

Parliamentary Toolbox: Explaining National Parliamentary Involvement in European Affairs

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Abstract: National parliaments in Europe have been seen as one of the possible solutions to the democratic deficit – the disconnection between European Union institutions and the citizens of Europe. Since national parliaments remain close to their citizens, giving them more say in the policy-making process could give the European Union more input legitimacy. To what extent does this occur, and what “tools” do parliaments use to get involved? What causes some parliaments to get more involved than others, or to be more likely to use a certain tool? This paper introduces the idea of a “toolbox” that parliaments have at their disposal, and discusses three main characteristics that separate one tool from another. One characteristic is automaticity, which is how automatically/easily a parliamentary tool can be repurposed to influence EU policy-making, rather than national policy-making. A tool’s automaticity largely depends on how institutionalized and formal it is, since more institutionalized tools may be harder to repurpose. For example, questions posed to ministers can easily be asked about European policy, rather than national policy, so these have high automaticity. Another useful concept is visibility, which corresponds to how public a tool is. Depending on what a parliament is attempting to achieve, publicity may be beneficial or necessary. The third main characteristic is the number and type of actors that are required to use a tool, as an individual may be able to more easily repurpose some tools for EU involvement, while others require committee, party, majority, and/or plenary support. The paper then focuses in on the different types of tools more clearly and discusses how parliaments should use different tools based on these three key characteristics. Generally, parliamentary strength should matter most for the use of less automatic and more institutionalized tools, since stronger parliaments will be better able to change these institutions. High levels of public Euroskepticism should matter most for public tools. More fragmented legislatures should make more use of individualized tools and less of those that require more coordination among actors.

Note to CPW Workshop participants:

Thank you for reading my paper! This chapter is the second chapter of my current book project, in which I develop and test the theory I present here. The first chapter introduces the idea and sets out one of the main normative implications of this work, which is that involving national parliaments could help bridge the democratic deficit between European citizens and the European Union's institutions. The subsequent chapters test parliamentary involvement via the three main tools I discuss here – questions to ministers, passing opinions under the EU's Early Warning System (explained below), and involvement of the transposition of EU legislation into national legislation.

There are three topics on which I would particularly welcome comment. First, I have tried to adequately explain the EU's structure and legislative process, while also trying not to get bogged down in those details, so it would be helpful to know where more (or less) clarification is needed. Second, I am in the process of converting this from a dissertation chapter to a book chapter, so I am looking for additional changes that would make it seem more focused and polished. (That process has involved cutting a lot out, so if there are things that are missing or seem extraneous, that would be great feedback.) Third, I am also particularly interested in suggestions about how the theory could be further developed or clarified.

A quick EU primer (I'm not sure where this should go in the book, but I'm putting it here for those who are not familiar with the way the EU works):

The European Union has three main institutions. The Commission essentially acts as the executive, and is organized similarly to a government cabinet. Each country appoints one Commissioner, who is in charge of a policy portfolio. The Commission proposes European legislation. It is supposed to represent European interests, and is generally seen as a proponent of further integration.

The Council has historically been the main legislative body at the EU level, but now it is increasingly seen as the upper house in a bicameral system. It meets in policy configurations (Agriculture, Foreign Affairs, etc.), and each configuration is made up of the national ministers for that policy area. (In other words, the twenty-eight national foreign affairs ministers meet in the Foreign Affairs Council.) The Council has generally been seen as the institution that defends national interests, and it presents one of the most obvious avenues for national parliamentary influence, since it is made up of national ministers.

The European Parliament (EP) can be thought of as the lower house of the legislature. It has increasingly gained influence, and voters in each member state directly elect its members. MEPs (Members of the European Parliament) are elected from national party lists, but join together in transnational party groups within parliament. The EP is generally viewed as being in favor of further integration. The EP is the direct representation of citizens at the European level, although low voter turnout and interest raise concerns about whether citizens truly feel represented by their MEPs.

Introduction

Over the last few decades, national parliaments have increasingly gained an interest in influencing European-level politics. The European Union now legislates in an increasing number of policy areas, and increasing amounts of national legislation are affected by or based on European legislation. While estimates for how much of national legislation is related to European law vary quite a bit, some are as high as 90%. This narrows the space for national legislative activity, especially in those policy areas where the EU is more active. This creates an incentive for national parliaments and their members to try to influence the EU policy-making process, especially if voters may blame their national politicians for European policies. Additionally, scholars and politicians have suggested that increased involvement by the national parliaments might help alleviate the democratic deficit, or the sense of disconnection between the European institutions and European citizens.

Attempts to bring the national parliaments into the process have been rather slow and incoherent. These efforts have been met with a variety of challenges, including political, procedural, institutional, and ideological ones. For example, opinion is not necessarily united on *whether* the national parliaments should be involved, and it is certainly not unanimous on *how* national parliaments should get more involved. In order to answer these questions, I develop a theory of when and why we should expect to see parliaments getting involved in certain ways.

In order to do this, I propose a parliamentary toolbox framework, which thinks systematically about the different types of tools that parliaments could use to achieve their goals. I focus here on their use of these tools in relation to European policy, which helps to remove a substantial amount of cross-national variation. All of the parliaments face the same set of policy issues, the same legislative timeline at the EU level, and the same supranational actors. These similarities help to make cross-national parliamentary activity much more comparable than is often the case for purely domestic activity.

However, the same framework could also be applied to domestic legislation and to legislatures outside of Europe.

The Parliamentary Toolbox

I conceive of each parliament having a set of tools, or methods of involvement, at their disposal. The concept of a “parliamentary tool” includes any mechanism parliaments can use to influence policy. In the discussion here, I focus on tools for influencing European level policies, but one could also focus on tools for domestic or subnational policy-making. Examples of tools include parliamentary debates, committee hearings, motions or resolutions, budgetary approval or the “power of the purse,” and the ultimate tool – the vote of no confidence. The three that I focus on throughout this book are questions that MPs can pose to members of their government, opinions on EU legislative documents that parliaments can send to the European Commission, and involvement in the transposition of European laws into domestic legislation.

Thinking of each of these as one tool in a larger toolbox is helpful because it allows us to consider what systematic considerations can explain why a certain tool is used for a specific purpose or situation. Just as you might select a certain screwdriver or drill bit for a specific task, MPs and parliaments are likely to choose the tool that is best suited to a particular purpose. This may also depend on the set of tools that are available to them, such that some tools could be supplementary or complementary to other tools. Therefore, when we consider why a parliament uses an individual tool, such as parliamentary questions, we should consider what other tools that parliament has in its toolbox and why one tool might be the best one for a particular purpose.

I therefore consider three main characteristics that make one tool more useful in certain situations than in others. The first is relevant for how parliaments attempt to influence EU-level politics, which is the goal I focus on here. For this purpose, one important characteristic of a tool is its level of

automaticity, which is how easily and automatically it can be repurposed from national politics to EU politics. The second is what type of actor it is available to, such as whether it is something that individual MPs can use, party or majority support is required, or the opposition can use it. The third is how public it is, in terms of its visibility to the media and citizens. I return to these characteristics below.

In addition to variation across these characteristics, parliamentary tools also vary in their availability to parliaments and their quality. Not every parliament has every tool in its toolbox, and some tools may be stronger or more fine-tuned than others. For example, all of the parliaments under examination here have a European Affairs Committee. However, they vary in size (number of members), which may impact their capacity to process information and conduct business. The EU Select Committee in the House of Lords has six subcommittees with over seventy members. By comparison, the European Union Affairs Committee in the Polish *Sejm*, which is the largest committee in that chamber, only has about forty-five members. These committees also vary in terms of prestige, supporting staff, institutional powers, and level of activity. Despite these differences, the committees will always be more or less useful than other tools in certain situations. For example, committees are always going to be more useful for the detailed work of deciding which dossiers from the Commission are worthy of further attention than some other tools, such as a debates. On the other hand, if a parliament is trying to communicate with its public about the EU, debates are much more likely to be useful than committee work. If one is trying to hammer a nail, even a poor quality hammer is going to be more useful than a screwdriver.

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

control. In this case, they will want to use a more public tool, such as parliamentary questions or debates.

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

At the level of national politics, we see that different parliaments do tend to favor certain tools, which are likely the strongest tools in their toolboxes. Parliaments can classically be divided into "talking shops" and "working parliaments," based largely on the strength of certain sets of tools and a focus on these tools. Some parliaments, like the British House of Commons, focus largely on questions and debates, and are considered largely talking shops. Others, like the German *Bundestag*, focus more on shaping policy directly, often through the committee system. Questions tend to be more important in talking parliaments, like the UK, whereas more tends to get done through closed-door cooperation with the government in working parliaments like the German *Bundestag* (Rozenberg, et al. 2011).

In many cases, it makes sense that a parliament's favorite and highest quality tools for national politics would also be the best tool for European level politics. Therefore, we should expect to see similar differences when it comes to European politics. Wessels (2005, 462-463) finds that: "working parliaments – those where the governance function is obviously dominant – regard themselves as powerful enough to play the European policy game in direct contact with the government, informal coordination and bargaining... Parliaments that serve more as houses of deliberation, [in contrast] use

articulation and voice as the way to react to European policy-making.” In support of this argument, research on national parliaments has tended to find that patterns of behavior have tended to follow over from domestic affairs into EU affairs, and then into EU crisis activity. These patterns of behavior might also be considered to be parliamentary strength, particularly if one only considers certain tools. Since some measures of ‘parliamentary strength’ also include the strength of some of these tools or related tools, it is less surprising that much of the previous research finds that this is an important predictor of involvement.

Characteristics of Parliamentary Tools

Automaticity

Automaticity refers to how automatically a tool can be repurposed from national political uses to European politics. This is generally related to how formal or institutionalized a parliamentary tool is, since more institutionalized tools will generally be harder to repurpose. Do rules and procedures need to be changed to use that tool for EU affairs? If so, can the parliament make those changes on its own, or does the government need to be involved? Under this conception, an institutionalized or formal tool is one that is less automatic. Existing institutions must be adapted or new ones developed in order for that tool to be useful in EU affairs. In contrast, less institutionalized or formal tools are ones that are automatic – the existing institutions can be more automatically used to help parliaments become involved in European policy-making.

This level of institutionalization and automaticity is the first of the main characteristics that I argue is important when comparing parliamentary tools for European affairs. For example, the European Affairs committees are quite institutionalized or non-automatic. Committees tend to show a fair amount of stability over time and to an extent across parliaments. Most parliaments have a committee on foreign affairs, a committee on the environment, etc. Creating a new committee, and

particularly creating a new committee with prestige, staff, (strong) powers of oversight, and potentially special prerogatives, such as mandating the government's position in the Council or being able to make decisions on behalf of the plenary, requires the development of a new institution or the adaptation of existing institutions. It is generally much easier to use an existing institution, even if using it for a different purpose, than it is to adapt or create institutions. Changing or creating institutions is also more likely to be conditional upon the existing institutions, as these have a tendency to be path-dependent.

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

Various other tools require different levels of institutional change in order to adapt them for use in EU affairs or to strengthen them. One tool, which I examine later, is the ability for parliaments to send opinions to the European Commission about proposed legislation. If sufficient numbers of national parliaments send "reasoned opinions" arguing that proposals violate the principle of subsidiarity, which says that all legislation should be made at the closest possible level to the citizen, then they may be able to delay or block legislation. Either way, the Commission is supposed to respond to all opinions, opening a "political dialogue." This tool may require more or less institutional changes, depending on the parliament and how strong they want the tool to be. For example, in 2013, the UK House of Commons "indicated it was in negotiations with the Government" to change the institutions surrounding various

elements of its procedure for the scrutiny of EU legislation, “including: whether the Explanatory Memorandum (supplied by UK ministries on Commission proposals) should contain a detailed statement on subsidiarity scrutiny... [and] strengthening co-ordination with other national parliaments,” among others (COSAC 2013a). The House of Commons can write reasoned opinions whether or not the Explanatory Memorandum includes a detailed statement on subsidiarity, so this type of change does not preclude them from writing reasoned opinions. However, they believe that it would strengthen this tool. As a legal council for the Commons’ European Scrutiny Committee said, “the government has a frustrating habit of saying that the legislation is not necessary, and yet not having subsidiarity issues.”¹ Since the Commons’ committee is a Euroskeptic outlier compared to the rest of the House, they would generally be happy to agree with subsidiarity complaints if given a reasonable argument. Being in agreement with the government would only strengthen both of their positions in Brussels. They therefore believe they could more effectively use reasoned opinions if this institutional change was made. Interparliamentary cooperation is also a tool that they can use without substantial changes to institutions, since they can attend inter-parliamentary meetings and make phone calls to other parliaments, but again, there are institutional changes that could be made that would strengthen this tool.

Institutional changes may also be necessary at both the national and European levels, depending on the change. For example, there has been considerable discussion (and one attempt at) introducing the idea of a “green card,” which would allow a group of national parliaments to collectively suggest that the Commission propose new legislation. This could conceivably be done under the guise of the political dialogue between the Commission and national parliaments, although then it would not be a particularly strong tool, since the Commission would be under no obligation to listen. However, some parliaments are concerned that even doing this as part of the political dialogue would require

¹ Legal Counsel to the European Scrutiny Committee, Personal Interview, UK House of Commons, London, December 4, 2014.

treaty change at the European level, since the treaties do not suggest any power of initiation for the national parliaments. Interestingly, the Polish *Senat* has also suggested that this type of tool would require institutional changes at the national level as well, since there is “no legal basis for proactive actions in external and European relations within the framework of Polish Constitution and law. According to the Polish Constitution, only the Government had a right to pursue an external policy, while the Parliament could only control and verify it” (COSAC 2015). Thus, one needs to consider the institutional changes that may be necessary at all levels.

Public Visibility

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

“score points” with voters, and they are also the best (and possibly only) way that national parliaments may be able to increase a sense of connection between voters and the European Union.

There are some times when using less public tools like these is clearly a benefit. This is particularly true if using a public tool would publicize existing divisions between or within the governing party or parties (Auel and Raunio 2014b). Public tools can also be problematic if doing so could cause problems in Brussels. First, it would risk showing weakness and division to other governments, letting them know that there is not a united front. Second, it could make the negotiation strategy for the Council public to other governments. This concern may lead some committees to close their doors, especially if they are discussing the issue of the government’s position ahead of Council meetings (Auel 2013). One Danish MP spoke about how they will have closed meetings if they are going to talk about what other governments or national parliaments are going to do, especially since it would “come off weird” that the Danish parliament is, for example, talking about the British parliament.² Another Danish MP said that the effect of having made the committee meetings open was that they started having much of the actual negotiation before the meetings.³

Necessary Actors

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

² Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, May 21, 2013.

³ Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, November 7, 2014.

The second component of this characteristic is whether it is a tool that can be used by the opposition. Opposition MPs generally have very different goals than MPs from governing parties, and since they likely have less influence over policy, they are more likely to turn to electoral goals like regaining power. They also have different options for influence, and therefore tend to use the tools at their disposal. They often cannot influence policy by reaching out to a minister for an informal discussion, so they may be more inclined to reach out to the public and the media to place pressure on that minister.

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

Tools for EU Involvement

If MPs and parliaments *are* going to get involved in European policy-making, there are a variety of tools that they can use in order to do so, and the set of tools at their disposal has increased, both as parliaments have pushed for more rights at the national level and because of those given to them at the EU level. Some parliaments themselves have cited these developments. The Austrian parliament “argued that it had to make use of new instruments and mechanisms and to become more involved while it also said that Parliaments/Chambers needed to create new mechanisms, on the European level and between national Parliaments and the EU institutions, which have full democratic accountability” (COSAC 2013a, 7). Even more specifically, the Danish *Folketing* sees itself “as an active player scrutinising the national government as well as European decision-making; applying existing tools to European decision-making and to developing new tools - for instance through inter parliamentary cooperation” (6-7). COSAC surveyed parliaments in 2013 to ask them about the various tools, or mechanisms, that they used to scrutinize EU affairs, either via their governments or the EU institutions. This information is replicated in Table 1, below. I will briefly summarize some of the tools available to parliaments below, along with how the three dimensions discussed above apply to each of the tools. The specific tools of questions, opinions and resolutions, and transposition will be discussed further in the empirical chapters that focus on those tools.

European Affairs Committees and Scrutiny Systems

One of the first EU-related tools that parliaments established for themselves was the establishment of dedicated European Affairs Committees, which generally oversee the scrutiny process. There is a lot of variation in terms of strength, power, composition, and procedures. Some committees in bicameral systems are joint between both houses, such as in Spain or Ireland, while some have two separate committees. They also vary quite a bit in terms of the strength and prestige of the committees

within parliament. For example, the Danish European Affairs Committee is one of the strongest committees in their parliament, although it is still a “committee of the nerds.”⁴ The Europe Committee in the Polish *Sejm* is the largest of their committees, made up of about 10% of the *Sejm*’s full membership, and unlike other committees, it meets during weeks without plenary sessions and during election periods.⁵ In contrast, the Belgian *Chambre*’s committee is an “advisory committee” that “can only advise, with no decision power.” One MP spoke about an analysis on the roles of the national parliaments that they had received, which said that they played one of the smallest roles.⁶ Another Belgian MP characterized the work of the committee as consisting of a “loud debate about what went wrong.”⁷

There is also variation in the main way that parliaments and committees engage in scrutiny. One of the main scrutiny styles, such as that engaged in by the British House of Commons, is focused on documents. The committee engages in “sifting” of these documents, and ministers are not supposed to vote in the Council until parliament has cleared the document from scrutiny. Another main scrutiny style, which is used in the Danish *Folketing*, is focused on providing a mandate for the government’s negotiation position ahead of each Council meeting. A third main scrutiny style involves “mainstreaming” EU legislation out to the sectoral committees so that it gets dealt with more likely any other national legislation. The German *Bundestag* and the Irish *Dail* do this, leaving the European Affairs committee to deal mostly with fundamental questions of integration (e.g. treaty changes), broad legislation, and subsidiarity concerns. The German committee also plays a coordination role when a single piece of legislation involves multiple sectoral committees (Auel 2006).

⁴ Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, May 23, 2013.

⁵ Staff Member, Personal Interview, Polish *Sejm*, Brussels, June 4, 2013.

⁶ Member of Parliament, Personal Interview, Belgian *Chambre des Représentants*, Brussels, June 6, 2013.

⁷ Member of Parliament, Personal Interview, Belgian *Chambre des Représentants*, Brussels, June 6, 2013.

Table 1: Tools for European Scrutiny

Entity Scrutinized	Mechanisms Employed
Governments	<ul style="list-style-type: none"> • Formal legal Acts outlining the limits of the government’s mandate • Oral and written parliamentary questions • Motions – legislative and non-legislative • No confidence motions • Power of national budget approval • The evaluation of reports on the positions taken by governments
Council	<ul style="list-style-type: none"> • Ministers appearing before committee or plenary before and/or after Council usually within a set time period • Oral or written reports by Ministers before and/or after Council • Scrutiny reserve resolutions or formal mandates or resolutions (binding or non-binding depending on the tradition or legal position) • Written reports on developments occurring during the outgoing Presidency • Special committee or plenary debates • Reports on the status of negotiations or about the impact of an EU measure
Commission	<ul style="list-style-type: none"> • Full use of political dialogue and subsidiarity mechanisms • Appearances before committees to give evidence or meetings with Commissioners or EU Representation staff in capitals • Special committee or plenary debates (e.g. on the Commission Work Programme) • Dialogue at interparliamentary conferences
European Council	<ul style="list-style-type: none"> • Appearances of Prime Ministers in plenary before and/or after each European Council usually within a set time period

Source: Reprinted from COSAC (2013b)

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

have learned from their predecessors and they have, on average, implemented more comprehensive scrutiny measures (Auel and Raunio 2014b).

European Affairs committees are relatively institutionalized and non-automatic tools for their parliaments. They are institutions that have had to be built up specifically for use in European affairs, and they tend to function somewhat differently than other committees. This is especially true where there are well-institutionalized systems for mandating the government or for scrutiny reserve, which do not exist in other committees. The establishment of mainstreaming systems requires institutional changes to all committees in the parliament, not just European Affairs committees. Other institutional changes have also been implemented, such as giving some European Affairs committees the right to make decisions on behalf of the plenary in ways that other committees cannot. The strengthening of these committees has therefore been relatively slow over time and the strongest committees tend to be found in those parliaments that were already institutionally strong (Raunio 2005). The work that these committees do is generally not very public, since neither citizens nor the media are likely to sit on their committee meetings or read any minutes of these meetings. They are somewhere in the middle in terms of how many actors they require, since they are not an individual tool, but decisions also do not require a plenary majority. Usually these committees are still proportional to the plenary and so will have the same influence from governing parties. However, some committees, such as the one in the German *Bundestag*, have a tradition of being chaired by someone from the opposition.

Basic Legislative Tools, Repurposed

Some of the tools that national parliaments use to influence EU policy and oversee their governments' actions at the EU level are the same ones they use to influence and oversee domestic issues. One such tool are parliamentary debates. Debates may be one of the most important ways that parliaments connect with citizens and may be particularly important for communicating with them (Auel

and Raunio 2014b). However, debates may be limited as a tool for constraining the government because many debates that include European issues may also involve domestic ones, which may make it difficult for the government to parse out the parliament's exact position (Auel 2006). EU issues may also be set in the larger context of debates about foreign affairs.⁸ Additionally, debates may not be able to have the clearest impact on government actions because they often include a variety of views, without necessarily coming to a firm conclusion. The prospect of debates to influence actual EU policy-making may also be limited by the larger difficulty of synchronizing issue discussion at the EU and domestic levels, so that "things may no longer really be relevant at the EU level by the time they get debated in the national parliament."⁹

Auel (2006) initially found that purely focused EU debates were relatively rare, although there is some evidence that they are becoming more common, especially in light of the recent crises.¹⁰ Between 1994 and 2002, the *Bundestag* debated between 1.5% to 2% of the documents it received (Auel 2006). About a decade later, focusing in on debates held in relation to the European Arrest Warrant, the Services Directive, and providing financial aid to Greece in the spring of 2010, Auel and Raunio (2014a) find that the *Bundestag* had by far the highest share of EU debates in comparison to the French *Assemblée Nationale*, the Finnish *Eduskunta*, and the UK House of Commons. They found that the *Bundestag* was the only of the four in which standard EU legislation was often debated on the floor. As the case selection for this study and the finding about the *Bundestag* may suggest, it does seem that many parliaments save debates for the bigger issues, especially since some parliaments, like the House of Commons, have agendas that are predominantly set by the government.¹¹

⁸ Member of Parliament, Personal Interview, Polish *Sejm*, Warsaw, September 24, 2013.

⁹ Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, May 21, 2013.

¹⁰ Member of Parliament, Personal Interview, German *Bundestag*, Berlin, October 10, 2014.

¹¹ Member of Parliament, Personal Interview, UK House of Commons, London, December 4, 2014.

Debates are clearly a public tool, and have the most potential for communication with the government and the public. If the debate comes to a clear conclusion, they may also serve to politically force the government to take a certain position, since it would be difficult for it to publicly go against the government after such a public display. They are relatively automatic and less institutionalized, since no institutions clearly need to be changed to hold debates about the EU. However, some institutional changes could strengthen this as a tool for European affairs, such as institutionalizing periodic debates focusing on the EU. What actors are required to use this tool depends on the rules for setting the agenda in various countries. In some countries, the governments have quite a bit of control over the legislative agenda and their consent may be required, and in all countries, the governmental parties retain primary control of the agenda. However, most systems allow a small portion of the agenda to be set by backbenchers or the opposition, and these groups may use debates as a tool for EU influence. For example, the British Backbench Committee has scheduled some EU debates,¹² and the Green party in Germany has used its debate scheduling power to hold debates on the Transatlantic Trade and Investment Partnership (TTIP), the free trade agreement that is being worked out with the US. Since they have generally achieved their goal of ending nuclear power in Germany, they have capitalized on concerns over TTIP as a new wedge issue. The MP discussing this strategy also specifically cited the use of plenary debates because they were a public tool that could be used politically to gain favor from the public.¹³

Another traditional parliamentary tool that parliaments can use for European issues are parliamentary questions, which will be discussed in more detail in the following chapter. Questions allow individual MPs the opportunity to raise an issue of concern with a minister or the head of government. One relatively recent study of parliamentary questions in the French *Assemblée Nationale* found that EU-related questions were only a small share of all questions and that they showed only a

¹² Member of Parliament, Personal Interview, UK House of Commons, London, November 21, 2014.

¹³ Member of Parliament, Personal Interview, German *Bundestag*, Berlin, October 6, 2014.

modest increase over time. They found that MPs from the governing parties used questions to control the cabinet, especially when the minister comes from a different party. Euroskeptic and opposition deputies were no more likely to ask EU-related questions than pro-European and governing party MPs (Navarro and Brouard 2014). My research suggests that the *Assemblée Nationale* is somewhere around the average in terms of the share of questions that are used for European issues. As will be discussed below, questions are public, less institutionalized and more automatic, and a tool that both individuals and the opposition can utilize.

Both debates and questions, as well as some of the other tools here, can be combined with the “tool” of the media in order to have more of an impact. A former spokesperson on EU matters in the Danish *Folketing* spoke about how this combination, plus public opinion, was key for having influence: “if you raise a debate in the media and the public agrees, then you can have influence.”¹⁴ Another MP in Britain spoke about how the key was to “get published beyond Hansard,” which is the British parliament’s official record of parliamentary proceedings. “Media coverage... creates political pressure. The media is quite influential and can get Brussels to withdraw legislation.”¹⁵

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

¹⁴ Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, October 31, 2014.

¹⁵ Member of Parliament, Personal Interview, UK House of Commons, London, December 8, 2014.

on the vote over the third bailout package. The Dutch parliament also had a confidence vote based on its government's support for the Greek bailout, although the government did survive the vote.

The United Kingdom is/was another country where a confidence vote or leadership challenge over European issues might have been conceivable. In 1992, a group of Conservative MPs rebelled against John Major's Conservative party over the bills to implement the Maastricht Treaty. They voted against the government and did cause them to lose some parliamentary votes. They arguably came close to bringing the government down three times, although they ultimately voted with the government on confidence motions. It was finally by tying confidence in his government to a vote that he had previously lost, when it was just a 'take-notice' motion, that Major was able to gain the power to ratify the Maastricht Treaty. One of these rebels spoke about Cameron and his government in similar terms, saying that he had told Cameron he needed to veto the "Fiscal Compact" treaty, and while he thought that Cameron probably agreed with the Euroskeptics that the treaty was a bad deal, he thought he also did it "because he was scared of them. If Cameron agreed to further integration or went for the single currency, he would be out in twenty-four hours, so he won't do these things." He referred to a leadership election as the "nuclear option, but it is something we would do."¹⁶ As this MP stated, parliaments can use these tools to control the government, even if they have not used them in relation to European affairs, as long as they can make a credible threat. This tool is relatively automatic, as no changes would need to be made to the procedure to use it for European affairs. When confidence votes are used, they are public, and if one was successful, it would be extremely public. However, threats to use these votes are not public. Who has the ability to hold a vote of confidence depends on the system, but a majority would always be required to pass one.

¹⁶ Member of Parliament, Personal Interview, UK House of Commons, London, November 21, 2014.

Transposition

Transposition is the process by which European law is written into national law. To some extent this is also a repurposed traditional parliamentary tool, but since transposition often follows a different process than passing new legislation, I treat it as a separate tool. There are three kinds of European laws: directives, regulations, and decisions. Directives are “binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice and form of methods.”¹⁷ This means that while the EU sets out what the final result of the law must be, it gives each state flexibility on how the policy should be implemented, providing room for significant adaptation at the national level through transposition. Transposition is also substantively important, considering the amount of legislation that begins at the EU level. Therefore, the opportunity to influence such legislation is a valuable one.

Despite these opportunities, the work of transposition is often left to the executive, either by allowing them to write the legislation through special or secondary procedures that do not require as much parliamentary involvement or by a simple lack of involvement as the legislation passes through the parliament. Much of the transposed legislation in Denmark follows this latter route. By the time legislation comes back to the *Folketing*, the strong and interested European Affairs Committee is out of the picture. Ideally, each person on the standing committee (who would also ideally have taken a position before the European Affairs Committee provided a mandate) would think about what the EU committee person from her party had said about the legislation and take that into consideration during transposition, but the standing committee rarely gets involved at either point.¹⁸ Transposition is a highly institutionalized and non-automatic tool, that is not particularly public, and usually requires the cooperation of the government as well as a parliamentary majority. Further discussion on transposition follows in the chapter dedicated to it.

¹⁷ Article 288 of the Treaty on the Functioning of the European Union

¹⁸ Member of Parliament, Personal Interview, Danish *Folketing*, Copenhagen, May 21, 2013.

Communication with the Commission

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

Both of these tools will be discussed further in the chapter on resolutions, since these opinions are often passed as resolutions. The introduction of these tools, especially the responsibility for monitoring subsidiarity, has caused a substantial increase in the amount of work for many of the EU committees, but it has also made them more interested, and has led to more opinions and involvement.¹⁹ In this way, they may actually have a benefit outside of themselves. Members of Parliament may not actually care that much about the rearview mirrors on tractors, but when they start to look at the proposal for subsidiarity questions, they also start to absorb the substance of the policy. MPs therefore become more informed about the EU level and EU policies because of the process.²⁰

¹⁹ National Parliamentary Representative, Personal Interview, *Espace Léopold*, Brussels, June 5, 2013.

²⁰ National Parliamentary Representative, Personal Interview, *Espace Léopold*, Brussels, June 5, 2013.

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

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

Tools for Interparliamentary Cooperation and Coordination

One set of tools available to national parliaments, and largely developed for involvement in European affairs, involves collaboration between parliaments. One such tool is the biannual COSAC meetings, as well as additional meetings of the chairpersons of the European committees. These meetings allow for the exchange of information and best practice, sometimes informally and sometimes through organized conversations. COSAC has also organized a series of coordinated subsidiarity checks, in which it has selected certain pieces of legislation proposed for the Commission and designated them

as being worthy of special subsidiarity consideration by the national parliaments. This was done in the lead up to the introduction of the Early Warning System, as well as afterwards, in an attempt to increase coordination. COSAC meetings also present an opportunity for discussions and an exchange of views with representatives of the EU institutions, especially the Commission and Council, who will often speak at these meetings (COSAC 2010). In addition to these tangible tools that COSAC provides, there are also some more intangible benefits of interparliamentary cooperation. It helps parliaments scrutinize effectively the most relevant legislative proposals, helps them hold their governments accountable, and is “an important tool for the qualitative and in-depth involvement of national Parliaments in the EU decision-making process” (COSAC 2014). Interparliamentary cooperation may provide some tangible tools to parliaments, but it may also provide the benefit of helping them better use their existing tools.

Some tools have also been designed specifically to help parliaments make better use of other tools. For example, they have developed a website for “the mutual exchange of information between the national Parliaments and the European Parliament concerning issues related to the European Union”, called the InterParliamentary EU information eXchange, or IPEX.²¹ The platform contains a database of documents, which contains all of the draft legislative and consultation documents from the European Commission, as well as all documents that parliaments upload in relation to these, including reasoned opinions and political dialogue opinions. They can also post other information during the scrutiny process. This allows parliaments to easily check whether other parliaments are scrutinizing certain documents and what concerns they have with the document, which may help them decide whether or not to draft an opinion of their own.

All of the national parliaments have also stationed representatives in Brussels. These are civil servants of the national parliaments, who all work together on one floor and meet at least weekly. They primarily act as information conduits between their national parliament and the European institutions,

²¹ From the “About IPEX” page on its website, currently found at: <http://www.ipex.eu/IPEXL-WEB/about/aboutipexl.do>. The main website can currently be found at: <http://www.ipex.eu/>.

as well as between their national parliament and the others. One of these representatives said that his main goals were to gather information and to follow dossiers, especially those that the EU committee has noted for special attention at the beginning of the year, so that he can report on common ground and whether there is any chance of a yellow card.²² Another representative said that his overall goal was to act as the “eyes and ears” for his national parliament at the European level.²³ These representatives were particularly instrumental in reaching the yellow card threshold the first time that the national parliaments did so, on the Monti II proposal about the right to strike (Cooper 2015). They have been a valuable “tool” that can help parliaments coordinate and stay more informed about what is occurring “on the ground” in Brussels.

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

Other Possible Tools for the Future

In addition to these tools and others currently at their disposal, there is also a desire for and an effort to develop new tools. About two-thirds of the national parliaments favor the development of new tools and/or the adaptation of existing ones, in order to be better involved in European policy-making. One of the main adaptations involves extending the deadline for subsidiarity checks. They also seek to be able to go farther than subsidiarity, in order to be able to scrutinize whether the actions proposed by the Commission are proportional to the legislation’s objectives. Additionally, they seek a

²² National Parliamentary Representative, Personal Interview, *Espace Léopold*, Brussels, May 30, 2013.

²³ National Parliamentary Representative, Personal Interview, *Espace Léopold*, Brussels, June 4, 2013.

more proactive power, rather than just a blocking one, in order to be able to suggest new legislation to the Commission through the use of a “green card.” They would like to further develop the political dialogue, in order to make it more fruitful. They also expressed desire for a permanent assembly of national parliaments that would be a legislative partner in certain policy areas, and they would like to be able to scrutinize draft trade agreements (COSAC 2014). While some of these are more realistic proposals than others, they all suggest that national parliaments are interested in being involved and want the tools to be able to do so.

Hypotheses

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

This expectation makes sense when one considers that parliamentary strength has consistently been found to be an important predictor of oversight rights, considering that much of the previous work has looked at very institutionalized and rights-based measures of these rights. Among the tools I

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

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

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

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

The third characteristic refers to the type of actors that can use the tool. Questions exist at one end of this spectrum, in that they are both an individual tool and one that can be used by the

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

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

I test these hypotheses in the following four chapters. Chapters two, three, and four consider parliamentary questions, opinions sent to the Commission, and transposition, respectively. Each chapter provides additional information on each tool, theorizes further about how the characteristics of that tool should affect its use, and tests these hypotheses. Chapter five combines all three tools in one model, attempting to better understand how tools are used as complements or substitutes for one another.

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