

# THE PARTICIPATION OF THE SPANISH AND ITALIAN PARLIAMENTS IN EU AFFAIRS POST-LISBON

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SUMARIO: I. ACKNOWLEDGEMENT. II. INTRODUCTION. III. THE PARTICIPATION OF THE SPANISH CORTES GENERALES IN EU AFFAIRS. IV. THE PARTICIPATION OF THE ITALIAN PARLIAMENT IN EU AFFAIRS. V. CONCLUSION. VI. BIBLIOGRAPHY.

**RESUMEN:** En este artículo he evaluado a través de seis indicadores, relacionados con dos dimensiones, cómo la participación en los asuntos de la UE de los españoles y los parlamentos italianos han evolucionado desde abril 2008 hasta diciembre de 2017. Mi suposición es que, a pesar de que ha habido una mejora en ambos casos, la Legislatura española aún mantiene una posición débil frente al Gobierno en asuntos de la UE, mientras que el italiano (y, en particular, el Senado) se ha vuelto más autónomo del Ejecutivo. No obstante, para evitar posiciones divergentes entre el Gobierno y el Parlamento, así como entre cada cámara, mecanismos de coordinación, como un comité bicameral de Asuntos de la UE según el modelo español, podría ser introducido en Italia.

**ABSTRACT:** In this article I have assessed through six indicators, related to two dimensions, how the participation in EU Affairs of the Spanish and Italian Parliaments has evolved from April 2008 until December 2017. My assumption is that, even though there has been an improvement in both cases, the Spanish Legislature still maintains a weak position vis-à-vis the Government in EU matters, while the Italian one (and, in particular, the Senate) has become more autonomous from the Executive. Nonetheless, to avoid divergent positions between the Government and the Parliament, as well as between each Chamber, coordination mechanisms – like a bicameral EU Affairs committee according to the Spanish model – could be introduced in Italy.

**PALABRAS CLAVE:** Parlamentos nacionales – **KEYWORDS:** National Parliaments – Early Warning Mecanismo de alerta temprana – Diálogo político – Mechanism – Political Dialogue – Subsidiarity – EU Subsidiariedad – Comité de Asuntos de la UE. Affairs Committee.

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## I. ACKNOWLEDGEMENT

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## II. INTRODUCTION

Even though recognition to the role of National Parliaments (NPs) was already given by the Treaties of Maastricht (1992) and Amsterdam (1997)<sup>1</sup>, only the Lisbon Treaty -entered into force on 1 December 2009– has provided their direct involvement in the European Union (EU) decision-making process. In particular, it has defined the Legislatures of Member States (MS) as one of the pillars, together with the European Parliament (EP), on which the EU representative democracy is founded (Article 10 Treaty of the European Union (TEU)) and has vested them with a series of prerogatives, listed in Article 12 TEU.

Among these new «European powers»<sup>2</sup>, the most significant is certainly represented by the scrutiny -carried out by every NP, or each House in case of bicameral systems– on the compliance of EU legislative proposals with the subsidiarity principle, in the framework of the Early Warning Mechanism (EWM)<sup>3</sup>. Furthermore, since 2006, with the Political Dialogue (PD), NPs have been forwarding to the European Commission comments and observations on all legislative proposals and consultation papers, without any limitation regarding the time, the legal ground or the nature of the act<sup>4</sup>.

1. M. Delgado-Iribarren García-Campero, «El papel de los parlamentos nacionales tras el Tratado de Lisboa», P. M. Fabio (ed.), *Derecho de la Unión Europea y el Tratado de Lisboa*, Civitas, 2013, 376-378.
2. N. Lupo, «National parliaments in the European integration process: re-aligning politics and policies», in M. Cartabia, N. Lupo and A. Simoncini (eds.), *Democracy and subsidiarity in the EU. National parliaments, regions and civil society in the decision-making process*, Il Mulino, 2013, 114-119.
3. Delgado-Iribarren, above n 1, 387-398. See Article 3 Protocol No. 1 on the Role of National Parliaments in the European Union and Articles 6 and 7 Protocol No. 2 on the Application of the Principles of Subsidiarity and Proportionality. In particular, a «yellow card» is triggered if one-third of the NPs votes in favor of the infringement of the principle of subsidiarity -one-fourth is sufficient for the Area of Freedom, Security and Justice–, whereas an «orange card» requires the vote of one-half of the overall number of NPs.
4. Although the political dialogue, also called «Barroso procedure», is not regulated in the Lisbon Treaty, the Commission's initiative to send to NPs «all new proposals and consultation papers» in order to «improve the process of policy formulation» has been welcomed by the European Council of 15 and 16 June 2006. See COM (2006) 211 and Presidency Conclusions, 17 July 2006, point 37.

The attempt of this research is to assess whether the innovations introduced by the Lisbon Treaty have increased the participation in EU Affairs of the Spanish and the Italian Parliaments, traditionally considered weak in the scrutiny of the Government in the Council and in the European Council or in the shape of EU legislation<sup>5</sup>.

Consistent with the «Euro-national parliamentary system perspective»<sup>6</sup>, my argument is that the combination of European and national legislation has fostered the overall engagement of both Parliaments at EU level, although to different extents: indeed, while the Spanish Legislature still holds an ancillary position towards the Government in this field -as a result of the strong party system<sup>7</sup> and the powerful role granted by the Constitution to the Executive in foreign/EU Affairs<sup>8</sup>-, the Italian Parliament (and especially the Senate) has gained more autonomy, with the consequent risk of endangering the unitary representation of national interests at EU level.

In order to verify the validity of my hypothesis, I will evaluate the involvement of the Spanish and Italian Legislatures on the EU stage according to six indicators corresponding to the following two dimensions<sup>9</sup>:

CAPACITY TO SCRUTINY THE GOVERNMENT'S ACTIVITY IN THE EUROPEAN COUNCIL <sup>10</sup>	INVOLVEMENT IN THE EU LEGISLATIVE PROCESS AND SUPERVISION OF EU INSTITUTIONS
Governmental hearings prior to European Council meetings Governmental hearings after European Council meetings Creation of subcommittees within EACs <sup>11</sup>	Participation in the EWM and PD Dialogue with representative of EU institutions and agencies Interparliamentary cooperation (COSAC and ICMS) <sup>12</sup>

5. *Ex multis*, cf. for Spain S. Piedrafita, «The Spanish Parliament and EU Affairs in the Post Lisbon Treaty Era: All Change?», *The Journal of Legislative Studies*, 20(4), 2014, 9 and for Italy S. Cavatorto, «Italy: Still Looking for a New Era in the Making of EU Policy», in C. Heffler, C. Neuhold *et al.* (eds.), *The Palgrave Handbook of National Parliaments and the European Union*, Palgrave Macmillan, 2015, 211.
6. Regarding this expression, refer to A. Manzella & N. Lupo (eds.), *Il sistema parlamentare euro-nazionale*, Giappichelli, 2014.
7. M. Baras & O. Barberà, «Los partidos políticos españoles», in J. Ma, Reniu, *Sistema político español*, Huygens, 2012, 275-291, where the pyramidal and centralized structure of Spanish parties is emphasized.
8. Article 97 Spanish Constitution, SC.
9. These criteria have been developed by the author in conjunction with Professor Manuel Delgado-Iribarren García-Campero and derive from his experience as Clerk of the CMUE and regular participant to the COSAC meetings since 2004, as well as from his extensive studies on EU Affairs and constitutional law. The aim has been to identify some features characterizing the parliamentary activity of any NP dealing with EU issues, and it is hoped they can be useful for future comparative studies on this topic.
10. Due to space constraints, this paper deals only with parliamentary control over European Council encounters, which are becoming increasingly important in the EU decision-making.
11. Acronym for EU Affairs Committee.
12. Acronyms respectively for Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union and for Interparliamentary Committee Meetings.

For the purposes of the analysis, I will apply these indicators firstly to the Spanish Parliament (Section II) and secondly to the Italian one, distinguishing between the Chamber of Deputies and the Senate, where relevant (Section III). Finally, I will draw some conclusions, highlighting the differences and similarities between the two models and maintaining the need of introducing in Italy some instruments to allow a better coordination between the Houses and the Government, following the Spanish example.

Regarding the time limits of this research, I will consider the interval from April 2008 until December 2017, corresponding in Spain to the IX, X, XI and XII Legislative Terms and in Italy to the XVI and XVII ones, in order to embrace the years immediately prior and subsequent to the entry into force of the Lisbon Treaty.

### III. THE PARTICIPATION OF THE SPANISH CORTES GENERALES IN EU AFFAIRS

#### *The Joint Committee for the EU*

The Spanish *Cortes Generales* is an asymmetric bicameral parliament where only the Lower House, the *Congreso*, supports by a vote of confidence the Government (Article 112 SC), whereas the *Senado* represents Provinces and Autonomous Communities (Article 69.1 SC)<sup>13</sup>.

In reference to EU Affairs, they are mainly monitored by the Joint Committee for the European Union (*Comisión Mixta para la Unión Europea*, hereinafter CMUE), created by Law 8/1994 and made up of both Deputies and Senators<sup>14</sup>. As argued, the model of a joint committee for EU policies –at the time adopted just by Ireland– has been elected by the Spanish Parliament not only to avoid conflicts of competences between the two Houses –especially in case of divergent majorities– but also to concentrate hearings in one place, thus decreasing their total amount<sup>15</sup>. Consequently, the CMUE enjoys a special nature in comparison to the other standing committees, exerting a consultative function towards them and stimulating their legislative activities<sup>16</sup>.

13. For deepening these profiles refer to L. F. Santaolalla, *Derecho parlamentario español*, Dykinson, 2013, as well as to A. Manzella, «Le Cortes nel sistema costituzionale spagnolo», in E. García de Enterría & A. Predieri, *La Costituzione spagnola*, Giuffrè, 1982, 453-498.

14. This body has replaced the preexistent Joint Committee for the European Communities, established by Law 47/1985, and later modified by Law 18/1988. M. M. Martín Martínez, «El control parlamentario de la política comunitaria», *Revista de Instituciones Europeas*, 1995, 22(2), 458-469.

15. F. J. Matia Portilla, *Parlamentos nacionales y Derecho comunitario derivado*, Centro de Estudios Políticos y Constitucionales, 1999, 148-156.

16. P. Pérez Tremps, «Il rafforzamento dell'esecutivo come conseguenza della integrazione nella Comunità europea», in G. Rolla (ed.), *Le forme di governo nei moderni ordinamenti policentrici*, Giuffrè, 1991, 107.

With Laws 24/2009 and 38/2010, as well as with the 2010 Resolution of the Boards of the Congress and the Senate, the Committee has been vested, *inter alia*, with the power of adopting, on behalf of the two Houses, reasoned opinions -stating the non-compliance by EU draft legislative acts with the subsidiarity principle- and contributions<sup>17</sup> in the PD framework<sup>18</sup>.

In particular, according to the Resolution, the CMUE Bureau and the Board of Spokespersons selects «at least twice a month» EU draft legislative acts to be examined by the Committee and appoints for each of them a rapporteur, in charge of presenting to the Committee either a contribution (*informe*) if no breach is observed, or a reasoned opinion (*dictamen motivado*) if a violation of the subsidiarity principle is identified<sup>19</sup>. In order to do so, the CMUE can request the Government a report to clarify the content of the legislative proposal and the corresponding preparatory documents; moreover, the Committee has also to transmit the draft to regional parliaments, whose views can be «taken into account»<sup>20</sup>. Finally, after receiving the Government's memoranda and the regional indications, the Committee approves, generally by consent, a reasoned opinion or a contribution<sup>21</sup>.

In the next paragraph, I will assess the CMUE activity from the IX Legislature to the XII one<sup>22</sup>, analyzing firstly its capacity to scrutiny the Executive in the European Council (subparagraph a)), and secondly its participation in the EU decision-making and dialogue with EU institutions (subparagraph b)).

### *The participation of the Spanish Parliament in EU Affairs*

#### *a) Parliamentary scrutiny of the Government in the European Council*

The first indicator to assess this dimension deals with governmental hearings before the CMUE prior to European Council summits.

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17. «Contributions» and «reasoned opinions» are the terms adopted by the EP to classify NP opinions and therefore they will be employed in this article.
  18. In any case, the Plenary can always recall the debate and the final approval of any reasoned opinion or contribution, although this has never occurred.
  19. Paragraph 8.1, Bureaus' Resolution of 21.09.1995, as modified in 2010.
  20. Ivi, Paragraph 8.3. The regional opinions must be submitted to EU institutions only if also the CMUE identifies a violation of the subsidiarity principle (Article 6.3 Law 8/1994). See D. Fromage, «Regional parliaments and the early warning system: an assessment six years after the entry into force of the Lisbon Treaty», SOG-WP33/2016, 15-17, <http://sog.luiss.it/sites/sog.luiss.it/files/SOG%20Working%20Papers%20WP33-2016%20Fromage.pdf>, last accessed 20.04.2018.
  21. M. Delgado-Iribarren García-Campero, «La incorporación de la Comisión Mixta para la Unión Europea de las Cortes Generales al control de la aplicación del principio de subsidiariedad y al dialogo político con las instituciones legislativas de la Unión Europea (2014-2014)», in P.A. Sáenz de Santa María & J.I. Ugartemendia Eceizabarrena (eds.), *El Parlamento Europeo: ¿esta vez es diferente?*, IVAP, 2015, 260.
  22. Unless differently specified, statistics for the XII Legislature are updated until December 2017.

Indeed, even though Law 8/1994 commits the Government to sending a written report prior to the ordinary European Council meetings concluding the Council Presidency, so far this obligation has never been respected<sup>23</sup>. Thus, this information requirement has been replaced since 2004 by the appearance before the CMUE of the Secretary of State for the EU or the Ministry of Foreign Affairs to illustrate the subjects of the next EU summits<sup>24</sup>.

Although the IX (April 2008–December 2011) and the X (December 2011– January 2016) parliamentary Terms have been characterized by a considerable activism of the CMUE<sup>25</sup>, the quality of the control exercised over the Government has varied significantly. Indeed, if in the first Term the chairmanship of Miguel Arias Cañete<sup>26</sup>, the relevant issues at stake and the organization of the Spanish semestral Presidency<sup>27</sup> have encouraged the CMUE to organize frequent meetings in order to define national priorities and assess the results obtained in EU summits<sup>28</sup>; in the following Term, instead, under the presidency of Gerardo Camps<sup>29</sup> –representative of the same party holding absolute majority in both Houses, the PP– the CMUE has exerted a softer scrutiny on the Government. In any case, the fourteen appearances of the Secretary of State for the EU between 2011 and

23. M. Sánchez de Dios, «Report on Spain» in W. Wessels *et al.*, *Democratic Control in the Member States of the European Council and the Euro zone summits-Annex 1*, 134, [http://www.europarl.europa.eu/RegData/etudes/etudes/Join/2013/474392/IPOL-AFCO\\_ET%282013%29474392%28ANN01%29\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/Join/2013/474392/IPOL-AFCO_ET%282013%29474392%28ANN01%29_EN.pdf) last accessed 20.04.2018.
24. J. Laso Pérez, «La actividad de control parlamentario en España sobre la Unión Europea durante la VIII legislatura (2004–2008)», *Revista General de Derecho Europeo*, 15, 2008, 8–10. In particular, the Secretary of State for the EU has informed the Committee more frequently than the Minister, who has appeared before it only twice, namely on 26 June 2012 and on 4 October 2012.
25. Indeed, while in the VIII Legislature (2004–2008) the CMUE met only 24 times, during the following one it has recorded the highest number of meetings (namely 75) compared to the other standing committees in the Congress, however, the figure has slightly decreased to 68 in the X Term. See DSCG, *CMUE*, IX Legislature, 20.09.2011, No. 75, 14.
26. Indeed, in addition to be an expert in EU Affairs, he belonged to the main opposition party (*Partido Popular*, PP), and therefore put much effort in scrutinizing the activity of the Government presided by José Luis Zapatero (*Partido Socialista*, PSOE). It is also worth mentioning that before holding the office of CMUE President from 2008 to 2011, Mr. Arias Cañete has been a member of the European Parliament (1986–1999) and Minister for Agriculture, Fisheries and Food (2000–2004) for the Government presided by José María Aznar López. In 2011, he was appointed once more as Minister for Agriculture, Food and Environment by Mariano Rajoy Brey and in 2014 he was elected for his second mandate as member of the European Parliament. Finally, in 2014 he was assigned by the President of the European Commission Jean-Claude Juncker to the office of Commissioner for Climate Action and Energy, which he currently holds.
27. The Spanish Presidency has been between January and June 2010.
28. Indeed, the CMUE met even during «parliamentary holidays» in July.
29. On that occasion, the practice of attributing such position to the main opposition party has not been respected, due to the PSOE declination to hold the office. Before being CMUE President during the X Legislature, Mr. Camps (PP) has been appointed in 2000 Secretary of State for Social Security and in 2003 Minister for Economy, Manufacturing and Employment in the Valencian Community.

2015 have contributed to hold the Government accountable, especially during the years of the financial and economic crisis that have thoroughly affected Spain. Furthermore, pursuant to Article 9 Law 8/1994, the Secretary of State for the EU has sometimes appeared before the Committee also to account for the results achieved during the concluded Council Presidencies<sup>30</sup>.

Whereas in the brief XI Legislature (January 2016-May 2016), the Secretary of State for the EU appeared just once to report on the crucial European Council meeting of 18 March 2016, during the current XII Term Toledo Albiñana<sup>31</sup> in his first hearing before the CMUE underlined the importance of parliamentary control over the Government activity in EU Affairs and promised to keep the CMUE informed as much as possible<sup>32</sup>. In fact, so far he has complied with this commitment, appearing before the Committee prior to every European Council meeting.

The second indicator to be examined refers to the *ex-post* parliamentary control over the Government's action in the European Council. Indeed, even though the Executive is formally due to report before the Plenary of the Congress on the outcomes of the previous European Council meeting –*ex* Article 4 Law 8/1994– these hearings have actually taken place only 31 times out of the fifty-one EU summits occurred between June 2008 and December 2017<sup>33</sup>. More specifically, it is notable that the period in which the Government has appeared more frequently to the Plenary has been between 2012 and 2013, when significant measures to face the economic crisis have been adopted in European Councils. Apart from that, the overall scarce commitment of the Government to report *ex post* to the Plenary has been highly criticized by the opposition, especially on occasion of the European Council held in March 2016 where a controversial agreement with Turkey was approved. In this case, in fact, the Government, which had firstly refused to appear before the Lower House invoking the lack of confidence relationship between the «*gobierno en funciones*» and the Congress, has been then obliged to go and explain its position on the migration crisis<sup>34</sup>.

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30. It has happened, for example, in September 2011, when the Secretary of State for the EU reported on the activity of the ongoing Hungarian Presidency (DSCG, CMUE, IX Legislature, 13.09.2011, No. 74) or about the outcomes of the Lithuanian one (DSCG, CMUE, X Legislature, 22.10.2014, No. 50).

31. It is relevant to underline the extensive experience in EU and international affairs acquired by Mr. Albiñana over the years, both as a diplomat for the Spanish Government and as an official in the European institutions. In October 2011, he has been also appointed as Ambassador on Special Mission for Bilateral Relations with the European Union.

32. DSGC, CMUE, XII Legislature, 14.12.2016, No. 3.

33. A list of European Councils from 1961 until 2014 is available at [https://www.cvce.eu/content/publication/2000/11/22/8244b7d8-d086-450b-9b28-1478203d3b2e/publishable\\_en.pdf](https://www.cvce.eu/content/publication/2000/11/22/8244b7d8-d086-450b-9b28-1478203d3b2e/publishable_en.pdf), last accessed 20.04.2018.

34. DSCG, Pleno, XI Legislature, 6.04.2016, No. 7, 11. Indeed, after the Government refusal to report before the Plenary, some opposition parties have even proposed lodging an appeal before the Constitutional Court.

Finally, the third indicator concerns the creation of subcommittees (*ponencias de estudio*) on salient issues. Whereas during the IX Term the CMUE has established five of them –respectively on the Lisbon Strategy, the impact of the Treaty of Lisbon on the *Cortes*, the ultra-peripheral regions, the financial perspectives and the specialty of Ceuta and Melilla<sup>35</sup>– in the current XII Legislature, one of the first decisions taken by the President María Soraya Rodríguez Ramos (PSOE)<sup>36</sup> has been the creation of a *ponencia* exclusively devoted to Brexit. In particular, among the several experts that have been heard so far to study the consequences of the British left from the EU, it is necessary to mention the hearing of the EU's Chief Negotiator with the United Kingdom Michel Barnier, who has informed the Committee about the status of negotiations and their future developments<sup>37</sup>.

b) *Participation in EU decision-making process and dialogue with EU institutions*

This second dimension will be evaluated through three indicators as well. The first one deals with the participation in the EWM and the PD. To begin, it is worth mentioning that the Spanish *Cortes* have started participating to the PD only in 2010 –four years after its launch in 2006– and that they did not take part to the pilot projects to test subsidiarity organized by COSAC<sup>38</sup>. In spite of this initial hesitation, since the IX Term the CMUE has regularly participated to the EU legislative process, as shown in the table below<sup>39</sup>.

Table 1 Number of contributions and r.o. sent by the Spanish Parliament to the Commission

	IXlt.		XIlt.				XIlt.	XIIlt.	
Years	2010	2011	2012	2013	2014	2015	2016		2017
Contributions	4	2	7	17	45	11	13		29
r.o.	0	2	2	5	1	1	0		1

35. DSCG, CMUE, IX Legislature, 20.09.2011, No. 75, 14.

36. Vice-President of the Agriculture committee in the EP from 1999 to 2004, Ms. Rodríguez Ramos has been Secretary of State for International Cooperation during Zapatero's government between 2008 and 2011, and then she has been appointed as spokesperson for the PSOE in the Congress of Deputies.

37. DSCG, CMUE, XII Legislature, 10.05.2017, No. 35.

38. Laso Pérez above n 24, 59ff.

39. Data extracted from the Annual Reports of the Commission on the Relations between the Commission and National Parliaments, [https://ec.europa.eu/info/annual-reports-relations-national-parliaments\\_en](https://ec.europa.eu/info/annual-reports-relations-national-parliaments_en). For the year 2017, figures are estimation, based on the information published on the Congress of Deputies' website: <http://www.congreso.es/portal/page/portal/Congreso/Congreso/CongresoUE>.

In general, it could be said that in the reference period the *Cortes* have been more active in the PD than in the EWM<sup>40</sup>. In particular, since 2011 the overall number of contributions has increased constantly, reaching a peak of 45 in 2014. Anyway, the following year the figure decreased by 75%, probably due to the general elections that took place in December –which have prevented the Committee to fully work–, as well as to the decision adopted by the new-elected President of the Commission Jean-Claude Juncker of reducing the total amount of legislative proposals. In the XI Legislature, the value has just slightly increased, owing to the political instability and the elections held in July 2016. Finally, in the current XII Legislature, the figure has further grown, standing at twenty-nine contributions at the end of 2017.

Regarding the EWM, the first two reasoned opinions were adopted in 2011, one in reference to the Energy Efficiency Directive<sup>41</sup> and another one with regard to two Regulations dealing with Unitary Patent Protection<sup>42</sup>. More specifically, with the latter the CMUE declared the violation of the subsidiarity principle by both proposals, since, in its view, the erroneous legal basis provided in the first one would have automatically affected the compliance with the principle of subsidiarity also by the second one<sup>43</sup>. Nevertheless, the scholarship has underlined that with this reasoned opinion the CMUE has actually intended to reinforce the Government's position, which had previously declared its intention of bringing legal action before the European Court of Justice for violation of the subsidiarity principle by the two above-mentioned drafts<sup>44</sup>.

Therefore, this case draws to attention a feature of the Spanish parliamentary participation in the EWM, namely the CMUE tendency to follow the position of the Government<sup>45</sup>, which is generally positive<sup>46</sup>. Consequently, it has been pointed out that,

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40. This is a common trend, since between 2010 and 2016 NPs have sent 350 reasoned opinions and 3,319 contributions in total.

41. *Dictamen 1/2011* on COM (2011)169 final.

42. *Dictamen 2/2011* on COM (2011)215 and 216 final.

43. J. A. Camisón Yagüe, *Las Cortes Generales y el control de principio de subsidiariedad: una visión práctica. Los dos primeros dictámenes negativos en el marco del procedimiento de alerta temprana*, Dykinson, 2012.

44. See the intervention by the MP Sàez Jubero in DSCG, CMUE, IX Legislature, 14.06.2011No. 71, 14.

45. Indeed, in the rare cases that the CMUE has rejected a reasoned opinion proposed by a rapporteur, it was in contrast with the Government's position, as it has recently occurred in reference to COM (2017)343 or to COM (2012)130. See respectively DSCG, CMUE, XII Legislature, 18.10.2017, No. 59 and DSCG, CMUE, X Legislature, 8.05.2012, No. 19.

46. C. Fasone & D. Fromage, «Are Parliaments (More) Committed to the Trend of Open Government After the Lisbon Treaty? The Italian and the Spanish Cases», in I. Bouhadana *et al.*, *Parliaments in the Open Government Era*, IMODEV, 2015, 12. The position of the Government on the compliance with subsidiarity is expressed in a report that, according to Article 3.1j), the CMUE may request. However, even though the CMUE has almost always asked for such a document, the Government has sometimes failed to provide it, even in case of important proposals. E. Aranda Álvarez, «La Alerta Temprana en el procedimiento legislativo de la Unión Europea», *Revista de Derecho Comunitario Europeo*, No. 44, 2013, 133-134.

like in the case examined above, the CMUE has frequently used the EWM as a political instrument, not to technically assess the respect of subsidiarity, but rather to strengthen the Spanish national position already expressed by the Government in the Council<sup>47</sup>. This also explains why such a low amount of reasoned opinions -claiming especially an unjustified interference in the competences of MS<sup>48</sup> or an excess of powers conferred on the Commission<sup>49</sup>- has been submitted between 2011 and 2017, with the highest point reached in 2013. In any case, it should be mentioned that the Commission has always replied to the reasoned opinions sent by the CMUE, thus stimulating the Spanish Parliament to actively participate to the EU decision-making<sup>50</sup>.

The second indicator looks at the meetings between the CMUE and EU institutions (or agencies) representatives. More in details, if in 2010 the CMUE has been the first EU parliamentary committee to hear the President of Eurojust and the Director of Europol<sup>51</sup>, also in the X Legislature there was a significant amount of meetings, including those with the Commissioner for Financial Programming and Budget Janusz Lewandowski -asked to account for the Multiannual Financial Framework 2014-2020- and with members of the EU Court of Auditors, who reported on the activity of the institution in 2011, 2012 and 2013; furthermore, in 2015 eight of the new-appointed Commissioners and Vice-Presidents were heard to illustrate the program of the Commission. In the XII Term, there have been already nine meetings with members of the Commission -including the Commissioner for Climate Action and Energy, Arias Cañete, President of the CMUE during the IX Legislature, and the Commissioner for Economic and Monetary Affairs and the Euro, Pierre Moscovici-, as well as with the Director-General for Budget Nadia Calviño, heard in September 2017.

The third and last indicator concerns interparliamentary cooperation in the frameworks of the COSAC and of ICMS<sup>52</sup>. In particular, Spain has participated to all twelve COSAC meetings organized between January 2012 and December 2017 with a delegation composed of one or two CMUE members (either from both Houses or only from one of them), with the assistance of one of the Committee clerks. Conversely, concerning the participation in the ICMS, the Spanish *Cortes* has taken part to half of these summits in 2012, 2013 and 2015, while the figure has decreased to one fifth (namely three meetings

47. Camisón Yagüe, above n 43, 115-117.

48. *Dictámenes* 2/2013, 4/2013, 7/2013 and 8/2013.

49. *Dictamen* 1/2013. See Delgado-Iribarren, above n 21, 261.

50. An episode demonstrating the success of the *Cortes*'s activity in this framework is represented by the request -made by the Boards of the Houses, at the initiative of the CMUE, to the EP- to subject to the subsidiarity check a proposal for regulation of EP's right of inquiry, on the basis that it would have affected national competences. In spite of the position express by the Legal Affairs Committee, the request was then accepted and the proposal forwarded to NPs. Delgado-Iribarren, above, n 21, 259.

51. In conformity with Article 12c) TEU.

52. Since statistics about Spanish participation in interparliamentary domains during the IX Legislature are not published on the website of the *Congreso*, I will focus only on the X, XI and XII Terms.

over sixteen) in 2016, due to the general elections held in that year. However, in the current Term, up to the end of November 2017, the Parliament has participated to six ICMs plus a series of other initiatives -like exchanges of views, workshops and seminars- organized by the EP<sup>53</sup>.

#### *Concluding remarks*

After eight years from the entry into force of the Lisbon Treaty, it could be said that the Spanish Parliament has improved its overall capacity to scrutiny EU policies. Indeed, if in the beginning the CMUE had a reactive attitude towards EU Affairs, mainly «limited to the reception of information given by the Government or administrative bodies»<sup>54</sup>, nowadays it has enhanced its overall ability to challenge the Executive at the European level. In particular, it is entitled with more instruments to keep the Government accountable prior and after European Council meetings, participate on a regular basis to the EWM and the PD, acquire information independently from the Government through *ponencias de estudio* and hearings with representatives of EU institution, and dialogue with the EP and other NPs in the framework of interparliamentary cooperation.

Nevertheless, the frequent non-fulfillment by the Government of the information obligations provided by legislation and the constant endorsement by the CMUE of the Executive's position on the respect of subsidiarity reveals that the Parliament's role in EU Affairs is still feeble. In fact, even though the CMUE has enhanced its autonomy in the last years, becoming one of the most active standing committees in Parliament, it yet maintains a subordinate position vis-à-vis the Government, whose strong influence on parliamentary activity is made possible owing to a solid political majority. For this reason, it appears interesting to compare the Spanish participation in EU integration to that one of another Legislature traditionally characterized by a «low level of Europeanization»<sup>55</sup>, namely the Italian Parliament, which, after the Lisbon Treaty, has instead acquired more autonomy from the Government, thus becoming an «active player» of the EU arena<sup>56</sup>.

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53. Moreover, in the last five years, delegations of the CMUE, as well as of other committees, have gone three times to Brussels to participate to activities organized by the Commission in order to strengthen the dialogue with NPs on the Annual Work Program.

54. F. B. Lloréns & M. T. González Escudero, «The Parliament of Spain: Slowly moving onto the European Directions?», in A. Maurer & W. Wessels (eds.), *National Parliaments on their Ways to Europe: Losers or Latecomers?*, Nomos, 2001, 205. The same consideration emerged also from Winzen's study who included the Spanish Parliament among those NPs exerting a sporadic control over the Government and participating in a limited way to the shape of EU legislation. See T. Winzen, «National Parliamentary Control of European Union Affairs: A Cross-national and Longitudinal Comparison», *West European Politics*, 35(3), 2012, 657-672.

55. D. Rometsch, «Conclusions. European and National Institutions», in D. Rometsch & W. Wessels (eds.), *The European Union and member states: Towards institutional fusion?*, Manchester University Press, 1996, 354.

56. F. Bindi Calussi & S. B. Grassi, «The Parliament of Italy: From Benevolent Observer to Active Player», in A. Maurer & W. Wessels (eds.), *National Parliaments in their Ways to Europe: Losers or Latecomers?*, Nomos, Baden-Baden, 2001, 269-299.

#### IV. THE PARTICIPATION OF THE ITALIAN PARLIAMENT IN EU AFFAIRS

##### *The different involvement of the Chamber of Deputies and the Senate in the EWM and PD*

Although the Italian Parliament is a symmetric bicameral legislature<sup>57</sup>, the normative autonomy conferred by Article 64.1 Italian Constitution (IC) –according to which the Chamber and the Senate are entitled to adopt their own standing orders– has determined procedural and organizational divergences between the two Houses regarding their participation in European affairs, making it possible a fragmentation of the national position at the EU level<sup>58</sup>.

In particular, the scholarship has identified five main differences between the Chamber and the Senate in that respect<sup>59</sup>. First and foremost, their involvement in the EWM and PD is regulated through distinct «experimental» procedures established in the Lower House by two opinions issued by the Rules Committee on 6 October 2009 and on 14 July 2010, and in the Upper House by a letter sent on 1 December 2009 by the Speaker, Renato Schifani, to the chairpersons of the standing committees<sup>60</sup>.

Secondly, regarding the trigger of the EWM procedure, in the Chamber of Deputies it is the XIV Committee on EU Affairs (EAC) that decides which European draft legislative acts ought to be scrutinized<sup>61</sup>, whereas in the Senate all EU proposals are automatically transmitted to the competent sectoral committees as well as to the 14<sup>th</sup> Committee for their examination<sup>62</sup>.

57. It means that the Chamber of Deputies and the Senate of the Republic exert the same functions (Article 70 IC) and hold the Government equally accountable through the confidence relationship (Article 94 IC). For an overview of the Italian parliamentary system, consider A. Manzella, *Il Parlamento*, il Mulino, 1991, as well as the more recent textbook by L. Gianniti & N. Lupo, *Corso di diritto parlamentare*, il Mulino, Bologna, 2013,

58. M. Romaniello, «The Italian symmetric bicameral system in EU affairs», in N. Lupo & G. Piccirilli (eds.), *The Italian Parliament in the European Union*, Hart Publishing, 2017, 285-287. An attempt to reduce disparities in the participation of the two Houses in EU Affairs has been made with a reform to the Senate's Rules of Procedure (RoP Senate) adopted on 20 December. However, given that these new rules were still not in place at the time of writing the article and that they have just entered into force with the XVIII Legislature (started on 23 March 2018), the author has based her considerations on the previous text of the Senate's standing orders. In spite of that, references to amended versions of relevant articles have been inserted in footnotes to give account of the evolution recently occurred.

59. N. Lupo, «The Scrutiny of the Principle of Subsidiarity in the Procedures and Reasoned Opinions of the Italian Chamber and Senate», in A. Jonsson Cornell & M. Goldoni (eds.), *National and Regional Parliaments in the EU. Legislative Procedure Post-Lisbon. The Impact of the Early Warning Mechanism*, Hart Publishing, 2017, 232ff.

60. It is important to underline that these documents are subject to different publicity regimes, given that the former are published on the House's website, while the latter is not disclosed to the public. C. Fasone, «Qual è la fonte più idonea a recepire le novità del Trattato di Lisbona sui Parlamenti nazionali?», *Osservatorio sulle fonti online*, 3, 2010, 7.

61. More specifically, it is the Bureau of the Committee (with the participation of group representatives) which makes this selection during regular weekly meetings.

62. Before the reform of the Senate's standing orders in December 2017, the 14th Committee was made up of Senators belonging also to other sectoral committees, so as to have a cross-cutting approach to the scrutiny of EU Affairs; from the current Legislature onwards, conversely, this double-membership is explicitly prohibited, as provided also in the Chamber of Deputies.

Thirdly, there is also a difference concerning the roles exerted by the EAC and the other standing committees in the two Houses: in the Chamber, the former is exclusively competent to check the respect of subsidiarity, while the latter are responsible for evaluating the substance of the proposal as well as the compliance with the principle of proportionality; contrariwise, in the Senate the sectoral committees deal with any profile of the draft, with the possibility for the EAC to send an opinion to the Government, through the Speaker, in case of their inactivity after fifteen days from the forwarding of the proposal<sup>63</sup>.

Fourthly, also the involvement of the Plenary in the EWM is differently regulated in the two Chambers, since in the Lower House the request can be issued by the Government, one fifth of committee members or one tenth of deputies, and, in case of positive opinion submitted by the Committee on EU Policies, it should be also accompanied by a document (*ordine del giorno*) explaining the reasons for such disagreement; on the contrary, in the Upper House the procedure is the same provided for the examination of resolutions, whose discussion can be moved to the Plenary at the request of the Government or one fifth of committee members<sup>64</sup>.

Finally, there is a fifth crucial difference with regard to the way the EWM, the PD and the political direction function (*funzione di indirizzo politico*) are related among each other. Indeed, if the Chamber seeks to separate the scrutiny of subsidiarity from the evaluation of proportionality and the oversight of the Government, in the Senate these three procedures are strictly interweaved, since the opinion of the EAC is directly forwarded to the Government and EU institutions<sup>65</sup>.

In the light of the above, many scholars have emphasize the advantages presented by the procedure implemented by the Senate, which appears to be more consistent with the idea of EWM and PD endorsed by the Commission<sup>66</sup> and also with the approach followed by Law 234/2012 regulating the Italian participation in EU Affairs<sup>67</sup>; contrastingly, the mechanism of the Chamber of Deputies, in an effort to separate the political profile from the technical one, has been criticized for being too artificial and «bizantine»<sup>68</sup>.

63. During the XVII Legislature, this substitutive power has been exercised 95 times, thus demonstrating the difficulties of involving the other committees in the EU field, Romaniello, above n 58. Nevertheless, it is relevant to specify that with the already mentioned reform of the Senate's Rules of Procedures, the 14th Committee has become entitled with an exclusive competence when examining the principles of subsidiarity and proportionality, as it happens in the Chamber of Deputies (Article 144. 1-bis RoP Senate, new version). For an analysis of these profiles, see A. Carboni & M. Magalotti, «Prime osservazioni sulla riforma organica del Senato», *federalismi.it*, 1, 2018, 29-32 and N. Lupo, «La riforma del (solo) regolamento del Senato alla fine della XVII Legislatura», *Forum Quaderni Costituzionali*, 5.01.2018, 3.

64. Article 144.6 Chamber's Rules of Procedure (RoP Chamber) and Article 50.3 RoP Senate. In any case, the Plenary has never been involved.

65. D. A. Capuano, «Il Senato e l'attuazione del trattato di Lisbona, tra controllo di sussidiarietà e dialogo politico con la Commissione europea», *Amministrazione in cammino*, 6, 2011.

66. Indeed, the Commission has encouraged the idea of the EWM and the PD as «two sides of the same coin». See *2009 Annual Report between the European Commission and National Parliaments*, 10.

67. In particular, Articles 8 and 9 Law 234/2012.

68. N. Lupo, «I Parlamenti nazionali nell'Unione europea e il principio di sussidiarietà; qualche suggestione per la Camera dei Deputati» *Amministrazione in cammino*, 10, 2014. As already

In the next paragraph, I will assess the capacity of the Italian Parliament to challenge the Government in the European Council (subparagraph a)) and to take part to the EU decision-making as well as to relate to EU institutions (subparagraph b)) throughout the XVI and XVII parliamentary Terms, emphasizing the differences between the Houses, when appropriate.

*The participation of the Italian Parliament in EU Affairs*

a) *Parliamentary scrutiny of the Government in the European Council*

The first indicator for evaluating this dimension is referred to the communications that -according to Article 4.1, Law 234/2012- the Government has to give to the Plenary of both Houses prior to European Council meetings in order to express its position and «take into account possible directions provided by the Chambers»<sup>69</sup>. It is relevant to underline that this information obligation has been introduced as a parliamentary practice by the President of the Council of Ministers Mario Monti<sup>70</sup> during the XVI Legislature, as a way to keep the Parliament informed about the agenda of the next European Council summits -where salient economic measures would have been adopted- and to gain its political support<sup>71</sup>. After the formalization of the procedure in Law 234/2012, this commitment has been respected by the Presidents of the Council in the following Term -i.e. Enrico Letta, Matteo Renzi and Paolo Gentiloni- who have gone 22 times before the Plenaries of the Chamber and Senate to illustrate the issues at stake in the next European Councils<sup>72</sup>. Furthermore, at the end of these debates the Parliament has usually adopted resolutions, without binding effect, to give directions to the Government and indirectly influence its position in negotiations<sup>73</sup>.

As regard as the second indicator, namely the capacity of the Parliament to challenge the Executive after European Council encounters, although Article 4.1 Law 234/2012

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explained, the Senate's procedure to scrutiny EU Affairs has been modified at the end of 2017 to make it more consistent with that one provided in the Chamber of Deputies; however, given that these new provisions have just entered into force and therefore are not accompanied by a stable praxis, at the right time it is not possible to affirm whether they will actually lead to a greater coherence between the positions expressed by the Chamber of Deputies, the Senate and the Government or the Upper House will maintain a certain degree of autonomy anyhow.

69. Previously, pursuant to Law 11/2005, such communication was given by the Minister for Foreign Affairs to the Joint Committees on Foreign Affairs and EU Policies, without the adoption of any resolution at the end of debate. A. Esposito, «European Affairs within the Chamber of Deputies», in Lupu & Piccirilli (eds.) above n 58, 103.

70. As well known, Mr. Monti, a former European Commissioner (1995-2004), has been appointed a lifetime senator by the President of the Republic Giorgio Napolitano three days before being entrusted with forming a technocrat government (November 2012), in order to adopt those austerity measures deemed as necessary to restore market confidence.

71. See, for instance, the communication given to the Chamber of Deputies by Monti before and after the important European Council held on 28 and 29 June 2012.

72. Latest data as at October 2017, extracted from <http://www.camera.it/leg17/1228>.

73. However, according to Article 7.2 Law 234/2012, the Government has to justify why it has not followed Parliament's preferences.

provides that the Government should inform the Plenary of the results of these meetings within fifteen days, it is generally the Minister (or Secretary of State) on EU Affairs to report on these issues to the Joint Committees on Foreign Affairs and EU Policies of both Chambers<sup>74</sup>. Therefore, a «well-established coordination between the Parliament and the Government»<sup>75</sup> regarding the Italian participation in European Councils has developed throughout the years, allowing the former to be better informed before and after such meetings and the latter to reinforce its negotiating position at the EU level<sup>76</sup>.

With regard to subcommittees, two internal bodies within the EAC of the Upper House, set up without any revision of the standing orders, have to be mentioned: the first one -created during the XV Legislature and made up of group representatives- is in charge of scrutinizing legislative and non-legislative EU proposals on behalf of the whole Committee, in order to check the substance and the legal ground of the drafts, as well as their compliance with the principles of subsidiarity and proportionality<sup>77</sup>; the second one, conversely, has a more specific competence, dealing with the relationship with Regions in the field of EU Affairs. Established in March 2014 to enhance the dialogue with territorial legislatures, it demonstrates the relevance that the Senate acknowledges to regional participation in EU Affairs, introduced by the Lisbon Treaty<sup>78</sup>. Nevertheless, the activity of this subcommittee has been quite occasional, having gathered only seven times since its creation -more specifically, five times in 2014 and twice in 2017, after two years of deadlock.

*b) Participation in EU decision-making process and dialogue with EU institutions*

Regarding the second dimension, it is first of all necessary to appraise the participation of the Italian Parliament in the EWM and PD during the selected time span.

As shown in the table<sup>79</sup>, although the involvement has significantly changed during the XVI and XVII Terms, statistics show the major activism of the Senate both in the subsidiarity check and in the «Barroso procedure»<sup>80</sup>.

74. Indeed, during the XVII Legislature, it has occurred only once and just before the Plenary of the Chamber of Deputies (Mario Monti, 25.03.2013). Conversely, from the Chamber's website, it results that these hearings have taken place eight times from May 2013 until March 2016.

75. Esposito, above n 69, 103.

76. F. Scuto, «Il ruolo del Parlamento italiano nella formazione del diritto europeo: recenti sviluppi e criticità», *Nomos: le attualità del diritto*, 2015, 3-5. Nonetheless, the same systematic cooperation does not exist for Council meetings.

77. M. Romaniello, above n 58, 295.

78. For further details, see C. Fasone, «The Coordination with the Regional Councils», in Lupo & Piccirilli (eds.), above n 58, 150-152.

79. Data extracted from the Annual Reports of the Commission on the Relations between the Commission and National Parliaments, [https://ec.europa.eu/info/annual-reports-relations-national-parliaments\\_en](https://ec.europa.eu/info/annual-reports-relations-national-parliaments_en). For the year 2017, figures are estimation, based on the information published on the IPEX website: [www.ipex.eu](http://www.ipex.eu).

80. However, it is important to clarify that this data is influenced by the Senate decision to forward all opinions, although they just endorse the Commission's proposal.

More specifically, as underlined by the Commission, in 2010 the participation of the Chamber of Deputies and the Senate in the PD «has multiplied»<sup>81</sup> in comparison to the previous year, as a result of the novelties introduced by the Lisbon Treaty and the implementation of Law 11/2005 regulating the Italian participation to the EU legislative process.

This trend has continued in the following years until 2012, when the Senate became the second most active Chamber in the PD, having submitted 96 contributions in total. Contrastingly, these figures fell sharply in 2013 -probably due to the political instability following the resignation of President Monti and the general elections held in February 2013, which prevented the Parliament from regularly operating-, when the amount of contributions reached the lowest point ever in the Chamber and decreased by 62.5% in the Senate. After a slight increase in 2014<sup>82</sup>, the values fell again in the following year, owing to the discontent with the responses sent by the Commission -deemed as too formalistic and bureaucratic<sup>83</sup>-, as well as the general reduction of legislative proposals presented by the new Commission. Furthermore, in 2016 the contributions multiplied by almost four in the Chamber and three in the Senate, given on the one side the important issues in question -concerning, for instance, international protection of asylum seekers or taxation-, and on the other one the shift of NPs' attention from legislative to non-legislative proposals, like the Annual Work Program<sup>84</sup>. Finally, in 2017 there has been an increase in the amount of contributions submitted by the Chamber, whereas the figure declined by 27% for the Senate, passing from 81 to 59.

**Table 2** Number of contributions and r.o. (in brackets) sent by the Italian Parliament to the Commission

	XVI l.t.						XVII l.t.				
Years	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	
<b>Chamber</b>	6	9	25	28(2)	15	6	15	7	27	38	
<b>Senate</b>	8	17	71(1)	76(3)	96(1)	36(2)	62(1)	25	81(3)	59(1)	

81. COM (2011) 345 final, 5.

82. As suggested, this decline can be explained considering that in such period the Italian Parliament was engaged in discussing important bills like the electoral law and the constitutional reform. C. Fasone & D. Fromage, «The French and Italian Parliaments in EU Affairs Post-Lisbon: True Empowerment or Cosmetic Change?», *Journal of Contemporary European Research*, 13(3), 2017, 1254.

83. See, for instance, the 24th COSAC Bi-annual Report, 5.

84. Fasone & Fromage, above n 82, 1253.

Conversely, if one considers just the reasoned opinions submitted by the Italian Parliament in the XVI and XVII Legislatures, they are far fewer than the total amount of contributions, thus revealing a general cooperative attitude of the Italian Parliament towards EU legislation<sup>85</sup>. In particular, it is remarkable that the first reasoned opinion has been sent by the Senate in 2010 -in reference to a proposal for a decision on the import of Greenland's fishery products<sup>86</sup>-, in contrast with the position adopted by the Chamber of Deputies and the Government, which did not observe a violation of the subsidiarity principle<sup>87</sup>. Thus, the example reveals -in addition to the different approaches assumed by the Chamber and the Senate vis-à-vis the EWM, more constructive the former and more confrontational the latter<sup>88</sup>- the risks to which the lack of appropriate mechanisms of coordination between the two Houses and the Government could lead<sup>89</sup>. The element appears even more patent considering that only in one case the two Houses have expressed concerns on the same legislative proposal but, also in this circumstance, they have adduced different reasons<sup>90</sup>, thus making it even more difficult to represent a common national position at EU level.

The second indicator refers to hearings of representatives of EU institutions before standing committees. As clarified by the Rules Committee of the Chamber of Deputies in the opinion issued on 6 October 2009, committees may convene not only representatives of the EP and the Commission -as provided by Article 127-ter RoP Chamber and Article 144-*quater* RoP Senate-, but also of other EU institutions and bodies. Therefore, while during the XVI Legislature thirteen hearings of Commissioners and ten of MEPs<sup>91</sup> have taken place -mainly before the EACs and/or other sectoral committees of both Houses in joint session-, in the following parliamentary Term there has been an improvement, with one hearing of the President of the European Central Bank Mario Draghi, two of the High Representatives of the Union for Foreign Affairs and Security Policy Federica Mogherini and 21 of Commissioners and Vice-Presidents; regarding the dialogue with

85. Fasone & Fromage, above n 82, 1254.

86. COM (2010) 176 final.

87. C. Fasone, «Il Senato approva il primo parere contrario sul rispetto del principio di sussidiarietà», *Forum Costituzionale online*, 2010, [http://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti\\_forum/temi\\_attualita/parlamento/0012\\_fasone.pdf](http://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/temi_attualita/parlamento/0012_fasone.pdf), last accessed 20.04.2018.

88. See, *ex multis*, D. A. Capuano above n 65, and M. Romaniello, «Il ruolo attivo del Senato in Unione europea. Esperienza e prospettive alla luce del progetto di riforma costituzionale», *Rassegna parlamentare*, 4, 2015, according to whom the opposition of the Senate would have been a way to push the Government to comply with the information obligation provided in Article 3.3 Law 11/2005.

89. M. Romaniello, above n 58, 298-302.

90. COM(2012) 788 final. M. Cecili, «La sussidiarietà e l'Early Warning System tra diritto e politica. Il caso della c.d. "direttiva tabacco" del 2014», *SOG-WP41/2017*, 2017, <http://sog.luiss.it/sites/sog.luiss.it/files/SOG%20Working%20Papers%20WP41%20-%202017%20Cecili.pdf>, last accessed 20.04.2018.

91. In most of the cases Italian MEPs have been heard. Moreover, many of these meetings were devoted to the reform of the agricultural and fishery policies.

the EP, apart from one hearing of the members of the Constitutional Affairs Committee, the Italian components of the Committee on Agriculture –and also its First Vice-President Paolo De Castro– have been heard twice, thus demonstrating the great attention paid by the Italian Parliament to agricultural policy.

The third and last element is referred to the participation of the Italian Legislature in EU interparliamentary relations, in particular in the COSAC and ICMs fora. First and foremost, the reference dispositions in that respect are Article 126 of the RoP Chamber and Article 23 of the RoP Senate, even though only the latter explicitly refers to interparliamentary cooperation, mentioning just the COSAC. Anyway, both the Upper and Lower Houses have been rather active in participating in these domains through delegations granting the equal representation of both Chambers, as well as their bipartisan nature<sup>92</sup>. However, the different approach adopted by the Chamber and the Senate towards EU parliamentary scrutiny has produced significant divergences also in this field<sup>93</sup>: indeed, while the former has preferred a cooperative approach with the EP, seen as the main responsible for holding the Commission accountable, the latter has adopted a more competing attitude, with the intention of giving its contribution to the oversight of the EU Executive. Therefore, like in the case of the EWM and the PD, the «perfect» bicameralism has paradoxically produced an asymmetric involvement of the two Houses in the interparliamentary cooperation, thus compromising the consistent and effective representation of the Italian position in the EU.

#### *Concluding remarks*

In light of the foregoing, it is possible to assert that in the last two Legislatures the Italian Parliament has increased its engagement in EU Affairs, as demonstrated by the regular *ex-ante* and *ex-post* report of the Government on European Council meetings and the constant dialogue with the Commission in the frameworks of EWM and PD, as well as with other EU institutions by way of hearings and interparliamentary relations.

Nonetheless, its capacity of impacting on the European legislative process is still too weak, due to several political and administrative factors<sup>94</sup>: firstly, MPs and political parties are traditionally more concerned with national issues rather than the European ones, and, in any case, they pay more attention to the agenda of the European Councils instead of dealing with the scrutiny of single EU acts<sup>95</sup>. Furthermore, the communications of the Government are generally given in a tardy manner and the indications approved by the Chambers do not seem to play a great role in shaping the negotiations carried out by

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92. The decision on the composition of the delegation for COSAC and ICMs is adopted by each House autonomously, even though some preliminary forms of coordination at the administrative level occur on informal basis. E. Griglio, «Procedures vis-à-vis the European Parliament and the Other National Parliaments: Interparliamentary Cooperation», in N. Lupo & G. Piccirilli above n 58.

93. *Ivi*, 209-212.

94. A. Esposito, «European Affairs within the Chamber of Deputies», in N. Lupo & G. Piccirilli, above n 69, 118.

95. *Ivi*, 119.

Executive representatives<sup>96</sup>. Moreover, as it has been already underlined, another element limiting the effectiveness of the Italian Parliament's action in EU policies is the persistency of divergences and asymmetries between the two Houses which, instead of acting unanimously, have sometimes entered in conflict among them and the Government as well. In fact, if on the one hand the Chamber considers the scrutiny of the Government as its primary function, on the other hand the Senate uses the new European powers conferred by the Treaty to make its voice heard in the EU and affirm its autonomy from the Executive.

As a consequence, in addition to a change in the attitude of parliamentary officials, MPs and stakeholders, a reform of the RoP of both Chambers to give stability and legal certainty to praxis and experimental procedures affirmed over the years, as well as to provide adequate mechanisms of coordination between the positions of the two Houses and the Government is deemed as necessary<sup>97</sup>.

## V. CONCLUSION

The analysis carried out in this work has demonstrated that, after the entry into force of the Treaty of Lisbon, the involvement in EU Affairs of the Spanish and Italian Parliaments -traditionally considered as feeble in challenging the Executive's action in the European Council and in taking part to the formation of EU legislation- has increased. Indeed, the «compound»<sup>98</sup> of norms and procedures at the national and European level has granted to parliamentary standing committees -and in particular to those specialized in EU Affairs- a series of new powers and prerogatives that have fostered their participation on the EU stage.

However, as shown in the previous Sections, there are some differences in the engagement of these two Parliaments at the EU level that need to be emphasized.

First of all, while in Italy a regular and constant dialogue between the Government and the Parliament -prior and after European Council meetings- has been established throughout the years, in Spain keeping the Government accountable has proved to be more problematic. Moreover, the hearing of the Italian President of the Council before European Council meetings gives more relevance to the *ex-ante* control phase, during which the Parliament could still condition the Government's action through the adoption of resolutions; conversely, in Spain -although the appearance of the Secretary of State for the EU prior to European Councils allows the CMUE to be promptly updated on the agenda of these encounters and to express its views in that respect-, the *ex-post*

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96. Ibidem.

97. As said before, the reform occurred in December 2017 has only interested some provisions of the Senate' standing orders, while the RoP Chamber have not been affected.

98. N. Lupo & G. Piccirilli, «Introduction: The Italian Parliament and the New Role of National Parliaments in the European Union», in N. Lupo & G. Piccirilli (eds.), *The Italian Parliament in the European Union*, Hart Publishing, 2017, 2.

report by the Prime Minister leaves the Legislature a reduced scope of action, having just the possibility to scrutiny decisions that have been already taken<sup>99</sup>.

Secondly, the subcommittees existing within the EACs exert different functions in the two Parliaments: indeed, the Spanish *ponencias de estudio*, like that one for Brexit, have proved to be an effective instrument to obtain a deeper knowledge on salient issues and acquire qualified information through an autonomous channel; conversely, in Italy the two subcommittees within the Senate's 14<sup>th</sup>.

Committee have not been established in order to challenge the Government's position at the EU level, but rather to ensure a more efficient division of labor and to provide a better coordination with regional entities. Furthermore, they have not been particularly active in pursuing those objectives either, since, for instance, the Subcommittee on the Relationship with Regions in EU policies has gathered only twice in 2017.

Thirdly, although both Parliaments have proved to be more engaged in the PD than in the EWM, there are some differences in their participation: for instance, contributions submitted in 2017 by the Italian Legislature amount to around one hundred, while they are almost thirty in the case of the Spanish one. Contrarily, regarding the scrutiny of the principle of subsidiarity, the two Legislatures have been more cautious about forwarding reasoned opinions, having preferred to maintain a cooperative relationship with the European Commission. Furthermore, it is relevant to underline that both Parliaments, instead of using the EWM as a technical instrument, have sometimes interpreted it as a political one, either to strengthen the Government's position or to affirm domestic prerogatives «in an opposite way»<sup>100</sup> towards the Executive.

Fourthly, the EACs of both Parliaments have been rather active in holding hearings of representatives from EU institutions, but while in Italy it has been preferred to convene mainly national MEPs and to focus on issues that were relevant to its economy—like, for instance, agricultural policy—, Spain has adopted a broader perspective, paying special attention to financial and budgetary issues and thus hearing also members of the EU Court of Auditors or the Director-General for Budget.

Finally, regarding interparliamentary cooperation, statistics have showed the great involvement of the Spanish and Italian Legislatures in COSAC and ICMs, thus demonstrating the success of such initiatives in increasing the Europeanization of NPs. Nonetheless, a different level of transparency ensured to these meetings has been observed consulting the websites of the institutions, since whereas the reports edited by the CMUE clerks have been regularly published on the Congress's website from the X legislative Term onwards, the same documents can be found only on the Italian Chamber's website, and just in some cases for the year 2013 and beyond.

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99. On the distinction between «interference/control» and «verification/scrutiny» see J. G. Roca & R. Ibrido, «El control parlamentario en Italia», in F. Pau i Vall, *El control del gobierno en democracia. XIX Jornadas de la Asociación Española de Letrados de Parlamentos*, Tecnos, 2013, 116-117.

100. D. A. Capuano, «Il Senato e l'attuazione del Trattato di Lisbona, tra controllo di sussidiarietà e dialogo politico con la Commissione europea» *Amministrazione in Cammino*, 6, 2011.

Therefore, in light of the above, it could be concluded that, in spite of the progresses made in the recent years to hold the Government accountable and shape EU legislation through the establishment of specialized subcommittees, hearings of EU representatives and extensive participation in the interparliamentary cooperation fora, the capacity of the Spanish Parliament to influence its own Government -whose leading role in the parliamentary system is assured by a cohesive and disciplined majority- is still limited; contrarily, despite its marginalization in the decision-making since the Nineties to the benefit of the Executive<sup>101</sup>, the Italian Parliament (and particularly the Senate) has profited from the instruments provided by Law 234/2012 to better monitor the Government's action in Brussels and scrutinize thoroughly EU legislative proposals.

Nevertheless, the Spanish model could serve as an important point of reference for the Italian Legislature in order to introduce «functional and organizational forms of integration between the two Chambers»<sup>102</sup>, especially in the EU field. Indeed, since the lack of coordination mechanisms between the Upper and Lower Houses ends up weakening the unitary representation of national interest at EU level, the establishment of a bicameral EU Affairs committee -following the CMUE pattern- would improve the role of the Legislature towards the Government and the European institutions<sup>103</sup>. In fact, even those functions that should be exercised autonomously by the two Chambers -like the power granted to «each Chamber» to issue reasoned opinions<sup>104</sup>- could be better coordinated, for instance during the preliminary phase, in order to adopt a final coherent position<sup>105</sup>. This need of cooperation appears necessary if one considers the confirmation of the symmetric bicameralism after the constitutional referendum held in December 2016, which makes it even more urgent to provide adequate organizational and procedural solutions for the efficient running of parliamentary works. In this sense, the recent reform of the Senate's standing orders represents a partial, although relevant, step forward towards a more effective collaboration between the Upper and the Lower Houses.

Thus, it is hoped that the new-elected Italian Parliament would commit itself to giving a stable implementation to the parliamentary procedures introduced after the Lisbon Treaty and to strengthening the cooperation and dialogue between the Chamber and the Senate, with a view of re-launching the unitary role of Parliament and affirming its centrality within the Euro-national system<sup>106</sup>.

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101. P. Falletta, «The Transformative Role of the Parliament in the Italian Experience», in Lupo & Piccirilli (eds.), above n 58, 19-35.

102. L. Gianniti, «Per un ragionevole bicameralismo amministrativo», in F. Bassanini & A. Manzella (eds.), *Per far funzionare il Parlamento*, Passigli Editori, 2017, 39.

103. *Ivi*, 43.

104. Article 6, Protocol No. 2.

105. Gianniti, above n 102, 45.

106. A. Manzella, «Quale futuro per il sistema parlamentare?», *federalismi.it*, 23, 2017, 5, <http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=35225>, last accessed 20.04.2018.

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