratic Legitimacy of European Governance

4.1 Does the new role of the national parliaments increase the democratic legitimacy of the European Union? What kind of criteria might be useful to assess the quality of those changes?

A cynic would answer that the new provisions on national parliaments are just a masquerade hiding that no substantial democratic changes were brought about by Lisbon. The optimist (but are there any?) would see the new provisions as groundbreaking as they include the national parliaments among the power actors in the European law-making process. They will be given the chance to actually block a proposal in the area of shared competence, however, most of the time only if certain—very tough—conditions are met.³⁸

My middle ground would be along these lines: directly, locally elected representatives of the Member States' polities that have voluntarily given up large portions of exercise of their legislative capacity and that, when implementing European directives, every day iterate this commitment to take part in the supranational enterprise called EU—national parliaments. Every more structured and feasible involvement of these actors in European policy brings more...democracy and legitimacy. It aims at a more responsive and deliberative law-making process. We may not see a waterfall of yellow,³⁹

³⁴ Of course, Common Foreign and Security Policy maintains its specifics even under the Lisbon Treaty.

³⁵ It will have a form of procedural resolution of the Senate.

³⁶ Senate's Standing Rules, Section § 119f(3)

³⁷ This deadline reflected the original six-week deadline set by primary law, according to the Lisbon amendment of the Senate's Standing Rules it was replaced by the reference to primary law itself (Article 4 of the Protocol on the role of national Parliaments in the European Union).

³⁸ This does not apply to provisions enabling national parliaments to veto the decision of the European Council/Council according to Articles 48(7) TEU and 81(3) TFEU where no conditions need to be fulfilled. It remains to be seen though how often will these provisions be used. The question is whether this "multiplied threat" (there are 40 parliamentary chambers in the EU) does not actually make them inapplicable.

³⁹ Protocol No. 2 on the application of the principles of subsidiarity and proportionality, Article 7(2).

orange⁴⁰ and red⁴¹ cards or petitions to the ECJ initiated by National Parliaments. These mechanisms and their however frequent use should not be considered indicators of democratic legitimacy. But we are likely to see more sensitively drafted proposals with better argued subsidiarity assessments.

Besides the above prediction of “soft” impact of the new provisions, the only “hard” assessment criteria I can think of in this respect are levels of (non)transposition of directives, participation rates in EP elections, Eurobarometer polls, and the like. Level of democratic responsiveness is hard to evaluate in hard data.

4.2 Are there in your parliament any proposals to change procedures of cooperation with other parliaments in order to meet the requirements of the Lisbon Treaty?

Coordination among national parliaments, it is agreed, will be crucial for the functionality of the subsidiarity procedures. The Czech Parliament has always supported expansion of functionalities and better use of the IPEX database. The Senate instantly uploads information regarding every document under scrutiny, including English versions of Senate resolutions on European agenda and brief summaries thereof. On various platforms (COSAC, direct communication with the Commission, meetings of Secretaries General) the Senate has reiterated that the level of reliability of the database depends on timeliness of uploading of relevant information by national parliaments. There is wide space for improvement.

The Senate also took active approach in the debate on the procedures in the field of compliance check with the principle of subsidiarity. As a member of COSAC Troika (due to the Czech EU Presidency) it drew attention⁴² to the procedural difficulties with completing scrutiny on time during parliamentary recess. Therefore, it welcomed the letter from President Barroso sent on 1st December 2009⁴³ whereby he declares, among other, that the month of August will not be taken into account when determining the deadline referred to in Protocol No. 1.

During the CZ Presidency, the Parliament also sought to initiate debate on future parliamentary oversight of Europol and evaluation of activities of Eurojust.

4.3 How far may the requirements of the Lisbon Treaty concerning relations between the European parliament and the national parliament influence the

⁴⁰ Ibid., Article 7(3).

⁴¹ Article 48(7) TEU, Article 81(3) TFEU.

⁴² Both in the COSAC Conclusions adopted under the Czech presidency and in the Troika debates.

⁴³ The letter deals with practical arrangements for the operation of the subsidiarity control mechanism under Protocol No. 2 of the Lisbon Treaty.

mechanism of parliamentary (political) accountability and control of the government?

When it comes to cooperation between the European Parliament and the national parliaments, the Lisbon Treaty is specific in its provisions on the parliamentary oversight of Europol and evaluation of Eurojust. This should be regarded as creating an additional channel for national parliaments' scrutiny, conducted in cooperation with the EP. The traditional one—via their Governments—remains available and should be used to the highest possible extent. Hence, the accountability check question vis-à-vis the Government does not come up in relations of the national parliaments with the European Parliament.

4.4 Does the new role of the national parliaments increase the efficiency of the process of enhanced integration in the European Union?

Good and hard question. The funny thing about the Lisbon provisions on national parliaments is that everyone who tries, regardless of his or her stance toward integration, can find some encouraging prospects in it.

The reserved European can welcome the parliaments as new or strengthened guardians of national regulation against European encroachment.

The small government conservative or laissez faire liberal can see more potential procedural hurdles in law-making as a tool for less or better regulation.

The Euro optimist can see this development as proof that Europe can reform and that it is becoming even more deliberative and consensus seeking.

The National Parliamentarian can look forward to better argued subsidiarity assessments and the initiators' more critical approach to what shall be proposed.

The MEP can see more leverage for his institution vis-à-vis the other institutions as it can use its threat to join the national parliaments and undersign their possible orange card.

All and all, it is just impossible to tell.

5. Democratic Legitimacy of National Governance

5.1 May the new role of national parliaments increase the level of scrutiny of national governments (*viz.* lead to strengthening, as a side effect, the overall parliamentary control over the government)?

Why not? It is beyond doubt that the gravity centre of national parliaments' activity in European agenda will remain in scrutiny of their Governments. They

must assure that no dilution of attention takes place as this is their primary role in this respect. On the other hand synergies can be discovered. The Parliaments can use the extra channel of influence to voice their concern and consult their findings not just with their government but also with other governments and eventually other institutions. The “Barroso Initiative” on maintaining legislative dialog with individual national parliaments regarding individual proposals is said to remain in place even after Lisbon’s entry into force. This is important as this consultation mechanism is not limited to issues of subsidiarity.

5.2 Does the new role of national parliaments increase the standing of the parliamentary opposition as an element of the democratic participation in the legislative activity on national and European level? Are there any specific regulations in the parliament’s by-laws concerning enhanced participation of the political opposition in European Committees and the like?

Both EU committees are established by proportional representation so the opposition has influence corresponding to its influence in the Plenary. In the Senate, it is not only the EU or Foreign Affairs Committees in their respective agendas that can move a European document for debate to the Plenary, but also a group of 17 Senators (out of 81).

Political opposition is also indirectly empowered by the symmetrical strengthening of both parliamentary chambers in European agenda. As political composition of the chambers can differ, and empirically it does, the minority in the Chamber can express its opinion through allies in the Senate where they can be in the majority. This can sometimes lead to a considerable limit on the Government’s negotiation conduct (see 1.9).

5.3 Is there any special regulation concerning access to government information in the field of the Common Foreign and Security Policy and in the field of Police and Judicial Co-operation in Criminal Matters?

There is no special procedure for this. The Parliament can request any information necessary for its work and there have been no problems with Government’s response to such requests.

5.4 Are there any suggestions in your country concerning improvements to be made in the democratic scrutiny and control (e.g. publicity of the European Committee’s proceedings; the possibility of the Committee to give instructions to the government to bring proceedings before the Court of Justice on subsidiarity or proportionality grounds; possibilities of direct discussion

between the committee members and members of the European Commission &c.)?

The European Committees, in fact all bodies of the Parliament, sit and deliberate in public and all output documents are also made public. The other suggested provisions in brackets have been incorporated by the “Lisbon amendments” to the Senate Standing Rules and Chamber’s Rules of Procedure (see 1.9 above). The actions on grounds of infringement of the principle of subsidiarity by a legislative act of the European Union can be submitted by the Committee for European Affairs of the Chamber of Deputies or by designated committee of the Senate (see 1.6 above) or by a group of at least 17 Senators or 41 Deputies. If the chamber approves a draft action, it shall authorize a Member and/or other suitable person, to represent it in proceedings before the European Court of Justice. The action is to be delivered to the Government without delay. The Government shall provide the authorized representative with all the necessary co-operation in respect of the appropriate course of action within the proceedings.

Members of the Czech Parliament engage in debate with Members of the European Commission during the Commissioners’ visits to the Czech Republic and when committees or individual members travel to Brussels. This does not require special provisions in the standing rules.

6. The Lisbon Treaty and the Protocols

6.1 What is the meaning and function of the new Article 7(3) of the Protocol on the Application of the Principles of Subsidiarity and Proportionality? Are the obligations cumulative or alternative with those arising under Article 7(2) (the Protocol’s “furthermore”)?

The relationship between the two articles is gradual. Higher fraction of votes triggers more severe review mechanism.

6.2 What is your opinion on ‘the power to block legislation’ (Article 7(3) (b) of the Protocol? Will the role of the national parliament be enhanced or will it be of a rather symbolic character (*i.e.* the adoption of proposed legislation will not be effectively stopped)?

Experience from the coordinated subsidiarity tests conducted under the auspices of COSAC reveal that it will be extremely difficult for the national

parliaments to reach the required quora.⁴⁴ Moreover, if the blocking threshold is reached, one of the institutions will need to step in and join the national parliaments in what will essentially be a type of “less Europe stance.” And that is unlikely. In none of the coordinated subsidiarity tests (see 2.7) conducted under the auspices of COSAC has the number of votes assigned to national parliaments approached the necessary quora. Outside of the coordinated tests, only exceptionally is the number of national parliaments commenting on the proposal and communicating their results to the Commission higher than three.⁴⁵ This would suggest that the effect be more indirect, as explained above, by motivating the Commission to better argue its proposals. Only very rarely will Art.7 of Protocol 2 provisions be invoked.

It is important to keep in mind that it is the duty of the Council and Parliament as legislators to make sure that the principle of subsidiarity is observed regardless of any outside influence. Legislative procedure can (and should) therefore be terminated if a breach is detected even without official initiation by the national parliaments.

6.3 Are there any new changes to the mechanism of activity of the national parliament proposed or under way as a response to the regulations of the Lisbon Treaty?

There are no new changes foreseen except for those already mentioned in 1.9 and 3.9.

6.4 Is there any legislative initiative concerning the new role of the national parliament under the Lisbon Treaty? What is the substance of such proposals?

Together with the chambers’ assent to ratification of the Lisbon Treaty, amendments to the European parts of the Standing Rules of the Senate and the Rules of Procedure of the Chamber of Deputies have been passed⁴⁶ (see 1.9).

6.5 Concerning subsidiarity control:

a/are there specific rules of procedure?

⁴⁴ Protocol No. 2 on the application of the principles of subsidiarity and proportionality: one third/a quarter of all the votes allocated to the national Parliaments pursuant to Article 7(2), simple majority pursuant to Article 7(3).

⁴⁵ According to Report of the Representative of the Czech Senate in Brussels from July 2009, only four proposals received more than three opinions in 2008.

⁴⁶ Act of 6 May 2009 No. 162/2009 Coll. amending Act No. 90/1995 Coll., the Rules of Procedure of the Chamber of Deputies, as amended, and Act No. 107/1999 Coll., on the Standing Rules of the Senate, as amended.

Standard procedure applies with the addition of special mechanisms regarding communication of the findings to concerned actors and coordination with the government should ECJ proceedings be triggered.

b/ are there portfolio arrangements?

The Committee on European Union Affairs is responsible for I. Pillar and the Committee on Foreign Affairs and Security for II. and III. Pillar agenda (but see 3.9).

c/ are there agreements between the government and the parliament?

Though an exchange of reassurances took place in the course of preparation of the “Lisbon amendments,” there are no formal agreements.

6.6 What kind of area-specific criteria may be applied to control of subsidiarity?

I respectfully decline to elaborate upon this here, the main reason being that I don't know.

7. The National Parliaments' Involvement and the Construction of a European Polity.

7.1 Did the Lisbon Treaty raise awareness of the magnitude of the fundamental issues of the European integration to be discussed and solved in the years to come?

Reporting from the Czech Republic, one needs not—or is even reluctant to—elaborate on the quantity and quality of the publicity that the Lisbon Treaty received. There is no doubt that the various political actors were raising awareness on the basis of “the magnitude of the fundamental issues of European integration.” But as any reasonably vigilant outside observer can suspect, the debate was not directed at the issues that are “to come,” but that the principal message was rather that the Lisbon Treaty itself is the breaking point in the EU's development and of the Czech Republic's democratic existence in the society of European nations—with different actors emphasising different parts of the last phrase.

Arguments that concentrated on the issues ahead for the solving of which the Lisbon Treaty was presented as a tool—whether more or less adequate—were scarcely debated. Forward looking arguments, both from the supporting and dissenting camps, seemed to have been limited in a fundamentalist manner to whether there will be any reasonable future—for some with and for some without it.

7.2 What are the European policy issues under discussion within the national parliament? Is the national parliament ready to become a substantial actor in the European policy making that also includes the strategy of integration?

The institutional debate starting with the drafting of the Treaty establishing the Constitution for Europe and ending with the ratification of the Lisbon Treaty was long, complex and exhausting. Several political players have changed perspectives in the process just as political majorities have shifted.

The Czech Parliament has been active in the “European debate” and has used every occasion to reiterate that it intends to stay at the centre of the discourse. For instance, the President of the Senate called a conference of his partners to discuss the implications of the Lisbon Treaty on national parliaments.⁴⁷ The Czech Presidency of the COSAC had concentrated on the role national parliaments will play in bringing more accountability to the Area of Freedom Security and Justice and led an extensive debate on the national parliaments’ input to the implementing provisions of the Lisbon Treaty on joint oversight of Europol and Eurojust by national parliaments and EP.⁴⁸

As to strategy of integration, the debates in the Senate—as the chamber that is every year presented with the Government’s report on the development of the European Union during the preceding year and its further development⁴⁹—have on several occasions pointed to inadequacies of the Czech Republic’s EU strategy and the Senate may take the initiative in this respect.

7.3 Are there any special regulations or proposals of regulations concerning participation of representatives of NGOs, trade unions or organizations of employers in the activity of e.g. the European Committee of the parliament?

There are no special regulations or proposals concerning participation of these stakeholders. However, their representatives are often invited and given the floor in committee debates (not to mention topical conferences and seminars organized by the Parliament or on its premises). In any case, all the meetings are open to the public and anyone can be given the floor after a committee vote on the issue.⁵⁰ Senate and Chamber administration receives and sometimes even solicits position papers from organizations; these are included in background documentation for committee and plenary meetings.

⁴⁷ Central European Summit of Speakers of Parliaments “New Forms of Co-operation of National Parliaments in the European Union” hosted by Speaker of the Senate, Přemysl Sobotka, Prague, 26.-27. September 2008.

⁴⁸ See Conclusions adopted by the XL COSAC, Paris, 3-4 November 2008 and Contribution and Conclusions of the XLI COSAC, Prague, 10-12 May 2009, <http://www.cosac.eu/en/documents/contributions/>

⁴⁹ Section 119(1) a) of the Act No. 107/1999 Coll., on the Standing Rules of the Senate, as amended.

⁵⁰ The author has never witnessed refusal to give the floor to any such representative that asked for it.

7.4 Are there any proposals to include voices and opinions of interested groups of society before e.g. the European Committee of the parliament so as to enhance the level of democratic legitimacy by annexing concerns thus voiced to the parliament's final statement on the European matters?

See answer to 7.3.

7.5 To what extent may the new mechanism of involvement of the national parliaments into European affairs have impact on hitherto prevailing understanding of domestic and European politics?

Let me take this opportunity to pay tribute to the author of this questionnaire. This question, like many others, is very well placed. But a proper thorough answer would require much more than a few paragraphs that this questionnaire can bear.

The standing ("old") mechanism has arguably succeeded in changing the way that the bigger portion of the parliamentary political representation thinks about European politics and its impact on the domestic scene. It is now recognized why the Parliament's input is important for greater legitimacy (if not also quality) of national negotiation positions, greater Government accountability and signalling of the Parliament's attitude toward eventual implementation of future measures.

As to the "new" mechanisms, it is too early to tell. On one hand, there is some deep scepticism as to its practical impact. On the other, and this could at times be the same groups or individuals, there is strong determination to make the maximum use of the new opportunities.

[7.6 Is there any detectable evolution in the practices of implicating Members of the European Parliament in national parliamentary work or in the political parties' personnel policy concerning European and national elections?]

[Very little or none. The above provisions for MEPs' participation at EU Committee meetings are scarcely used. This is mostly due to scheduling conflicts. In the Senate there is and has been a general invitation for the Czech MEPs to attend EU Committee meetings and all invitations with agenda are communicated to them.

Currently there is a new initiative being launched that is inspired by the UK Parliament's interaction with UK MEPs. The plan is to hold regular informal meetings two to three times a year between Senators, Deputies and Czech MEPs. It is not yet clear how much focused these meetings will be but they are

likely to concentrate on current pending legislation rather than being mere general fora for interaction and networking.^{51]}

8. The National Parliament under the Lisbon Treaty and Beyond

8.1 Considering that legislation in the field of Justice and Home Affairs comes to be an ever more vital aspect of the development of European integration, are there any concepts or proposals for a more intense influence of the national parliament on these matters?

This realization is very well present in the Czech Parliament (see answers 2.2, 4.2, 4.3, 7.2). There always has been strong emphasis of scrutiny of JHA/AFSJ matters which is likely to continue with use of standard procedures. To date, no special concepts or proposals have been tabled.

8.2 What kind of conditions should be met to make national parliaments more influential in setting the agenda of the European Union?

- *On the part of the Commission: The Commission needs to take seriously its obligations concerning subsidiarity impact assessments in all legislative proposals in shared competence area and in all other preparatory documents. It also needs to continue the fairly successful Barroso initiative and develop it further taking on board the recommendations of COSAC. These include most importantly better feedback on how the Commission has dealt with national parliaments' reactions to its proposals both individually and collectively with regard to each dossier.⁵² The Commission SG also needs to further work on educating the different DGs regarding the initiative, make sure that responses drafted by these DGs are of certain minimum depth and quality and explain to those drafting them the reasons why this is done.*
- *On the part of the Council: Generally, to pay due respect to parliamentary opinions and reserves, and to provide the widest possible access to information for their respective national parliaments.*

⁵¹ The first meeting of this kind was hosted by the Senate and took place on 23. September 2009; the next one is planned for 31. March 2010.

⁵² See for example Contribution and Conclusions of the XXXVII COSAC, Berlin, 14-15 May 2007, Contribution and Conclusions of the XXXVIII COSAC, Estoril, 15-16 October 2007, Contribution and Conclusions of the XXXIX COSAC, Brdo pri Kranju, 7-8 May 2008

<http://www.cosac.eu/en/documents/contributions/>

- *On the part of the EP: To regard the national parliaments more as privileged partners seeking better laws arising out of a more accountable process, and less as just another in the long line of stakeholders in a given issue.*
- *On the part of the national parliaments: There is a lot here. The conditions under which NPs can do a better job will be very individual as NPs' quality of scrutiny and influence in European affairs differs and certainly will differ in the future as well. But the essential need is for national parliaments to find ways of attaining better, faster and more efficient information flow (IPEX) and to realize that while they will rarely be able to act as one block vis-à-vis the institutions on substantive issues. They need to stand as one when important procedural decisions affecting their position are taken (e.g. Europol/Eurojust oversight implementing provisions).*

8.3 Is there any discussion concerning the possibility of the model of parliament evolving from one of a rather reactive towards a more policy-formulating body?

Little or none. The only such instance is the rudimentary debate about the role of the Senate as a possible forum for wider societal debate on Czech Republic's EU integration strategy.

Personally, I see the Lisbon NP system's most severe deficiency exactly in the fact that it emphasises the Parliaments' role as strictly reactive, blocking, down striking. Such role essentially limits the Parliaments' possibilities for contributing to shaping the integration process bottom-up. How about legislative initiative to national parliaments? . . . But that is for another debate.