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TOWARDS THE “GREEN CARD” – STRENGTHENING THE ROLE OF NATIONAL PARLIAMENTS IN EU AFFAIRS?

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The Treaty of Lisbon¹, leading to the strengthening of the role of national parliaments in the process of European integration, was due to innovative procedural changes referred to in the literature as the “treaty of national parliaments”². The new role of national parliaments is defined by Art. 12 of the Treaty on the European Union, as well as annexed to the Treaty of Lisbon Protocols on the role of national parliaments in the European Union (hereinafter called Protocol No. 1)³ and on the application of the principles of subsidiarity and proportionality (hereinafter called Protocol No. 2)⁴. In the light of Art. 12 TEU, national parliaments shall contribute actively to the good functioning of the Union through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol No. 1. The national parliaments also see to it that the principle of subsidiarity is respected in

¹ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, 2007/C 306/01.

² See Lupo N. (2014), *Il ruolo dei Parlamenti Nazionali nel processo di integrazione europea dopo il Trattato di Lisbona ed i conseguenti mutamenti del diritto parlamentare*, „Toruńskie Studia Polsko-Włoskie/Studi polacco-italiani di Toruń” IX, pp. 7–19, DOI: <http://dx.doi.org/10.12775/TSP-W.2013.001>.

³ Protocol (No 1) on the role of national parliaments in the European Union, 2012/C 326/01.

⁴ Protocol (No. 2) on the application of the principles of subsidiarity and proportionality, 2012/C 326/01.

accordance with the Protocol No. 2. Moreover, they take part, within the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area and by being involved in the political monitoring of Europol and the evaluation of Eurojust's activities. The real impact of the national parliaments on the scope and pace of integration processes is expected to be made by their taking part in the revision procedures of the Treaties and being notified of applications for accession to the Union. National parliaments should also take part in the inter-parliamentary cooperation between national parliaments and with the European Parliament, in accordance with the Protocol on the role of national parliaments in the European Union.

After and even in the run-up to the ratification of the Lisbon Treaty, national parliaments have implemented new procedures to apply the instruments in practice. However, five years from the entry of the Lisbon Treaty into force, national parliaments are still evaluating the means of their influence and control over the EU law and policies⁵. National parliaments would determine their own position and contribute to further development in the European cooperation by becoming more actively involved in the decision-making of the European Union⁶. Not just as the guardians of the subsidiarity principle, granted the possibility to block and delay draft laws, but also as proactive players in a constructive sense, with a right to invite the European Commission to table legislative proposals either to create new legislation or to amend the existing one. The role of national parliaments can be increased if they as such have more influence on the content of legislation⁷. The yellow and orange cards only deal with the question of subsidiarity⁸. The introduction of a "green card" would give national parliaments a stronger voice in the legislative process with regard to the content of legislative proposals⁹.

⁵ See KIIVER P. (2012), *The Early Warning System for the Principle of Subsidiarity. Constitutional theory and empirical reality*, Routledge, Oxford, p. 11.

⁶ See JASKIERNIA J. (2014), *Rola parlamentów narodowych w procesie integracji europejskiej po traktacie z Lizbony i konieczne zmiany w prawie parlamentarnym*, „Toruńskie Studia Polsko-Włoskie/Studi polacco-italiani di Toruń” IX, pp. 59–61, DOI: <http://dx.doi.org/10.12775/TSP-W.2013.004>.

⁷ See SEROWANIEC M. (2014), *Europeanisation of the traditional (ordinary) functions of the Parliament of the Republic of Poland after the Lisbon Treaty*, „Annales Universitatis Apulensis, Series Jurisprudentia” 17, pp. 92–103.

⁸ See MIK. C. (a cura di) (2014), *Parlamenty narodowe wobec zasady pomocniczości w świetle prawa i praktyki Unii Europejskiej*, Wydawnictwo Sejmowe, Warszawa; see also WITKOWSKI Z., SEROWANIEC M. (2014), *Przesłanki naruszenia zasady pomocniczości przez akty ustawodawcze Unii Europejskiej w świetle uzasadnionych opinii przyjętych przez Sejm i Senat RP*, „Gdańskie Studia Prawnicze” XXXI, pp. 997–1007.

⁹ See GROEN A., CHRISTIANSEN T. (2015), *National Parliaments in the European Union: Conceptual Choices in the European Union's Constitutional Debate*, in: C. Heffler, Ch. Neuhold,

Reflections on the role of national parliaments were launched at the COSAC Chairpersons’ meeting in Athens on 26–27 January 2014, where the Danish Folketing presented a paper entitled *Twenty-three recommendations to strengthen the role of national parliaments in changing European governance*¹⁰. According to the Folketing the national parliaments’ influence on European decision-making through the Yellow Card procedure depends on the number and quality of the reasoned opinions submitted. In order to achieve successful subsidiarity checks it is therefore necessary that the national parliaments conduct the subsidiarity checks as early and thoroughly as possible, even before the adoption of proposals by the Commission. A better and earlier coordination between national parliaments would improve the quality of the outcome from the subsidiarity checks¹¹.

The Folketing was of the opinion that the national parliaments can contribute to further developing European cooperation by becoming more actively involved in the decision-making of the European Union. Not just as the guardians of the subsidiarity principle, with the possibility to block and delay draft laws, but also as proactive players in a constructive sense with a right to invite the European Commission to table legislative proposals either to create new legislation or to amend the existing one. The Folketing stated that the “green card” would further allow the national parliaments to review and comment on the content of a legislative proposal within a 10-week deadline. If 1/3 of national parliaments agree on a position to change the proposal, the Commission should take into account the position of the parliaments and explain if it does not. If national parliaments do not reach a common position on the proposal within the 10-week deadline, a green light to proceed with the decision making procedure is automatically given. The Folketing added that the quality of reasoned opinions can be improved through development of common criteria and arguments and through debates between parliaments on responses to reasoned opinions and yellow cards. If national parliaments identify proposals of particular importance and common concern, their coordination under the subsidiarity procedure can be improved. Several national parliaments already follow the practice of drawing up a list with proposals of particular interest, but it would be of great value

O. Rozenberg, J. Smith (eds.), *The Palgrave Handbook of National Parliaments and the European Union*, Macmillan, p. 57.

¹⁰ Folketinget (2014): *Twenty-three recommendations to strengthen the role of national parliaments in a changing European governance*, http://renginia.lrs.lt/renginia/EventDocument/6fa11f98-fc15-4443-8f3f-9a9b26d34c97/Folketing_Twenty-three%20recommendations_EN.pdf, accessed 10 July 2015.

¹¹ *Ibid.*, p. 4.

to national parliaments in their planning if all parliaments had identified such proposals at an early stage¹².

On 11 March 2014, the European Union Committee of the UK House of Lords adopted a report entitled *The Role of National parliaments in the European Union*¹³. This report was the result of an extensive enquiry by the House of Lords with evidence being given by many key actors, including the Vice-President of the European Commission – M. Šefčovič. The suggestions in the report relate to national parliaments' early engagement in policy proposals, establishment of a direct contact with Commissioners and Commission officials, introduction of a "green card", changes to the subsidiarity control mechanism, interparliamentary cooperation and economic and financial governance. In principle, the House of Lords agreed that there should be a way for a group of likeminded national parliaments to make constructive suggestions regarding the EU policy initiatives, which may include reviewing the existing legislation, complementing the existing "yellow card" with a "green card"¹⁴. The European Union Committee noted that the concerns raised in relation to intruding on the Commission's formal right of initiative, would cause the national parliaments to envisage the "green card" as a recognition of a right of a number of parliaments working together to make constructive policy or legislative suggestions, including reviews or repeals of the existing legislation, without creating a formal right for parliaments to initiate legislation. But the "green card" agreement would need to include an undertaking by the Commission to consider such suggestions carefully, and either bring forward appropriate legislative or other proposals (or consult on them), or explain why it had decided not to take the requested action¹⁵.

The European Union Committee of the House of Lords suggested that the reasoned opinion procedure can, and must, be made more effective. It is an important way in which national parliaments can contribute to the making of EU legislation; and can thereby enhance the quality and legitimacy of that legislation. The key elements of the procedure, including its scope, deadlines, and the effect of a yellow card being issued, are set out in the EU Treaties and could only formally be changed through a revision of the Treaties. However, it would be possible for the Member States acting together in the Council, in co-operation with the European Commission, to agree on a package of improvements. The

¹² Ibid., p. 2–4.

¹³ British House of Lords (2014): 'The Role of National Parliaments in the European Union', Ninth Report to the European Union Committee, <http://www.publications.parliament.uk/pa/ld201314/ldselect/ldEUcom/151/151.pdf>, accessed 10 July 2015.

¹⁴ Ibid., p. 20.

¹⁵ Ibid.

parliaments, Council and Commission could undertake to operate the reasoned opinion procedure consistently with the agreed changes. While there may be a useful role for COSAC in sharing practical experience in how to conduct subsidiarity assessments and how to prepare an effective reasoned opinion, we do not think that it would be sensible to attempt a more precise definition of the subsidiarity principle than the definition that is already set out in the EU Treaties. The House of Lords European Union Committee concluded in a report: “in the light of our experience to date we consider that the reasoned opinion procedure set out in Protocol 2 to the Treaties must be considerably strengthened if it is to become an effective tool for engaging national parliaments in the development of EU legislation”¹⁶.

In addition, the British government considers that national parliaments should have the power to allow them, while working together, to block proposals through the introduction of a red card. This would mean that if a sufficient threshold of national parliaments find that a proposal violates the subsidiarity or proportionality principles, the European Commission will withdraw the proposal. This offers the best way to ensure, following the exhaustion of all opportunities for upstream engagement, that when a proposal raises subsidiarity or proportionality concerns national parliaments can be assured that their position will have an impact¹⁷.

According to the House of Lords it is vital that national parliaments should have a recognised opportunity for their voices to be heard during the later stages of legislative negotiations, particularly when those negotiations result in major changes to draft legislation. The EU Committee also suggested that the Council consider making a commitment that if a legislative proposal is significantly altered during its consideration by the co-legislators, the Council will allow sufficient time, and no less than 12 weeks, for each national parliament to scrutinise the new or significantly altered elements of the proposal. This would be a logical development of the role of national parliaments in the EU policymaking and without such a commitment there will remain a fundamental gap in the legislative process¹⁸.

On 20 May 2014, the Dutch Tweede Kamer adopted a report entitled *Ahead in Europe – on the role of the Tweede Kamer and national parliaments in the*

¹⁶ Ibid., p. 25–31.

¹⁷ Government Response to the House of Lords European Union Committee Report HL 151 of Session 2013–14 *The Role of National Parliaments in the European Union* Presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs by Command of Her Majesty July 2014, p. 18.

¹⁸ British House of Lords (2014), ‘The Role of National Parliaments...’, p. 31.

*European Union*¹⁹ with recommendations on how national parliaments could improve their working methods and enhance their cooperation with other parliaments, with a focus on transparency and effectiveness as key factors for legitimacy. The Dutch House of Representatives suggested that only the threat that national parliaments might, after a long internal drafting process, still reject a proposal that has been published can force the Commission from the outset to improve its consideration of how a proposal might be received by the different parliaments. This is to the benefit of the quality of legislation and regulations. In recent years, the Commission has indeed invested heavily in impact assessments and better regulation. With the yellow card, the discussion on subsidiarity has entered a second phase. Originally, the concept was used mainly in relation to the internal market. Now, subsidiarity is frequently used in discussions on limiting European regulation. For this reason the parliaments should agree, *via* interparliamentary cooperation, to consider together, in good time, those legislative proposals that on the basis of a first appraisal are considered to be priorities and that qualify for a subsidiarity test²⁰. Secondly, in close cooperation with the group of 41 (European Affairs chairpersons) that is to be set up, a standard paragraph should be developed that could serve as an opening paragraph of every reasoned opinion (subsidiarity objection from a national parliament), so that the European Commission would immediately be able to see that the submission concerned an objection related to the yellow card procedure²¹.

The Tweede Kamer was favourable to the idea of a “green card”, which parliaments, in a form of joint action, could use to propose new European policies to the European Commission. This would include the possibility of a proposal to amend or revoke the existing legislation. Here one should note that nothing stands in the way of parliaments making such a proposal now. A group of countries that is gathered around a theme (cluster of interest) could draw a green card²².

According to the House of Representatives the idea of introducing a “red card” – a test at the end of the decision-making process, which could lead to an agreement that has been reached by the Council and the European Parliament being rejected by a majority of national parliaments – is hampered by legal objections. After all, such cases involve a legitimate European decision; although

¹⁹ Tweede Kamer (2014): Ahead in Europe – Report on the role of the Tweede Kamer and national parliaments in the EU, http://www.houseofrepresentatives.nl/sites/www.houseofrepresentatives.nl/files/news_items/ahead_in_europe_tcm181-238660_0.pdf, accessed 10 July 2015.

²⁰ Ibid., p. 29.

²¹ Ibid., p. 30.

²² Ibid.

many opportunities for steering the process still remain in the follow-up phase. The national parliaments must engage in timely monitoring in the drafting phase and when legislation is being addressed²³.

Although the reports from the Danish Folketing, the UK House of Lords and the Dutch Tweede Kamer differ in content, they have certain similarities. In particular, all three chambers suggest that national parliaments should have a more proactive role, and in particular that they should have the possibility to suggest to the European Commission to table new proposals. All three reports emphasise that the increasing involvement of national parliaments in the pre-legislative phase is necessary in order to influence the Commission’s proposals. The three reports also suggest improvements to the subsidiarity control mechanism as regards the coordination of national parliaments’ opinions. The UK House of Lords and the Dutch Tweede Kamer suggested substantial changes to the subsidiarity control mechanism, aimed at giving more effect to national parliaments’ reasoned opinions. Although both chambers acknowledge that formal changes to the mechanism would require a treaty change, they have suggested that changes be made in the form of an informal agreement or a commitment from the European Commission to national parliaments. In addition the UK House of Lords expressed its view that a set of “best practices” could be drawn up, with an aim to share such amongst the parliaments/chambers. These could however also include a format for reasoned opinions and contributions; a mechanism used for communicating contributions within the context of a political dialogue to the European Commission, a mechanism for sharing contributions within the context of a political dialogue with other national parliaments and EU institutions²⁴. Also the Belgian Sénat and the Maltese Kamra tad-Deputati would seek guidance on what format would work best for reasoned opinions. Moreover, the Latvian Saeima was of the opinion that informal guidelines would bring about a greater degree of uniformity among national parliaments in drafting their reasoned opinions and political dialogue contributions, which, in turn, could greatly facilitate the European Commission’s task in responding to these submissions²⁵.

Another idea on how to increase the constructive engagement of national parliaments in the EU decision-making process is the so-called “green card”

²³ Ibid.

²⁴ Report from the European Commission. Annual report 2014 on relations with national parliaments [COM(2015) 316 final], p. 9–10, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0316&from=EN>, accessed 14 July 2015.

²⁵ Report from the European Commission. Annual report 2014 on Subsidiarity and Proportionality [COM(2015) 315 final], p. 5, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0316&from=EN>, accessed 15 July 2015.

proposal. The UK House of Lords' discussion paper outlined some concrete proposals on the main elements of the "green card"²⁶. The procedure should be open to any chamber of a national parliament to propose a draft green card on a specific issue. Therefore, each national parliamentary chamber should agree on its own internal process for filing the proposal of a draft green card. The "green card" procedure would allow national parliaments to propose new policies or legislation to the Commission, including amending or repealing the existing EU laws. The proposed green cards should outline the legislative action proposed in sufficient detail for the Commission, as the ultimate recipient of any green card, to make a considered response. Although the House of Lords do not seek to prescribe a set form, it might be useful for the "green cards" to include:

- 1) a summary of the reasons behind the proposed action;
- 2) the anticipated benefits;
- 3) the preferred type of legislation (e.g. Directive);
- 4) a possible legal base.

Secondly, before proposing a green card, a chamber may wish to consult other chambers informally via the network of national parliament representatives. Informal cluster meetings could be useful to discuss possible green cards, but whether or not to hold one should be a matter for the chamber considering making a proposal. Alternatively, meetings between parliamentarians and officials in the margins of relevant interparliamentary conferences may be useful, avoiding additional travel expenditure. A chamber wishing to propose a green card should also prepare a draft letter to the European Commission (according to the criteria related to the "Content and Scope" agreed by national parliaments) and disseminate this to all other chambers inviting them to sign the green card. Certainly, the green card should reach an agreed minimum threshold of signatories within a certain time-frame. Agreeing on certain criteria will not only lend political weight to a green card, but will ensure that the number of draft green cards "on the table" does not become excessive. One possible set of thresholds could mirror the existing yellow card procedure, so that:

- 1) the period available for co-signing a green card could be eight weeks from the date of a proposing chamber circulating a draft;
- 2) each national parliament could have two votes, with each chamber having one vote each in bicameral systems;

²⁶ Towards a "green card" – Letter from Lord Boswell of Aynho, Chairman of the European Affairs Committee of the House of Lords, <http://www.parliament.uk/documents/lords-committees/eu-select/COSAC/20150128%20Letter%20to%20Chairpersons.pdf>, accessed 15 July 2015.

- 3) a draft proposal would qualify as a green card if, within the agreed time frame, chambers representing one quarter of all available votes agree to co-sign the proposal.

Once the threshold is reached, the proposing chamber should send the co-signed text to the Commission under the political dialogue, making clear that the proposal is considered by national parliaments to be a green card. But if a proposal fails to reach the required thresholds, the proposing chamber may wish to send it to the Commission under a political dialogue, however, it should not be presented as a “green card” unless it has met the threshold agreed by national parliaments²⁷.

The European Union Committee of the House of Lords hope that the European Commission will respond positively to the green card initiative by making a renewed political commitment to engagement with national parliaments. For instance, the European Commission could commit to publishing a formal response to a green card within a specified deadline (e.g. 8 or 12 weeks), saying whether or not it intends to take the proposed action, and presenting its reasons; or the relevant Commissioner could go to the proposing chamber to respond in person to the green card, with all co-signatories being invited to attend such a meeting. It may be also useful for the first green card to state explicitly what type of response national parliaments wish the Commission to make in relation to green cards.

Along similar lines, the XLIX COSAC in its Contribution called on the Commission “to give special attention and consideration to opinions on a specific legislative proposal” when issued by “at least one third of national parliaments”. The Commission is invited to update national parliaments in advance in writing or at a subsequent COSAC Chairpersons’ or plenary meeting or at any other appropriate and relevant interparliamentary conference organised by the Presidency on its reactions to any such requests or any political contributions so received as set out above²⁸. COSAC considered furthermore that national parliaments should be more effectively involved in the legislative process of the European Union not just as the guardians of the subsidiarity principle but also as active contributors to that process. This goes beyond the adoption of reasoned opinions on draft legislative acts which may block those acts and would involve a more positive, considered and holistic view under which parliaments could

²⁷ The “Green Card”: discussion paper – Lord Boswell of Aynho, House of Lords, 19 January 2015, <http://www.tweedekamer.nl/downloads/document?id=87c6d271-d5d7-4e7a-b42c-90a83c05a48b&title=The%20%E2%80%9CGreen%20Card%E2%80%9D%3A%20discussion%20paper.pdf>, accessed 12 July 2015.

²⁸ See it. 30 and 31 of the Contribution of the XLIX COSAC Dublin, 23–25 June 2013.

invite the Commission to develop legislative proposals which they believe to be necessary or to review and adapt the existing proposals to specific stated reasons. Also during the 53th meeting of the COSAC Chairpersons, which took place in Riga from 31 May to 2 June 2015, a mandate was given to the Luxembourg Presidency to set up a working group to strengthen political dialogue through the introduction of a “green cards” as well as the improvement of the “yellow card” procedure, as the contributions at this meeting show. According to this text, the “green cards” would improve existing political dialogue and encourage national parliaments wishing to take a proactive role to submit constructive and non-binding suggestions on policy measures or legislative proposals to the European Commission, without prejudicing its right to initiate legislation²⁹.

Only the Lithuanian Seimas, Cyprus Vouli ton Antiprosopon, Czech Senát, Dutch Tweede Kamer, Danish Folketing and Italian Camera dei deputati had adopted an official position on the introduction of “green cards”. The Lithuanian Seimas considered that the broad dialogue of national parliaments, including their dialogue with European citizens, should contribute to the formation of EU policies. It was of the opinion that in order to give national parliaments the opportunity to play a constructive role in policy formulation at the EU level, it was necessary to improve cooperation among national parliaments and coordination of their actions, and therefore to strengthen not only the political dialogue with the European Commission but also communication among national parliaments. It believed that the developed political dialogue, by creating a “green card” (without amending the treaties), which encouraged the European Commission to put forward new legislative actions, and to revise, amend or repeal the existing legislative acts, including delegated or implementing acts, could be useful³⁰. The Cyprus Vouli ton Antiprosopon stated that the “green card” procedure would further enhance the role of national parliaments in the EU decision-making³¹. The Czech Senát was of the opinion that the “green card” allowed for coordination of national parliaments within the framework of a political dialogue and that coordination could lead to suggestions to call for a new legislative action

²⁹ The possibility for national parliaments to make suggestions to the European Commission was at the centre of discussions during a meeting of COSAC, <http://www.eu2015lu.eu/en/actualites/articles-actualite/2015/07/cosac-carton-vert/index.html>, accessed 15 July 2015.

³⁰ Speech by Loreta Grauzinienė, Speaker of the Seimas of the Republic of Lithuania, at the Conference of Speakers of EU Parliaments – Strengthening political dialogue, Rome, 21 April 2015, http://www3.lrs.lt/pls/inter/w5_show?p_r=9562&p_d=156826&p_k=2, accessed 10 July 2015.

³¹ Twenty-third Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny, Riga, 30 May–2 June 2015, p. 33, http://oide.sejm.gov.pl/oide/images/files/international/raport_cosac_23_en.pdf, accessed 10 July 2015.

or the amendment or repeal of the existing legislation. It would also enhance the political dialogue with the European Commission. The Senát agreed in principle with the measures described in the discussion paper, however it suggested to add that the national Parliament’s initiation of the “green card” included an English translation, and to extend the period for co-signing the draft to six months. Lastly, it underlined that, given the importance of the “green card”, the adoption by national parliaments should be taken by a body that was also competent to adopt written contributions addressed to the European Commission within a political dialogue (in its own case, the plenary)³². The Dutch Tweede Kamer assumed an official position in May 2014, in which it pointed out its support to the introduction of the “green card” and declared that this procedure should include the competence to amend or revoke the existing legislation. Furthermore, the Tweede Kamer believed that nothing stood in the way of parliaments making such a proposal now³³. A group of countries gathered around a theme (cluster of interest) could issue such a card. It welcomed the proposals made by the House of Lords. The European Affairs Committee of the Danish Folketing had issued a discussion paper outlining 23 recommendations on how to enhance the role of national parliaments in the EU decision-making, one of which concerned the introduction of a “green card”. In its official document adopted in December 2013, the Committee on EU Policies of the Italian Camera dei deputati stated that the political dialogue should continue to take place following the well-established practice of bilateral exchanges between the European Commission and individual parliaments, without entering into any kind of collective dialogue between the Commission and groups of national parliaments³⁴.

Some parliaments further expressed their views on the introduction of the “green card” in general terms. The Polish Senat supported the idea of strengthening the position of national parliaments. However, there were formal problems with engaging in the “green card” since there were doubts about the compliance with the existing treaties. Moreover, there was no legal basis for proactive actions in external and European relations within the framework of the Polish Constitu-

³² The Senate of the Parliament of the Czech Republic 10th term. Resolution of the Senate. 106th resolution delivered on the 7th meeting held on 18th March 2015 on the possible introduction of a “green card” as a means of interparliamentary coordination in EU affairs, <http://www.senat.cz/xqw/webdav/pssenat/original/75594/63536>.

³³ Anex to the Twenty-third Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny, Riga, 30 May–2 June 2015, pp. 170–171. http://oide.sejm.gov.pl/oide/images/files/international/raport_cosac_23_annex_en.pdf, accessed 12 July 2015.

³⁴ Twenty-third Bi-annual Report..., p. 32.

tion and law. According to the Polish Constitution, only the government had the right to pursue an external policy, while the Parliament could only control and verify it. It did not have a legal basis for creating a formal procedure of issuing positions under such a procedure³⁵. The Swedish Riksdag underlined that on the basis of the constitutional conditions that applied in Sweden, the government had the main responsibility of representing Sweden in the EU. The political dialogue between the Commission and Sweden therefore took place through the government, which was accountable to the Riksdag. It was only within the framework of the subsidiarity-check mechanism concerning draft legislative acts that the Riksdag, on the basis of the treaties, could communicate directly with the Commission. The Irish Houses of the Oireachtas explained that it had stated its openness to the idea of other parliaments on various cards, their scope, thresholds and time period in a political contribution to the European Commission in January 2015. It also acknowledged that some of these measures would require Treaty changes. With regard to this, it proposed to integrate any new mechanism into an informal inter-institutional agreement because it would then be easier to integrate new changes into any new Treaty, as the actors and stakeholders would have seen them work or not work in practice³⁶. Some parliaments pointed out that the reason for not responding at all to the questions of the section related to the “green card”, or only partly, was that they had not adopted an official position yet³⁷. The Portuguese Assembleia da República added that although it had not yet discussed the issue, it was traditionally in favour of strengthening the involvement of national parliaments as concerns the scrutiny of European affairs and would most likely agree to the “green card”. The UK House of Commons European Scrutiny Committee indicated that it supported initiatives to strengthen the role of national parliaments in general terms, which included the “green card” but that it had not expressed a view on specific aspects of the “green card”. The Estonian Riigikogu also declared its support to the idea of a “green card” in principle³⁸.

³⁵ See *Uprawnienia Senatu a procedura „zielonej kartki”. Analiza możliwości włączenia się Senatu RP w procedurę wzmocnionego dialogu politycznego, w świetle obowiązującego w Polsce prawa – opinie prawne* GRZESZCZAK R., POPŁAWSKA E. (2015), Opinie i Ekspertyzy 232, Biuro Analiz i Dokumentacji Zespół Analiz i Opracowań Tematycznych Kancelarii Senatu, Warszawa, http://www.senat.gov.pl/gfx/senat/pl/senatekspertyzy/2974/plik/oe-232_do_internetu.pdf, accessed 17 July 2015.

³⁶ Twenty-third Bi-annual Report..., p. 32.

³⁷ Ibid.

³⁸ Ibid.

The European Parliament’s Committee on Constitutional Affairs had not taken a formal position on the “green card”; however, it considered it as a positive suggestion to enhance the existing political dialogue with national parliaments as long as it did not amount to a real right of legislative initiative of national parliaments, which was not foreseen by the treaties. The Committee saw this initiative as one of the most promising ways to enable national parliaments to contribute actively to the good functioning of the Union. As expressed in the European Parliament’s resolution of 16 April 2014³⁹, even the early warning mechanism should be used as a channel for consultation and cooperative dialogue between the various institutions within the EU’s multilevel system. This positive mechanism could increase the feeling of ownership of the legislation adopted, contribute to render it more suited to national realities and facilitate its transposition and implementation. In this sense, a better use of the provisions of the existing treaties could allow national parliaments to express their opinions concerning the need for European legislation.

Considering the fact that many EU parliaments are “still struggling to define their proper role in the European Union” even after the Lisbon Treaty has given them a formal role suggests that perhaps a better-implemented role is needed⁴⁰. The national parliaments should be more effectively involved in the legislative process of the European Union not just as the guardians of the subsidiarity principle but also as active contributors to that process⁴¹. This goes beyond the adoption of reasoned opinions on draft legislative acts which may block those acts and would involve a more positive, considered and holistic view under which parliaments could invite the Commission to develop legislative proposals which they believe to be necessary or to review and adapt the existing proposals for specific stated reasons. The “green card” proposal, which would allow national parliaments to propose new policies or legislation to the Commission, could increase the constructive engagement of national parliaments in the EU decision-making process.

³⁹ European Parliament resolution of 16 April 2014 on relations between the European Parliament and the national parliaments [2013/2185(INI)].

⁴⁰ See KIIVER P. (2011), The Early-Warning System for the Principle of Subsidiarity: The National Parliament as a Conseil d’Etat for Europe, „European Law Review” 36, pp. 98–108.

⁴¹ See CYGAN A. (2011), The parliamentarisation of EU decision-making? The impact of the Treaty of Lisbon on national parliaments’, „European Law Review” 36, pp. 478–497.

Riassunto

“CARTA VERDE” – COME FAVORIRE UN ATTEGGIAMENTO PIÙ ATTIVO DA PARTE DEI PARLAMENTI NAZIONALI NEI CONFRONTI DEL PROCESSO DECISIONALE EUROPEO?

Nel 2014 nuove idee e proposte sul ruolo dei parlamenti nazionali nel processo decisionale europeo sono state avanzate da molti parlamenti nazionali (del Folketing danese, della House of Lords britannica e della Tweede Kamer olandese) e dal Parlamento europeo. Benché le relazioni del Folketing danese, della House of Lords britannica e della Tweede Kamer olandese differiscano nei contenuti, si possono comunque riscontrare alcune somiglianze. In particolare, tutte e tre le camere ritengono che i parlamenti nazionali debbano avere un ruolo più proattivo, e in particolare debbano poter suggerire alla Commissione di presentare nuove proposte. Tutte e tre le relazioni sottolineano che il crescente coinvolgimento dei parlamenti nazionali nella fase prelegislativa è necessario per influire sulle proposte presentate dalla Commissione („Carta verde”). Le tre relazioni suggeriscono inoltre miglioramenti al meccanismo di controllo della sussidiarietà per quanto riguarda il coordinamento dei pareri dei parlamenti nazionali. La House of Lords britannica e la Tweede Kamer olandese hanno proposto di apportare modifiche sostanziali al meccanismo di controllo della sussidiarietà, per dare maggiore effetto ai pareri motivati dei parlamenti nazionali.

Parola chiave: Carta verde; meccanismo di controllo della sussidiarietà; ruolo dei parlamenti nazionali nel processo decisionale europeo; del Folketing danese; della House of Lords Britannica; della Tweede Kamer olandese.

Streszczenie

PROCEDURA „ZIELONEJ KARTKI” – PANACEUM NA WZMOCNIENIE ROLI PARLAMENTÓW NARODOWYCH W UNIJNYM PROCESIE DECYZYJNYM?

W 2014 r. brytyjska Izba Lordów, duński Folketing oraz niderlandzka Izba Druga zainicjowały na forum Konferencji Komisji do Spraw Unijnych Parlamentów Unii Europejskiej (COSAC) debatę dotyczącą roli parlamentów narodowych w europejskim procesie decyzyjnym. Choć przedłożone przez poszczególne izby raporty istotnie się różnią, przyświeca im jednak wspólny cel. Postulują one bowiem podjęcie szeregu inicjatyw mających na celu wzmocnienie mechanizmu kontroli zasady pomocniczości, w tym przede wszystkim w zakresie szerszej współpracy pomiędzy parlamentami narodowymi. Ważną rolę w procesie umacniania roli parlamentów narodowych w UE może także odegrać w przyszłości procedura tzw. zielonej kartki, która w założeniu jej pomysłodaw-

ców przyczyni się do większego zaangażowania krajowych ciał ustawodawczych w prace legislacyjne już na etapie prac przygotowawczych w Komisji Europejskiej.

Słowa kluczowe: zielona kartka; żółta kartka; pomarańczowa kartka; czerwona kartka; parlamenty narodowe w UE; modele kontroli spraw unijnych; mechanizm wczesnego ostrzegania.

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