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Searching for the right tool in a brand new toolbox: Comparing factors of effective parliamentary scrutiny of EU affairs after the Treaty of Lisbon

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Abstract

The Treaty of Lisbon provides national parliaments with an opportunity to play a more important role in formulating EU policies, at least in the rhetoric of the EU officials¹. Yet, it remains unclear to what extent the formal provisions will be translated into political practice. The Lisbon Treaty is considered to create a new “opportunity structure” for national parliaments, providing them with means to act in EU policies which they have not enjoyed before.

The paper attempts to assess which factors in the post-Lisbon environment help transform the provisions of the Treaty into political practice and hence contribute to more effective parliamentary scrutiny of the EU affairs. The national political context or parliamentary culture will necessarily leave an imprint on how then Lisbon Treaty provisions are implemented. The paper analyzes which factors/mechanisms have been the most important for a number of national parliaments to adapt (even upgrade) their scrutiny system. The focus of the paper is not so much the formal procedures but the practical conduct of scrutiny across several member-states’ parliaments. Also, no attempt to quantify parliamentary influence is made.

On the basis of “diverse” case selection strategy (Gerring 2007, Seawright and Gerring 2008) and exploratory interviews with the representatives of national parliaments (October-December 2010), the legislatures of Sweden, Czech Republic and Romania were selected, exemplifying a whole range of strength of EU member-states’ parliaments. The paper concentrates on the scrutiny of two EU proposals, namely, the “Green Paper on pensions” (COM 2010 0365) and Proposal for directive on seasonal third-country migrants (COM 2010 0379). These policy proposals are presented as “critical cases”. Despite the general unimportance of EU issues for an MP’s re-election, pensions and migration are crucial for voters; hence MPs would have an electoral incentive to invest time and resources into the analysis of the two EU policy documents.

¹ For example, see the inaugural address of Jerzy Buzek, President of the European Parliament (15.09.2009); Maroš Šefčovič, Vice-president of the European Commission, “New role of national parliaments under the Lisbon Treaty”. Speech /10/584. 22.10.2010

Different factors contributing to better parliamentary scrutiny are linked to the various aspects of the new post-Lisbon “opportunity structure”. First, the legal factor relates to the “scope of opportunity structure”, namely the formal norms and rules of procedure, which define the room of maneuver of a parliament. Second, the administrative factor relates to the “cost of opportunity structure”, e.g. the resources (staff, expertise, time constraints) which the national parliaments need to have in order to make use of the new provisions. Third, the institutional practice factor relates to the “implementation of the opportunity structure”, namely relations between the various actors (committees and plenary, political parties, chairs and rapporteurs) involved in the scrutiny process at both domestic and EU level.

The paper argues that effectiveness of parliamentary scrutiny of EU affairs after the Lisbon Treaty depends primarily on inter-party relations, on the one hand, and between the European Affairs committees and standing committees, on the other hand. In none of the parliaments addressed in the paper have the administrative structures been boosted or relations with EU-level stakeholders developed actively. The interest of political parties to instrumentalise (or not) the Lisbon Treaty provisions to achieve policy goals is the key factor influencing the effectiveness of the EU affairs scrutiny. In the cases of Romania and Czech Republic increased inter-party rivalry have diminished the opportunities for more effective scrutiny, while in Sweden party loyalty and consensus culture has also somehow limited the activity of the European Affairs Committee. The political parties are reluctant to make a clear connection between the EU and domestic politics even if creating such a linkage could help them address their electoral interests.

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I. Introduction

The Treaty of Lisbon brought to an end almost a decade of incessant institutional reforms of the European Union. The Laeken Declaration, adopted in December 2001 at the European Council meeting, launched this European Union “perestroika” with two goals in mind. Efficiency of the EU institutional system was one of the challenges, the other being the “democratic deficit”, its key element being the lack of parliamentary accountability in EU affairs at the national level.

This lack of parliamentary involvement was not considered to be a problem during the early stages of EU integration as the “permissive consensus” (public support of EU integration without a specific interest in EU politics as such²) made the development of the Union less contradictory and didn’t produce vivid societal cleavages. Still, as the European integration progressed, “permissive consensus” became increasingly questioned and gave way to “constraining dissensus” (Hooghe, Marks, 2005) and the issue of ensuring citizens’ interest representation as well as governments’ accountability in EU affairs loomed large once again (Norris 1997).

The accession of the Eurosceptical Denmark and UK, who adopted stringent procedures for parliamentary scrutiny of EU affairs, and the signing of the Single European Act (SEA), which increased the workload of national parliaments due to the transposition of internal market directives, have triggered the process of adaptation of national legislatures to EU integration. The Maastricht Treaty mentioned national parliaments for the first time in the EU primary legislation, starting an incremental process of increasing their formal powers at the EU level. This apex of this process has so far been the provisions of the Lisbon Treaty. Accordingly national parliaments

² Some authors claim that the term “permissive consensus”, coined by Lindberg and Scheingold (1970) is still a viable tool to describe public attitudes towards the EU, for example Buhr (2009), Hurrelmann (2007), Down and Wilson (2008). Still, as Buhr argues, “this should not be interpreted as an indication that deeper integration has been a popular project on a pan-European scale”. Hence, further political development of the European integration largely depends on the Union’s ability to “bring itself closer to the citizens”.

obtained a direct access to a large number of EU documents, secured a right to monitor the implementation of policies in the domain of justice and home affairs, received rights to determine the compliance of EU legislative proposals with the principle of subsidiarity³ and to bring proceedings to the EU Court of Justice (in case the subsidiarity principle is violated). Parliaments also obtained a prerogative to veto the change of decision-making principle in a policy area from unanimity to QMV (the so-called “passerelle clause”). The role of inter-parliamentary cooperation was increased, as the Lisbon Treaty explicitly mentions the COSAC’s role in spreading “best practices”.

Yet, these provisions have to be “interpreted” to the day-to-day practice of a national parliament and the scrutiny system enhanced accordingly. The mechanisms through which this is conducted can vary between the member states, with different parliaments preferring different tools. The aim of the paper is to evaluate which of these factors/mechanism of enhancing parliamentary scrutiny of EU affairs has been used and how.

The research for the paper was conducted on the basis of a qualitative comparative case study of three member-states parliaments (small N) through the process-tracing techniques (Checkel 2005; George and Benett 2005; Tansy 2007) and open-ended semi-structured interviews with members of national parliaments and parliamentary staff, policy stakeholders and experts.

The first section of the paper defines the key concepts and the theoretical framework applied in the research. The next part embeds the research question within the academic debate in EU integration and comparative politics literature, as well as explains the logic of case selection. The following sections analyze the transformation of the scrutiny process in Sweden, Czech Republic and Romania using the evaluation of the Green Paper on pensions and the Proposal for directive on seasonal labour migrants as examples. This part of the paper evaluates which factors/mechanisms have been used to make parliamentary scrutiny of EU affairs more effective in the aftermath of the Lisbon Treaty. The final section establishes which mechanism play the key role in enhancing EU affairs scrutiny as well. It also provides clues why political parties aren’t willing to address EU agenda and what this bodes for the role of parliaments in the aftermath of the Lisbon Treaty.

³ This principle implies that in the areas of shared competence between the EU and member-states, the Union does not take action unless it is more effective than the actions by the national, regional or local levels. For an official definition see Article 5 of the Lisbon Treaty

2. Key concepts and theoretical framework

According to Holzhaecker (2008, p.143) **parliamentary scrutiny** can be defined as the “exercise of power by the legislative branch to control, influence or monitor government decision-making”. The paper focuses on the concept of influence as, according to Auel and Benz (2005), concentrating on control and monitoring functions of a parliament does not necessarily allow to gauge its real political power as little attention is given to their practical day-to-day working of the parliament.

Although agenda-setting is considered to be an important mechanism for exercising parliamentary influence (Döring, 2001), it is not applied in this research as a yardstick to measure parliamentary powers. In the first place, as Rasch and Tsebelis (2011) argue, agenda-setting powers are increasingly shared between governments and parliaments, so the exact role of each institution has to be evaluated on a case-by-case basis. Secondly, in the case of the EU affairs scrutiny the agenda is somewhat “imposed”, hence the parliaments’ main tool of influence would be shaping the domestic deliberations and not determining the agenda.

Ultimately, building on Dahl and Stinebrickner (2002), Mokken and Stokman (1975), **parliamentary influence** is defined as the capacity of the parliament to (partially) determine the policy choices of the executive. A parliament is considered to be influential when the government:

- Accepts substantial⁴ parliamentary amendments pertaining to a certain (draft) law;
- Changes its own logic of argument in the evaluation of a document under scrutiny⁵.

The Lisbon Treaty affects both structures (formal rules, rules of procedure, long established “ways of doing things”) as well as agency (various parliamentary stakeholders) and is considered to provide a new **opportunity structure** for national parliaments.

The **opportunity structure** is defined as “various types of channels of access to the public sphere and to the policy-making and implementation processes” (Nentwich, 1996). The different elements of the opportunity structure can be related to the various mechanisms/factors that can be used to enhance parliamentary scrutiny:

⁴ The extent to which amendments were substantial will be determined via interviews with experts and stakeholders, as well as document analysis

⁵ This would reflect a potential situation when the government and the parliament support the law for different reasons

- Scope of opportunity structure (Legal factor) – legally possible range of actions/competences, various formal provisions dealing with parliamentary control of EU affairs;
- Cost of opportunity structure (Administrative factor) – resources that have to be used in order to make use of the opportunities, e.g. capacity to acquire expertise and information, sufficient support staff;
- Implementation of the opportunity structure (Institutional practice factor) – characteristics and interactions of actors involved in the process of the EU affairs scrutiny. This mechanism touches upon both domestic and EU levels. On the domestic level, it deals with relations between sectoral committees and the role of opposition, namely its ability to secure positions of chairman and rapporteur, as well as develop cross-party in order to confront the government⁶. On the EU level, this mechanism implies developing contacts with other national parliaments, EU-level institutions and stakeholders. Drawing on Hirschman (1970), one could claim that national parliaments can “exit” to the EU level, bringing the domestic conflict on EU issues to the “Brussels-level” in case they encounter strong resistance or insufficient cooperation at the national level⁷. The opportunity to “exit” is a novelty of the Lisbon Treaty. Using another of Hirschman’s concepts, “voice”⁸, before the Treaty national parliaments could primarily raise concerns in negotiations at the domestic level, having few formal rights to address the EU level actors independently of their respective governments⁹.

⁶ Ultimately the “institutional practice factor” addresses the state of executive-legislative relations, whether the parliamentary majority and opposition can develop cross-party cooperation to control the executive. See A.King (1976) and E.Damgaard and H.Jensen (2005)

⁷ The term “exit” is used to describe the strategy of national parliaments which develop enhanced contacts with EU-level actors as opposed to

⁸ Both terms “exit” and “voice” are used to describe the strategies of national parliaments in attempting to influence the EU policies of their respective national governments

⁹ The paper doesn’t present an overview of the EU level activities (participation in the Barosso dialogue, numbers of reasoned opinions, inter-parliamentary meetings organized etc.) of the selected national parliament but seeks to understand if any of the EU-level channels were used to influence the legislative process

The role of each of these factors in parliamentary practice of the European Affairs Committees (EAC) in the aftermath of the Lisbon Treaty will be considered in the following sections of the paper.

3. Embedding the research within EU studies /comparative politics literature.

3.1. Parliamentary strength and factors of effective scrutiny

The first largely theoretical considerations about the factors of effective scrutiny can be traced to Maurer and Wessels (2001), as well as Gyóri (in O'Brennan and Raunio, 2007). The later consider the scope of information, timing of scrutiny and the impact on the government's room for maneuver¹⁰ to play the key role. Recently several authors, for example Sprungk (2010), Neuhold and de Ruiter (2010), have turned to empirically testing these factors. Using a principal-agent model as theoretical background, Sprungk concludes that systematic involvement of sectoral committees and parliamentary opposition are the key factors influencing scrutiny effectiveness. Neuhold and de Ruiter test several hypotheses on the relationship between the characteristics of a political system (consensus/majoritarian) and the organization of EU affairs debates in bicameral parliaments. Although the hypotheses were not corroborated, the amount and quality of expertise available to a parliament on a topic touched upon by the proposed EU legislation appears to be an important explanatory factor.

The paper follows the second approach, drawing conclusions on the basis of studying the scrutiny process of several policy documents, what allows to discern discrepancies between formal and informal rules, as well as analyze the strategies of different parliamentary actors.

The choice of countries (Sweden, Czech Republic, Romania) on the basis of "parliamentary strength" needs to be explained within the body of comparative politics research on the types of parliaments.

One of the primary distinctions amongst the national parliaments is the division between "working" and "debating" (or "legislating" and "deliberating" national parliaments), with Nordic parliaments generally accepted as examples of the former and the British parliament as example of the later type (Auel and Raunio 2011). This distinction mirrors the definition of parliamentary

¹⁰ According to O.Rozenberg (2002) these factors were originally proposed by G.Laprat (1991) and G.Scoffoni (1992)

functions as proposed by Tsakatika (2007): “democratic check on rule-making” and “forum”¹¹. The former is the ability of the parliament to force the executive to accept substantial amendments, which provides a restraint, a check on the will of the government to single-handedly make decisions. On the other hand the “forum” function implies deliberation and discussions, which can lead to the change of an underlying logic of reasoning in executive-legislative debates.

The deliberative role of national parliaments is indeed very important, as it helps guarantee democratic legitimacy of the government and hold the government publicly accountable (Auel and Benz 2005; Auel 2007). Yet, some form of socialization and better mutual understanding (between the executive and legislative or between different national parliaments) will result only after a certain period of time elapses. Also, even the “debating” House of Commons public debates on EU policies don’t take place that often (Auel & Raunio 2011).

The novelty of the Lisbon Treaty is the formal right of national parliaments to participate in the legislative process through the Early Warning System, addressing the ECJ or using the Lisbon Treaty provisions to renegotiate its status in developing policy towards the EU. Taking part in the legislative process would allow national parliaments to directly connect domestic and EU politics. Obviously, the communicative functions of parliaments have been given a boost after the Lisbon Treaty, yet the ability of national parliaments to influence EU legislation (either directly or through domestic executives) is likely to be a crucial test for the Lisbon Treaty provisions. These provisions address how national parliaments can react to EU laws or new redistribution of EU competences. Arguably, what parliaments can really hope for after the Lisbon Treaty is being accepted by respective national governments as legitimate actors in formulating policies towards the EU. Yet, in case the national parliaments are unable to influence EU legislation, they are likely to stay the same reactive institutions as they were throughout most of the time span of the EU integration project. This doesn’t necessarily mean a confrontation between the executive and legislative powers but implies that parliaments actively take the EU legislative process into account. Public deliberations or public resolutions on EU issues can create a form of leverage on the respective government. Nevertheless, their effect can be diminished by the low saliency of EU issues in the public opinion, the low added-value of European Union topics for an MP’s re-election or unwillingness of political parties to politicize EU affairs.

¹¹ Tsakatika (2007) depicts “check” and “forum” as two aspects of parliamentary accountability which contribute to the democratic legitimacy of the political system. For example the “forum” function implies more of public debates and “rituals” of conferring authority through electoral procedures, not inter-elite debates. Nevertheless, it is assumed that the two concepts may offer an interesting perspective on parliamentary influence as well

Ultimately, the paper evaluates whether various mechanisms (the legal, administrative and institutional practice mechanisms listed above) were used as leverage in the legislative process, which touches upon both the EU and domestic policy arenas.

Attempts to determine the strength of national parliaments¹² and classify them accordingly have largely centered the Mezey-Norton debate (Arter 2006). For Mezey (1979) the power of a legislature lies in its ability to constrain the executive, as well as modify and reject executive proposals. On the contrary, for Norton (1998) the power to reject, especially if exercised rarely was not to be considered a measure of a parliament's power. This point made by Norton is especially important in the aftermath of the Lisbon Treaty: in order to have an impact on the legislative process, national parliaments have to engage in assessing the content of the proposals, not just bluntly accept or reject it.

Ultimately, there is still a lack of precise tools in determining the value of parliamentary power, especially if one takes into consideration the difference between the formal rights and their application in practice. The lack of clear criteria is also another pending problem, although two factors seem to have been included in most classifications: legislative efficiency (ability to make informed policy decisions) and legislative autonomy (the extent to which it can act as checks and balances to the executive).

The large-scale survey conducted by Fish and Kroenig (2009) attempted to make the classification national parliaments more objective. The authors constructed a Parliamentary Power Index (PPI) based on 32 issues that reflects a parliament's influence over the executive, institutional autonomy, institutional capacity, some specific powers (e.g. grant amnesty, ratify treaties, authorize military actions etc). Despite being the most large-scale survey of the world's parliaments, one should admit that the survey questions are heavily biased towards formal provisions. The large N approach adopted clearly marks out the difference between European, Asian or African legislatures but compromises the differences amongst the European parliaments, which are not reflected in the scores given.

The paper builds upon the classification on national parliaments in the EU integration literature (e.g. Majone 2011), and the data from research on the parliament's budgetary power (Wehner 2006).

¹² In the paper parliamentary strength encompasses formal rights and their application vis-à-vis the respective national government

Although Magone doesn't provide a clear definition of parliamentary strength, his evaluations appear to be based on expert opinions and take the application of formal rules into account. He considers the Swedish, Finnish and Dutch parliaments to be strong; British, German, Austrian, Danish, Norwegian and Italian – moderately strong; Swiss, Belgian, Luxembourg, French, Irish, Portuguese, Spanish, Greek, as well as Central-East European and Balkan parliaments – weak. Out of the parliaments of the “new” EU member-states the legislatures of Bulgaria and Romania are considered to be the weakest. Maurer and Wessels (2001) also develop a classification of parliaments according to their input into formulating the government's policy towards the EU, although the typology proposed doesn't take the Central and Eastern European states into account. Parliaments of Denmark, Finland, Austria, Sweden are considered to be strong “national players”, with France, United Kingdom, Germany and Netherlands being less influential. Parliaments of Belgium, Greece, Spain, Ireland, Italy, Luxembourg, Portugal are dubbed as “slow adapters”, being unwilling or unable to affect their government's stance in EU negotiations. Looking at the role of parliaments independent of EU integration Raunio (2005) uses a combination of various scales provided in Döring (1995) to distinguish several groups of national parliaments. He considers parliaments Finland, Italy and Netherlands as the most influential. Austria, Denmark, Germany and Sweden occupy are in the second less-influential group. Parliaments of Belgium, Luxembourg, Greece, Portugal, Spain, United Kingdom, France and Ireland are respectively weak. Nevertheless, “new” member-states were not included in the classification.

Budgetary powers of parliaments can be considered as a good proxy for assessing their political powers. Ultimately, approval of financial measures has historically been the main mechanism of parliaments' influence. The index constructed by Wehner (2006) doesn't take all of the European countries into account, for example few Balkan countries are included. The results of Wehner's research and Majone's classification corroborate each other: strong budgetary powers are exercised by politically influential parliaments.

Building on this data, the parliaments of Sweden, Czech Republic and Romania were included in the research as examples of strong, medium strong and weak parliaments¹³.

¹³ Ultimately, only limited generalization can be drawn from the three case studies, yet it is considered that they can highlight a number of structural trends important for the national parliaments of all member-states

3.2. Transformation of European political parties

The paper argues that inter-party relations are a crucial factor determining the conduct of the EU affairs scrutiny. Also, it claims that political parties avoid making a link between EU policies and domestic policies. It is argued that the way parties address EU issues as well as the transformation of national party systems as such precludes them from making such a connection. This section identifies the key points in the literature on the Europeanization of political parties and the transformation of national party systems. Later, the paper considers whether these trends help explain the outcome of the analysis of the EU affairs scrutiny in Sweden, Czech Republic and Romania.

According to P.Mair (2008), political parties have remained much more impervious to the pressures of Europeanization much more than any other national political institutions. Europeanization leads to a hollowing out of national party competition as the development of EU integration puts more constraints on domestic decision-making, forcing a mainstream convergence on economic issues. Also, “Europe” limits party competition by reducing the number of issues that can be discussed exclusively at the national level and the number of tools with which these issues can be addressed. The increasingly important role of non-majoritarian institutions also tends to depoliticize the national discussion of the EU agenda in political parties. Yet, the paper deals with the policy domains (migration, social security) where national states have resisted further EU involvement or have actively tried to keep the spread of EU competences within certain boundaries. Hence, reference to the EU could support party competition on the issues of social security and migration, as they address the core elements of national sovereignty and issues, which are crucial for domestic policies. It’s still unclear whether “Europe” is considered a constraint or an opportunity in party competition. Interestingly already in late 1990s claims started to be made, for example by Ray (1999)¹⁴, that internal dissent over European integration is growing yet it still hasn’t achieved the scale of a crucial cleavage that structures the party landscape. In later research, e.g. Kriesi (2007) the hypothesis of “Europe” as a new cleavage finds only mixed support¹⁵.

Arguably, there is little evidence that EU decision-making has greatly changed the balance of power within national political parties, apart from assisting greater autonomy of party leadership.

¹⁴ Ray L. (1999) Measuring party orientations towards European integration: Results from an expert survey, in *European Journal of Political Research*, 36, 283-306

¹⁵ For an overview of contrasting explanations of the link between EU and national political parties see Conti (2007)

At the same time the specialist on EU affairs have also not become more influential in the mainstream center-right and center-left parties (Poguntke 2007, Ladrech 2007, Raunio 2002). “Europeanization touches upon the internal organization of national parties but not necessarily “on their functions or their overall ability to secure own goals” (Ladrech 2011). Despite the fact that political parties have developed some ideational positions towards the EU, more research has to be done on how “Europe” is instrumentalized in party competition. This paper doesn’t address this claim directly but by looking at potential connections between the scrutiny of EU affairs and the domestic debates it does provide some answers as to how “Europe” is used in the policy-making process.

Depoliticization or muted reference to “Europe” can also be seen as a sign of a wider system change in European political parties, where this avoidance of deliberation and debate is a conscious strategy to secure public offices and develop wide cross-party cooperation.

The focal point for assessing political party transformation at the domestic level is the cartel party thesis. Proposed by Katz and Mair (2009, 1995), it argues that modern party systems become increasingly reliant on state financing, limit political competition, depoliticize a number of societal issues and are unwilling to raise new sensitive topics. The focus of a party’s activities is “office-seeking” and governing, not representing social interests; collusion and cooperation, not competition is the key mode of interacting among political parties. Cartel party remains an ideal type, yet it can help gauge important changes in the European party systems and potentially a hollowing out of democracy in the EU member-states (Mair 2006). Traditional democratic process is hollowed out, as parties increasingly loose “representative” and acquire “governing” functions, disengaging from supporters and electorate. Preferences of the citizens neither constitute a constraint, nor influence the behaviour of political parties, while Europe is a “sleeping giant” in terms of providing a basis for party competition (Mair 2005).

The cartel party thesis has received critique due to problems with operationalization and insufficient empirical support. Party leaders don’t necessarily become more autonomous; not all parties follow the “cartel” internal organization template (Koole 1996, Detterbeck 2005, Pelizzo 2008, Kitschelt 2000, Loxbo 2011). At the same time the rise of public/state financial support to the parties doesn’t necessarily happen at the same time with the decline of membership (as the cartel party thesis would postulate) (Haegel 2008). As van Biezen and Rashkova 2011 claim, the “growth largely found in the area of party financing may have more to do with the desire to enhance transparency and to combat corruption than with the controlling access to the political system for new parties”.

Yet, despite all the criticism being valid the cartel party thesis stresses depoliticization of a large number of issues. Presumably, political parties would be hesitant to connect the EU and the

domestic policy debate as they would need to deviate from the established channels of competition and unwillingly “break the cartel”. Also, Taggart (1998) points out that dominant parties in the cartel don’t use EU agenda to differentiate amongst themselves. The following section of the paper will address the cartel tendencies in Sweden, Czech Republic and Romania, considering whether they hinder the linkage between EU and domestic politics

4. Selecting policy cases for parliamentary scrutiny

The choice of policy issues / documents scrutinized by national parliaments was based on exploratory interviews with parliamentary representatives in Brussels (October-December 2010) and the information from the IPEX database. The respondents have pointed out several documents that were heavily debated by almost all of the parliaments:

1. Green paper towards adequate, sustainable and safe European pension system (COM 2010 0365)¹⁶
2. Proposal for a directive on the conditions of entry and residence of third country nationals for the purpose of seasonal employment (COM 2010 0379 final)

Also, the two policy issues mentioned above were amongst the priorities of the political dialogue between the European Commission and national parliaments in 2010-2011 (European Commission 2011).

Various aspects of the global economic crisis, Stability and Growth Pact etc were also recalled by the respondents. Yet it was decided not to include this issue for the following reason. Although in general scrutinizing the EU policies brings a member of parliament little electoral value due to a lack of interest in EU affairs amongst the voters, the issues of pension and migrants are highly salient for the general public. Hence, MPs have the potential to be “rewarded” by the electorate for assessing the policies of the EU in these domains. Obviously voters are also affected by the potential economic reform but they may find it easier to form an opinion on the less technical issues of pensions and migrants as compared to the economic reform.

As the scrutiny of both the Green paper on pension and the Proposal for directive seasonal migrants will be conducted in the post-Lisbon environment, a comparison has to be drawn to the pre-Lisbon parliamentary scrutiny practices. Despite the lack of clear analogues of the documents

¹⁶ In February 2012 the European Commission published a follow-up, a White Paper entitled an “Agenda for adequate, safe and sustainable pensions” COM 2010 55 final. The analysis of the scrutiny of this document is not included in the current paper

evaluated, it is still possible to discern the differences between the pre-Lisbon and post-Lisbon practices, drawing on the opinions of experts and key stakeholders. The documents represent both legislative and non-legislative proposals, what allows to understand how the scrutiny of different types EU documents is structured and carried out. Both Eurosceptic and Europhile parties/stakeholders could have interest in addressing the two documents: the proposals not only address the division of competence between the EU and national levels but also affect the “left-right” cleavage in the selected countries.

Parliamentary scrutiny of the Green Paper on pensions and the Proposal for directive on seasonal labour migrants in Sweden.

5.1. Swedish pension policy and migration policy.

The Swedish pension reform in early 1990s was introduced with a help of large cross-party dialogue which attempted to depoliticize the pension issue. Since then all amendments to the pension scheme have to be approved by consensus in the so-called Pension group which includes representatives of all political parties except for the Left party¹⁷, Green party and Sweden democrats¹⁸.

Although there has been major interest of all political stakeholders to keep political rivalry out of the pension policy, the Swedish NDC (notional defined contribution) pension scheme has increasingly come under strain. The fundamentals of the pension system are unlikely to be scrapped but the arguably the largest discussion on the technical issues has started in 2012, with a report on ageing and old-age security being commissioned to a group of experts (results to be known in mid-2012). So far it is unclear to what extent pension policy will constitute a major issue in the oncoming 2014 elections. The Social democratic party (opposition) could have the necessary power base to raise stakes and adopt a more confrontational attitude on pension reform vis-à-vis governmental parties, as the former leader of the Social democrats has done. Yet after the change of leadership in 2012 the party has returned to the “consensus mode” of discussing pension reforms. In any after two consecutive defeats in 2006 and 2010 general elections and diminishing support, the left-wing parties will need an issue that could rally voters

¹⁷ Didn't want to participate in the pension reform in 1990s, supporting traditional public PAYG pension scheme

¹⁸ These parties were not represented in the parliament/were not created at the time of the 1990s pension reform

The Green Paper puts a lot of focus on private, occupational and cross-border pension schemes; and there have been fears expressed that such measures may undermine the solidarity-based Swedish welfare system with young employees “exiting” to more lucrative foreign private funds for pension savings (Haverland 2007). The idea of prime-minister Reinfeldt to potentially raise retirement age to 75 links to the Green Paper’s suggestion of connecting retirement age to longevity (IPE. 9.02.2010)¹⁹, yet this offers ample opportunities for left-wing parties to criticize the government and potentially gain votes. The Green Paper fits into the current discussion on the Swedish pension system adaptation and can provide an additional opportunity for stakeholders’ discussion. Arguably, the Green Paper is more “market” than “labour” orientated and its discussion (as well as the debates on the Swedish pension system reform proper) can run along and reinforce the traditional socio-economic left-right cleavage which is prevalent in the Swedish politics (Interview 01.02.2012)²⁰.

The current Swedish labour migration rules were also implemented in inter-party consensus, yet the Social democratic party and the Left party were strongly in favour of continuing the application of labour market tests (now abolished) and giving more power to trade unions (Interview 6.10.2011)²¹. Generally there is an informal rule to avoid mobilizing migration issues in Swedish politics (Interview 05.03.2012)²². Yet the proposal for directive may provide a chance to re-introduce the labour market tests, as there is a large number of EP amendments supporting such a move. A crucial element is also the interpretation of Article 16 of the proposed regulation that deals with the scope of welfare provisions that are available to seasonal migrants. The directive may potentially deal with irregular migrants as well, providing for a regularization mechanism. Although it’s unclear when and in which form the directive will be agreed upon, it can help some of the left-wing parties to move the labour migration regime closer to their “ideal point”.

¹⁹ Do politicians really have the stomach to reform pensions? Retrieve from www.ipe.com on 09.02.2010

²⁰ Academic expert on Swedish politics, UK

²¹ Interview with a member of the Swedish Permanent Representation

²² Interview with an academic expert, Sweden

5.2. Evaluation of the policy proposals in the Swedish Riksdag

According to the rules of procedure of the Swedish Riksdag, the dossier on the Green paper on pensions was first referred to the Committee on Social Insurance in late July 2010. The report of the Committee²³ was debated on the 17th of November 2010. The resolution of the European Affairs Committee passed on the 25th of November same²⁴ year.

The Swedish parliament was rather positive in its assessment of the document. The resolution claims that the Riksdag shares the concerns of the European Commission about the increasing demographic pressure on the pension schemes and acknowledges the necessity to pass reforms. Nevertheless, all parties within the Riksdag firmly supported the idea the responsibility to devise the social security system lies within the remit of each individual member-state. It was claimed that the Open method of coordination is the most appropriate tool to support policies of the member-states. The resolution echoes the government's position that "sharing of best practices" and coordination is possible but pension policy is a sovereign responsibility of the member-states. The resolution claims that any extension of reinforcement of the EU's direct involvement in pension policy is to be countered. The resolution contains a special opinion of the Left party²⁵. It criticizes the Swedish pension scheme for discriminating against women, inability to cope with social exclusion and dependency on stock market. Yet this special opinion is directed more at the "domestic stakeholders" and supports the elements of the resolution which argue against further involvement of the European Union in pension policies. Ultimately, there was no difference in attitudes of parliamentary majority, opposition and government towards the Green Paper. Even for the Left party the main concern was to keep the Swedish system intact, diminish EU influence, while stressing their own concerns about the pension regime (Interview 14.03.2012)²⁶.

In relation to the Proposal for the directive on seasonal labour migrants the Riksdag started the scrutiny procedure of the proposal for directive in August 2010, referring the issue as well to the Committee of Social Insurance. The Committee gave it opinions in August, stating that the document is in compliance with the subsidiarity principle. The European Affairs Committee deliberated with the government on the 30th of September, with the majority in the committee

²³ Statement 2010/11:SfU5

²⁴ Statement 2010/11:SfU5

²⁵ The "special opinion" of the Left party was already included in the resolution of the Committee on Social Insurance and later moved to the EAC resolution.

²⁶ Interview with a member of the Riksdag, Left party.

supporting the executive's idea that although the proposal doesn't constitute a breach of subsidiarity the Swedish labour migration regime has to be protected²⁷.

The evaluation of the Green Paper was "a simple matter" for the Committee on Social Insurance, as the discussion focused on the division of competences between the EU and the member-states. The deliberations on the Proposal for directive on seasonal labour migrants were also brief, with the Swedish MPs looking primarily at the allocation of competences and not so much addressing the content of the directive. The European Affairs committee supported the opinion of the Committee on Social Insurance (Interview 06.03.2012). Hence, arguably, the key aim of the Riksdag's scrutiny of the two proposals was to diminish EU's involvement and minimize the impact on Swedish policies. The focus was the division of competences between the EU and member-states, as MPs have been somewhat reluctant to include concerns about domestic politics into the text of resolutions.

The following section looks at the legal, administrative and institutional mechanisms of the EU affairs scrutiny in the Riksdag and argues how they have been used during the evaluation of the Green Paper on pensions and the Proposal for directive on seasonal labour migrants.

5.3. Mechanisms of parliamentary influence

In the aftermath of the Lisbon Treaty the Swedish Riksdag had adopted the rules of procedure according to the reports of the Constitutional committee of the parliament (KU 2009/10:2) and the Board of Parliament (SOU 2008/09:RS4). Arguably, these amendments don't amount to a major overhaul of the scope of opportunity structure: they have enhanced the already strong role of sectoral committees by making them key players in conducting subsidiarity checks and locking-in the "decentralized" character of the EU affairs scrutiny.

As Madell (2010,p.480-482 argues) measures like introducing specific mechanisms of protection from the document overflow and upgrading the administrative/expert support system have not been discussed extensively within the Riksdag, as well as no new staff was hired. The Parliamentary Institute, the Riksdag's research facility is rarely used to provide expertise on EU affairs. Such analysis is ultimately provided by the committee staff. Although the parliament depends on the information provided by the government, from 2006-2007 there have hardly been

²⁷ The opinion of the Swedish EAC on the proposal for seasonal labour migrants isn't available at the IPEX webpage; dates of deliberations on this document mentioned on the IPEX webpage don't match any dates available at the Riksdag website

occasions when this was a problem (Interview 27.02.2012)²⁸. The crucial role of committee staff in providing expertise is strengthened by the fact that individual MPs have rather limited resources to engage in scrutiny. It's not only the opposition left-wing parties which had to cut the number of party staff after consecutively losing two electoral terms (Interview 17.10.2011)²⁹ but also MPs from the government coalition parties, who have to employ secretaries and assistants part-time. "Resources" (money for staff, infrastructure etc) tend to be concentrated at the central party level with individual MPs receiving a lesser share of them: this becomes an issue for small parties (Interviews 29.02.2012)³⁰. The "cost" of opportunity structure is increasingly concentrated at the committee level and not at the level of individual MPs. There are also don't seem to be many opportunities for the staff to exert political influence: resolutions are written by parliamentary administrators keeping in mind party positions, while MPs are free to pick and choose from the alternative solutions provided by the staff. A common position is presented in resolutions only if parties deliberately address staff members with such requests (Interview 27.02.2012)³¹.

The Riksdag doesn't have an institution of rapporteurs, yet as the example of the Green Paper shows the views of opposition parties can legitimately be presented in the parliamentary resolutions. Although the chair of the European Affairs Committee comes from the governing coalition, the composition of the committee may favour the opposition (7 members from the parliamentary majority – 10 members from the opposition), yet this advantage is rather hard to exploit given that it demands coordination of action between the Social-Democrats, the Left party, the Greens and the Sweden Democrats (radical right). There has not been a clear executive-legislative divide in terms of policies towards the EU. After the major ideological turn of the Green Party of Euroscepticism to much more Europhile positions, the only parties that express a consistently high degree of reservation to the EU would be the Left party and the Sweden democrats. Enhancing relations between the EAC and standing committees isn't only linked to provide for the best expertise but to "filter" party conflicts. Involvement of sectoral committee helps detect and resolve tensions between parties at the "lowest possible level": that is arguably the key reason why there is currently more pressure on formalizing relations between the EAC

²⁸ Interview with a staff member A of the Swedish Parliament

²⁹ Interview with an assistant of a Swedish MEP.

³⁰ Interviews with two members of the Swedish Riksdag (different parties)

³¹ Interview with a staff member A of the Swedish Parliament

and standing committees (Interview 12.03.2012)³². Yet, the lion's share of communication between the committees is still conducted through party channels. Political parties are ultimately free to choose from the different expert solutions provided by parliamentary staff

The members of Riksdag haven't attempted to "exit" to the EU level. Although there is a lot of communication between the Swedish parliament and the European parliament, as well as visits on both political and administrative level (Interview 16.09.2011)³³, it doesn't seem to lead to more cooperation on legislation between Swedish MPs and MEPs. The existing contacts run along party lines but the difference in work schedule and a resource gap between national and European parliamentarians makes them more complicated. The Swedish parliament made no attempts to contact the rapporteur (EPP party group) on the Green Paper on pensions (Interview 23.09.2011)³⁴, as well as shadow rapporteurs from S & D³⁵ and the Greens were not contacted (Information request 14.10.2011³⁶, Information request 23.09.2011)³⁷. Similarly, the proposal for directive on seasonal labour migrants didn't provoke the Swedish MPs to contact the EP rapporteurs and shadow rapporteurs. (Information requests and interviews 7.10.2011³⁸, 26.09.2011³⁹, 27/29.09.2011⁴⁰, 14.10.2011⁴¹, 17.10.2011⁴², 30.09.2011⁴³). No attempts to establish direct

³² Interview with a member of the Swedish Riksdag 12.03.2012

³³ Interview with a member of the European Parliament Secretariat General

³⁴ Interview with the assistant of the MEP rapporteur on the Green Paper on pensions

³⁵ There were contacts between the S&D rapporteur and the Belgian parliament, yet these were based primarily on the former social network of the rapporteur

³⁶ Information request from the assistant of the S&D shadow rapporteur 14.10.2011; Information request from the assistant of the Green shadow rapporteur 23.09.2011

³⁷ No responses were received from GUE/NGL, ALDE and ECR shadow rapporteurs

³⁸ Interview with assistant of ALDE group shadow rapporteur on the seasonal labour migrant directive

³⁹ Information request from an assistant of the GUE/NGL shadow rapporteur on seasonal labour migration directive

⁴⁰ Information request from an assistant of the Rapporteur on the seasonal labour migrant directive in LIBE committee

contacts between Brussels-based organizations (Interviews 23.09.2011 and 07.10.2011⁴⁴; Interview 26.09.2011⁴⁵) or the European Commission's DGs (Interview 06.10.2011⁴⁶, 12.10.2011⁴⁷). Clearly, neither the parliamentary majority nor the opposition attempted to develop these EU-level ties to influence the legislative process. Yet, precisely inter-party dynamics are to the development of the EU affairs scrutiny: party loyalty and coordination are high and even the occasional "grilling" of ministers is considered to be more a preparation for Brussels' negotiations than a conscious attempt to influence the executive. The huge role of standing committees is a key vehicle for increasing the Riksdag's leverage in EU affairs, yet their relations with the EAC are also suspect to party relations.

6. Parliamentary scrutiny of the Green Paper on pensions and the Proposal for directive on seasonal labour migrants in the Czech Republic.

6.1. Czech pension policy and migration policy

The initial Czech pension reform was conducted in mid-1990s yet since then it was heavily criticized by international institutions for being unsustainable. Attempts to introduce reforms were done in 2005-2006 and from 2009, both within the so-called Bezdek expert group. In principle, there was a certain attempt to emulate the Swedish practice of conducting pension reform on the basis of a wide inter-party consensus although this was not very successful. The version of the reform adopted by the government was met with resistance by the social democrats, communists and members of trade unions, although they have not presented clear

⁴¹ Interview with an assistant of the Rapporteur on the seasonal labour migrant directive in the EMPL committee

⁴² Interview with an assistant of a Swedish MEP

⁴³ Interview with the shadow rapporteur (Green MEP)

⁴⁴ Interviews with ETUC officials

⁴⁵ Interview with Business Europe representative

⁴⁶ Interview with a member of DG Home affairs

⁴⁷ Interview with members of DG EMPL, DG MARKT, DG ECFIN

alternative projects (Interview 13.09.2011)⁴⁸. The conflict reached its peak when the CSSD (social democrats; opposition), who enjoy the majority in the Senate, have been able to put a veto on the reform, which was overcome by a second vote in the Chamber, where the government finds support. The Czech pension reform will start to be implemented from 2013

The two major issues which could provide a link between the provisions of the Green Paper and the Czech pension reform are the following. First, stressing the role of additional pension schemes, the Green paper could add to the debates on the supplementary pension schemes and ongoing pension reform; for example, it could feed into the debates about the level of guarantees on return from investment into the newly created “second pillar”. Also, the European Court of Justice ruling on the case C-343/08⁴⁹ had the potential to be an important topic. The Czech government was fined for not implementing the IORP fully although there are no occupational pension schemes in the Czech Republic. Here one can see a potential contradiction between the Green paper, which clearly states that the design of the pension regime is fully in the hands of national governments, and the actions of the Commission, which takes a member-state to the court for not being compatible with EU legislation on the functioning of pension schemes. This can be an excellent opportunity for the Eurosceptic parties, e.g. the Czech center-right ODS to criticize the EU. Surprisingly, this issue was not raised in the Czech public debate (Interview 08.09.2011)⁵⁰.

The proposal for the directive on seasonal migrants is relevant not so much due to the numbers of seasonal labour migrants but due to potential discussion over the provisions of the Article 16 of the directive (scope of social rights for migrants) and the suggestion to regularize irregular migrants. Migration hasn't been much debated among political parties, while successive governments have never had a clear strategy on migration (Interview 30.04.2012)⁵¹. At the same time the Czech Ministry of Interior prepares a restrictive migration law reform, which can be partially be in contradiction with the more “migrant friendly” approach of the Proposal for directive. The rather low salience of migration issues is in a sense positive, as it doesn't allow the topic to be captured by right-wing radical. Yet it does disregard an issue which is increasingly

⁴⁸ Interview with a member of DG MARKT

⁴⁹ Deals with ambivalent implementation record of an EU directive on institutions for occupational retirement provisions (IORP directive)

⁵⁰ Interview with a member of staff of the Czech Confederation of Industry office in Brussels.

⁵¹ Interview with an migration NGO representative

important, as there have been abuses of the third-country labour migrants as well as migrant neighbourhoods in Czech cities have started to appear. Still, there are only about 2-3 members of parliament who have knowledge and interest in this topic (Interview 04.05.2012)⁵².

6.2. Evaluation of the policy proposals in the Czech the Senate.

The Czech Senate has deliberated on the Green Paper on pensions in July-November 2010. On the 14th of July the document was selected for scrutiny. On the 6th October the document was deliberated in the European Affairs Committee with the rapporteur appointed from the social democratic party.

The evaluation of the committee was somewhat restrained. It stressed that fundamental principles of social security are to be defined by the member-states, as well as the adequacy of the pension. Although the recommendation of the European Affairs Committee doesn't state explicitly that the Green Paper violates the subsidiarity principle, it stressed the need to adhere to it. The committee suggested that the cost of the pension system reform⁵³ should be excluded from the analyses whether the public deficit of a member-state meets the criteria of the Stability and Growth pact. The role of the Commission (and implicitly of the EU) in the sphere of pensions should be restricted to information exchange⁵⁴. The resolution of the Senate⁵⁵ was adopted on the 3rd of November. It is almost identical to the resolution proposed by the Senate's European Affairs Committee⁵⁶.

⁵² Interview with an NGO expert on migration

⁵³ The "double payment problem" – an element of transition from PAYG to defined-contribution pension schemes, when payments have to be done for the current generation on pensioners while at the same time amassing funds for private contributory schemes

⁵⁴ Senate of the Czech Republic. 312th resolution of the Committee on EU affairs. 6.10.2010

⁵⁵ In the Czech Senate it's the plenary which ultimately is responsible for giving the official opinion on EU issues; in the Chamber the EAC can speak on behalf of the whole lower house

⁵⁶ Senate of the Czech Republic. 590th resolution of the Senate. 3.11.2010

The Czech Senate European Affairs debated the Proposal for directive on seasonal labour migrants on the 21st of September 2010 with the committee chairman Ludek Sefzig acting as the rapporteur⁵⁷.

The European Affairs committee suggested that enhanced EU regulation in the domain of labour migration was unnecessary, stating furthermore that the proposal violates the subsidiarity principle. Hence, the committee delivers a reasoned opinion on the subsidiarity breach in compliance with the Protocol 2 of the Lisbon Treaty. The concern of the Czech senators is the fact that the proposal doesn't hold any effective mechanism that would stop third country national applying to other member-states in case they fail their first residence and work permit applications. Concentrating on defining rules for circular migration with a limited number of sectors in mind (agriculture, horticulture, tourism) is, according to the Czech Senate, a wrong strategy, as other sectors where a need in seasonal migrants may arise (e.g. construction). Members of the Senate also claim that it's impossible to precisely identify the financial impacts of the guarantees that should be granted to seasonal workers in the area of social welfare. Contrary to the arguments presented in the proposal for directive, the Czech Senate claims that establishing a common procedure and developing new regulation would increase the administrative cost of setting up a system of processing the applications. The Senate also presents the opinion that the application of article 16 of the Proposal for a directive may lead to higher levels of protection of third-country seasonal migrants than national workers. On the 22nd of September the Senate adopted in plenary the variant of the resolution proposed the European Affairs Committee and sent its reasoned opinion on the subsidiarity breach to the European Commission.

6.3. Evaluation of policy proposals in the Czech Chamber of Deputies

The "Green paper" was submitted to the Chamber of Deputies of the Czech parliament in July 2010. On the second of September S.Markova (communist party) was appointed as a rapporteur. On the 25th of November the European Affairs Committee passed a resolution N°35 dedicated to the "Green Paper"⁵⁸. The document seemed to be less critical towards the Green paper, than the view of the Senate. For example, the ECJ ruling C-343/08 is mentioned but it was just stated that it

⁵⁷ Senate of the Czech Republic, 307th Resolution of the Committee on EU affairs. 21.09.2010

⁵⁸ Chamber of Deputies, parliament of the Czech Republic. 35th Resolution. Committee of the European Affairs. 25.11.2010

will create pressure on the Czech pension system, no harsh criticism was given. A number of external experts were involved in the Chamber's EAC hearings: CMKOS trade union representative and professor Jaroslav Vostatek, who argued against the Bezdek reform. Vladimir Bezek, the head of the working group on the pension reform was invited but didn't join the hearing. Both the opinions of the Chamber of Deputies and the Senate dealing with the Green Paper recall the Article 153 of the Lisbon Treaty, that states that the EU can only support and complement the activities of the member-states in the field of social policy. Also, the Chamber (as well as the Senate) fully support the position of the government, that is firmly against increasing EU competencies in the social policies. The Committee in Social policy was consulted but only after the EAC has passed a resolution: it was purely for information purposes and the measure didn't have any impact on the scrutiny process.

The Chamber of Deputies received the proposal for directive on "seasonal migrants" in July 2010. On the 19th of September a rapporteur was adopted from the Public affairs party (VV). No committees apart from the EAC were involved. On the 7th of October the European Affairs Committee passed a resolution that the proposal for directive on "seasonal workers" is not in compliance with the subsidiarity principle. The Chamber argued that given that the matter can be tackled by national legislation, further EU competences and legal norms in that area are irrelevant⁵⁹. The opinion of the governmental representative, who also assumes that further EU regulation in the domain is not necessary, is also stated in the parliamentary resolution document. It is stressed that the obligation to provide equal treatment of seasonal migrants in the matters of social security in relation to the EU citizens is nothing short of an intervention into national social security systems. The discussion on the document was very quick, the committee was meeting at the very end of the allowed 8-week period (Interview 02.05.2012)⁶⁰. There is mixed evidence as to the level of the executive's involvement in developing the reasoned opinion. Although the parliamentary experts have started to discuss the issue quite early, the suggestion to adopt a reasoned opinion came from the Ministry of Interior. This could have been easy to communicate as the rapporteur on the seasonal labour migrant's issue and the minister came from the same party. The opinion of the government was respected and supported unanimously (Interview 13.10.2011)⁶¹.

⁵⁹ Chamber of Deputies of the Czech Parliament. 20th Resolution of the Committee for European Affairs. 7.10.2010

⁶⁰ Interview with a staff member of the Czech Chamber of Deputies

⁶¹ Interview with a staff member of the Czech Chamber of Deputies

6.3 Mechanisms of parliamentary influence

The “scope of opportunity structure” has increased for the Czech Parliament. The rules of procedure in both chambers were adapted to incorporate the Lisbon Treaty provisions⁶². In addition, during the ratification of the Lisbon Treaty a certain bargain was struck between the government and a group of ODS party members. In return for supporting ratification, an imperative ex-ante mandate for the Czech government in a limited number of areas was introduced, for example when a “passerelle” clause is applied or a revision of a Treaty’s provision without an IGC being conducted. This mandating procedure is valid for both chambers⁶³

Yet given that the government is still legally accountable only to the Chamber of Deputies it is unclear to what extent the new rules of procedure can really enhance the role of the parliament vis-à-vis the executive. At the same time a number of technical regulations on the “working methods” within the scrutiny process were not introduced, for example a suggestion to organize quarterly follow-up sessions on important policy issues in the Chamber of Deputies was not brought to life (Interview 13.10.2011)⁶⁴.

Both chambers don’t seem to experience major problems with the administrative and expert support of the scrutiny process, so the “cost of the opportunity structure” is so far manageable for the parliament. Due to budgetary constraints, no new staff was hired either in the European Unit of the Senate’s Chancellery or the EU department of the Parliamentary Institute (PI), bodies responsible for providing expertise for the upper and lower houses respectively. Acquiring information doesn’t seem to be a major problem: the staff enjoys direct access to the governmental EU Extranet database as well make good use of social networks in the executive structures. Although some key personnel have left parliamentary expert structures for the government or the private sector, for the past 2-3 years the staff has been more or less stable. A potential problem would be providing staff members with sufficient career opportunities and remuneration. As scrutiny is conducted separately in both chambers, the European Unit and the EU department in the PI don’t necessarily cooperate a lot. External expertise is almost never hired directly due to budgetary constraints and can come mainly in the form of stakeholder opinions.

⁶² Act of 6 May 2009 №162/2009 ...amending the Rules of procedure of the Chamber of Deputies and Act N 107/1999, on the Standing rules of the Senate, as amended

⁶³ Although the Czech system of EU affairs scrutiny is still by and large document based

⁶⁴ Interview with a staff member of the Czech Chamber of Deputies

Although the expertise provided is of a very good quality, on a number of occasions it has limited impact on the parliamentary debate proper due to disinterest of the MPs.

For example, in the Senate inter-party rivalry doesn't always allow to "upload" technical expertise of parliamentary staff into the scrutiny process. There were occasions when the members of the Czech Social-democratic party, who have a majority in the Senate were "compensating" for their weak position in the Chamber of Deputies by taking items proposed by the parliamentary majority off the agenda. Politicization and inter-party rivalry actually harms the content of the discussion, diminishing the added value of good administrative support (Interview 22.09.2011)⁶⁵. The Senate's administrative unit on EU affairs has been increasingly coming under pressure to provide preliminary expertise with an "ideological twist", while socialization of the senators increasingly runs along party lines, contrary to a freer atmosphere in the past legislative terms (Interview 30.04.2012)⁶⁶.

In any case the MPs have a carte-blanche in terms of (not) taking on board the suggestions of parliamentary experts. For example, the evaluation of the Green Paper on pensions by the Senate's European Unit raises a number of salient issues (extent of the second pillar in the Czech pension system, cost of the pension reform, the ECJ case C-343/08 etc) but this analysis of the Green Paper in the EAC has not been directly linked to a national debate on the pension system reform; the MPs didn't really follow-up on these potential points of tension.

Arguably, one could still talk of an over-reliance on governmental sources to evaluate policy proposals: for example, the Senate's and the Chamber of Deputies' evaluations of the Green Paper by and large repeats the government's policy memo. Yet, information exchange between the executive and the legislative has become better over the years and doesn't constitute a major point of tension between the executive and the legislative. Governmental information can also be accessed through social networks of parliamentary staff, as a number of their former colleagues have started working for the government, providing a much quicker informal way of securing information⁶⁷.

The "institutional practice" in the post-Lisbon environment shows the crucial role of party politics. For example, the plenary in both houses of the Czech Parliament have become more

⁶⁵ Interview with a former member of Czech Senate's staff

⁶⁶ Interview with an ex-member of staff of the Czech Senate

⁶⁷ This practice is relevant for the Parliamentary Institute

involved. In the Chamber the position of the EAC is always reaffirmed due to the similar majorities in the committee and in the plenary (ODS). In the Senate the plenary acts as a vehicle to keep the decisions of the EAC (lead by an ODS senator) in line with the CSSD majority. It has never come to a cleavage between the government and the parliament (both chambers simultaneously) on EU issues. For the practitioners such a scenario seems very improbable, as EU affairs are being discussed within the parliamentary majority – opposition axis.

Party politics can also “backfire” in the EU affairs scrutiny system. For example, the Chamber of Deputies’ European Affairs Committee was devoid of leadership for 1,5 years (2008-2009) as the suggested member of the Green Party couldn’t rely on sufficient parliamentary support and was appointed into office only from the third attempt. (Interview 02.12.2010)⁶⁸. The member of the Green party initially earmarked for the position of the committee chair moved into the government. The Green party found it hard to select another candidate, while other parties were not willing to take up the chairmanship as it would have led to a renegotiation of a coalition agreement and the loss of more important committees.

The Czech Senate has problems in acquiring the opinions of other sectoral committees, whose level of response left much to be desired (Suchman, 2010). This is corroborated by interview data. Involvement of sectoral committees has for the time being not helped much in spreading the knowledge of the EU topics. Sectoral committees were either not involved (Senate; Chamber of Deputies on seasonal migrants) or participated after a resolution by a European Affairs Committee was already passed. In the later case the EAC resolution was passed to the relevant standing committee for “information purposes” (Chamber of Deputies on the Green Paper) (Interview 13.10.2011; 14.09.2011)⁶⁹. The limited involvement of the sectoral committees, who have the special expertise, is presumably offset by the contributions of parliamentary staff⁷⁰. Yet their

⁶⁸ Interview with a staff member of the Czech Chamber of Deputies

⁶⁹ Interview with a member of staff of the Czech Chamber of Deputies; Interview with a member of the Czech Senate staff

⁷⁰ The low intensity of the dialogue between the EAC and other standing committees could be an issue for parliamentary staff/committee chair but not much for the committee members. Due to practical limitations only 1 interview with an “ordinary” member of an EAC in the Chamber was conducted (05.05.2012). For the respondent communication with other committees was never a problem, he could just go to the other committee meetings if needed; also the resolution of an EAC would take priority over the opinion of any other committee .

limited interest tells a lot about a rather low saliency of EU issues in the internal hierarchy and agenda of the parliament. The staff of sectoral committees (for example the Social Policy committee) is generally somewhat reluctant to address EU topics. In important cases the chair of an EAC could make a direct request to the chair of a standing committee to provide an opinion but this has hardly happened.

Nomination of rapporteurs on EU issues is not really contested as there is a pre-selection procedure depending on the interests and expertise of the committee members. They have the “last word” on resolutions prepared by parliamentary staff, yet the level of collaboration between MPs and the staff of both houses during the preparation of the documents varies greatly. Arguably, few make a direct connection between the EU and domestic policy process. For example, the Chamber’s rapporteur on the Green Paper on pensions was coming from the opposition party (Communists of Moravia and Bohemia), yet the criticism was directed towards the EU’s attempt to acquire more competence in social policy and not the Bezdek pension reform, of which the communists are critical.

The attempts to “exit” to the EU level were mainly taken up by the Senate. Yet, they seem to have been driven primarily by party interests. For example the CSSD complained several times to the European Commission that the government hasn’t properly discussed national convergence reports (Interview 19.10.2011)⁷¹. Contacts with EU institutions on the issue of pensions seems to have been chiefly information gathering events with no attempts made to directly influence the content of EU legislation. The representatives of the Czech Parliament in Brussels were not asked for extra information on the Green Paper after the Commission presented the documents to the national parliaments’ staff in May 2010 (Interview 12.10.2011)⁷². Also, during the EP hearing on the seasonal labour migrants directive in November 2010 no contacts were made between the Czech senator present and the European Parliament rapporteur on that issue (Interview 26.04.2012)⁷³. Brussels-based organizations like ETUC or Business Europe were also not consulted; offices of Czech stakeholders in Brussels, for example the Czech confederation of industry were not consulted as well (Interview 08.09.2011)⁷⁴. No contacts were made with the EP party group

⁷¹ Interview with an official from the Czech Permanent Representation.

⁷² Interview with a member of DG EMPL

⁷³ Interview with a member of the Czech Senate

⁷⁴ Interview with a member of staff of the Czech Confederation of Industry office in Brussels.

rapporteurs⁷⁵. Czech MEPs were also not contacted directly (Response to electronic questionnaire)⁷⁶.

In the aftermath of the Lisbon a practice of bi-annual meetings between Czech MEPs and MPs was set-up, yet the interest to these meetings remains somewhat limited. The event is used more for information sharing and networking, not for lobbying or coordination of policy activities.

7. Parliamentary scrutiny of the Green Paper on pensions and the Proposal for directive on seasonal labour migrants in the Romania.

7.1. Romanian pension policy and migration policy

Romania has carried out a pension reform between 2006/2007 – 2009/2010 within the framework of an inter-party consensus. Yet there have been ideas of bringing funds from second pillar back to the public sector in order to cover up the deficit of the state budget. Sustainability of the Romanian pension regime is considered to be rather low, with the Green Paper having a potential to incite debate on the layout of occupational pension schemes and portability/transferability of pension rights due to a large Romanian population working abroad.

Third-country seasonal migrants may not be a direct concern for Bucharest as its key interest in this policy field is to secure the conditions of work of Romanian seasonal workers laboring elsewhere in the EU and avoid their dumping by third-country national. Potentially, the need in third-country seasonal labour in Romania will increase (although there is no clear data on this; Interview 28.11.2011)⁷⁷, as well as the provisions of Article 16 of the proposed directive give a cause for concern. Parties avoid politicizing and raising issues like pensions / labour migration as the key element of competition, as they'd be forced to make hard choices about their own programmes (Interview 07.04.2012; Interview 13.04.2012)⁷⁸. Political parties take migration issues in consideration only to a very limited degree (Interview 11.04.2012)⁷⁹, while it could be that the

⁷⁵ See the list of interviews in the section on the Swedish parliament.

⁷⁶ Response to electronic questionnaire by a Czech MEP. 10.10.2011

⁷⁷ Interview with a member of the Romanian Permanent Representation

⁷⁸ Interview with an academic expert; Interview with an NGO representative

⁷⁹ Interview with a representative of an NGO

pension scheme is reconsidered by the newly formed PSD-PNL coalition (Information request 06.05.2012)⁸⁰.

7.2. Evaluation of the proposals in the Romanian Senate and the Chamber of Deputies

Before spring 2011 both upper and lower chambers had a Joint European Affairs committee. Hence the following section covers the evaluation of both proposals in the two chambers, which was conducted in the second half of 2010. The Green paper on pensions was discussed somewhat vaguely, as no solution was found to provide a formal answer. Although the deputies didn't have a strong pro or contra opinion on that issue, the committee was equally divided. As the chairman, who could tilt the balance of the discussion one way or another, was not present, no final decision was taken. A background note on the Green Paper was prepared, although it was more of an overview of the Commission's suggestion and less of an evaluation of the policy solutions proposed.

The Joint EAC didn't have a formal opinion on the seasonal migrants' proposal for directive, it was not discussed at the plenary as well. The suggestion to deliberate on this came from the Czech Senate, it was not selected as a priority by the Romanian parliament itself. Nevertheless, the concern of the Romanian parliament was how the directive would interact with restrictions on the free access to the labour market of Romanians in some member-states. There was a concern expressed that the seasonal contracts could be transformed into temporary contracts, which can provide better conditions for the labour force of the member-states. At the same time the provisions of Article 16 (social rights of seasonal migrants) hasn't been touched upon in the debate (Interview 06.04.2012⁸¹, Interview 09.04.2012⁸², Interview 12.04.2012⁸³).

7.3. Mechanisms of parliamentary influence

The "scope of the opportunity structure" for the Romanian parliament has changed, yet presumably not solely due to the Lisbon Treaty impact.

⁸⁰ Information request from an academic expert

⁸¹ Interview with a staff member of the Romanian Chamber of Deputies

⁸² Interview with two staff members of the Romanian Chamber of Deputies

⁸³ Interview with two staff members of the Romanian Senate

The major problem is that since 2006 Romania couldn't manage to adopt a legal framework on executive-legislative cooperation in the area of EU affairs. There seems to be no political commitment to finalize the discussion on the legal framework of cooperation.

In the spring of 2011 the Joint European Affairs Committee has been abolished with both houses adopting their own procedures and mechanisms for subsidiarity checks. There was some resistance to such a move but it was mainly due to personal vested interests of members of parliament, as prominent figures from the same party (PSD; social-democrats) have both supported and opposed such a move (Interview 7.10.2011)⁸⁴. Out of all the cases studied, Romania has arguably experienced the most profound change of the legal provisions and a greater development of the scope of opportunity structure. Nevertheless, the current draft of the law on executive-legislative cooperation in EU affairs is unlikely to make the Romanian parliament a strong player. The original version of the document was not very clear on how issues are selected for scrutiny, which legal standing does the opinion of the parliament has etc. (Interview 14.02.2012)⁸⁵. A large number of amendments were introduced in the Chamber, enhancing the mandating power of the parliament, only to fail to be discussed due to procedural complications. Hence, the original governmental version was accepted and members of the Chamber would try to promote their amendments in the Senate through like-minded members of the upper house. Yet, it remains unclear when and if the Senate discussed the draft law (Interview 02.04.2012)⁸⁶.

As all of the versions of the law on executive-legislative cooperation in EU affairs have failed to be discussed before the end of the parliament's term, the document had to be repeatedly re-installed in the agenda of a new legislature. Arguably, prominent members of the EAC committee have not put their influence behind the proposal, as they often withdrew their political pressure on the government just before the final decision on the law was to be taken. Also, the initiative to split the Joint EAC may have come less from the impact of the Lisbon Treaty but more from party politics. A new party (Union for the Progress of Romania) was created in the parliament out of the defectors from different parliamentary groups. It needed positions in the leadership of the parliament and one of the "easy" ways to do it was the creation of a new European affairs committee in the Senate out of the Joint EAC. Hence, party politics have played a significant in

⁸⁴ Interview with a staff member of the Romanian Senate.

⁸⁵ Interview with an ex-member of the Romanian Chamber of Deputies staff

⁸⁶ Interview with a member of the Romanian Chamber of Deputies

determining the “scope of opportunity structure”, what is not always conducive to better scrutiny of EU affairs.

The Romanian parliament seems capable of bearing the “cost of the opportunity structure”. Yet, there could be problems in the long-run as it is complicated to attract and keep high quality staff, as more career options and better remuneration is provided by the executive, e.g. in the Ministry of Foreign Affairs or EU Affairs (Interview 17.11.2011)⁸⁷. Recruitment to positions in the parliamentary staff (and to civil service in general) is an issue as on a number of occasions it was not based on open contestation but conducted informally. There seem to have been divisions amongst the parliamentary staff on the issue of choosing the optimal way to develop a legal scheme of EU scrutiny⁸⁸. Allegedly the staff of the Joint EAC secretariat were more willing to develop a strict mandating system (emulating the Nordic model) from the very start, what continuously met staunch resistance from the government side. The staff of parliamentary expert body in the Chamber was more cautious, suggesting a more cooperative approach and fearing that the Romanian parliament would lose the few political resources it has in unequal battles with the government.

The “institutional practice” of the EU affairs scrutiny is dominated by attempts to define the legal scope of action of the Romanian parliament. Apparently this has been used as a bargaining chip by political parties to gain concessions: the threat of the opposition PSD pushing for a mandating scrutiny was successively “bought off” by the government which wanted to have a free reign in EU affairs. Establishing a system of EU affairs scrutiny was hardly a goal in itself for any of the parties but an additional tool for parties to obtain political and material

⁸⁷ Interview with an ex-member of the Romanian Chamber of Deputies staff

⁸⁸ The author should make clear that he received very different opinions not only on the level of conflict but also on the existence of the conflict as such. Further investigation on this issue has to be done and the material presented in this section treated with caution.

benefits. Opposition parties didn't necessarily try to hold the government accountable in EU affairs⁸⁹.

Consultations with other standing committees are of limited scope, although the new system of subsidiarity checks envisages that sectoral committees are the first ones to revise a policy proposals, which is then considered by the EAC. EU issues are still treated as part of foreign policy, hence the members of standing committees don't see an added value in investing time and resources into the EU affairs scrutiny. The fact that the chairman of the Joint EAC and later the European affairs committee in the Chamber of Deputies came from the opposition party has in no way strengthened the position of the parliament vis-à-vis the government in debating EU politics. Also, no attempts to develop ties with the EP rapporteurs / shadow rapporteurs or Brussels-based EU-wide organizations were attempted to influence the policy-process⁹⁰.

The following section will present a comparative analysis of the different mechanisms used and propose a number of explanations of the results of the study.

⁸⁹ In May 2012 the former opposition parties PSD (social-democrats) and PNL (center-right, liberal) started forming a coalition government after no-confidence vote to the former prime-minister Razvan Ungureanu was passed

⁹⁰ See the footnotes above for the list of interviewees

8. Conclusions

8.1. Comparing the effectiveness of mechanisms of parliamentary influence

The paper argues that “scope of the opportunity structure” has widened for all of the parliaments, the case of Romania potentially experiences the most changes if the legal framework of executive-legislative cooperation is established. Arguably after the Lisbon Treaty one can see a certain “lock-in” of traditions of parliamentary scrutiny. Sweden continues the decentralization of its EU affairs scrutiny system, increasingly relying on standing committees and even potentially delegating them mandating rights. The Czech parliament still relies on a document-based scrutiny system, with the new mandating rules having a very limited scope. Yet, both chambers are willing to strictly apply the new rules wherever possible, as the “future role of the European Affairs Committee depends on this” (Interview 09.05.2012)⁹¹. Romania can potentially provide for a breakthrough in its scrutiny system, yet the chances of establishing it before the new general elections before the fall of 2014 are mixed. In pure procedural terms, Sweden arguably is the most effective system as it engages not only the EAC but spreads the expertise of the EU throughout the whole parliament.

In principle, all parliaments have found ways to adapt to the “cost of opportunity structure”, although no major changes in staff numbers or sources of expertise has taken place. The workload has clearly increased, yet the parliaments seem to be able to process the information flow due to increasingly close cooperation between the EAC staff and the secretariats of standing committees (Swedish Riksdag), using the social networks cross-cutting the executive and legislative branches of power (Czech Chamber of Deputies) or the experience of staff members with “institutional memory” (Romanian Parliament). The quality of the assessments of EU affairs provided by parliamentary staff doesn’t seem to be an issue. The main challenge for the parliamentary staff seems to be “uploading” their expertise to parliamentary debates and/or resisting political pressure to come-up with evaluations favouring the position of one or the other political party from the very start. A long term challenge would be the personnel policy, especially for the Czech Republic and Romania, which would need to secure high qualified staff.

Nevertheless, what really seems to make a difference for the day-to-day functioning of parliamentary scrutiny in the post-Lisbon environment is inter-party dynamic. Ultimately, the

⁹¹ Interview with a staff member of the Czech Chamber of Deputies

political parties have the final word on the way the Lisbon Treaty provisions on national parliaments are implemented.

In none of the cases assessed have the EU affairs triggered a clear executive-legislative cleavage. This is valid not only for the evaluation of the two EU policy documents but also for the general climate of assessing European Union affairs which are still predominantly considered as the domain of the executive. As has been shown above, political parties can effectively undermine the establishment of legal rules (case of Romania) or be unwilling to use parliamentary expertise in political debates, concentrating on purely ideological fights (Czech parliament).

The involvement of sectoral committees does make a difference for the assessment of EU affairs. This is exactly the mechanism that forces the MPs to make a connection between the EU and the domestic policy arena. For example, the most thorough resolutions on the Green Paper on pension and the Proposal for Directive on seasonal labour migrants come from the Swedish Riksdag. Yet again, committee input heavily relies on inter-party dynamic. In the Swedish case increased involvement of standing committees is used to resolve any potential controversies between the parties at the lowest possible level. At the same time party discipline is high, “loyalty” is arguably the key term to describe the relations between the members of the governing coalition and the parliamentary majority. Given that the governing center-right coalition goes to great length to coordinate amongst its members, a joint “uprising” of the majority and opposition against the government is very unlikely. In the case of the Czech Chamber of Deputies the EAC can send its opinions or EU documents after it already conducted scrutiny, for “information” reasons only. Given that there is little interest of standing committees in EU affairs, such practice only exacerbates the situation. The Czech Senate’s EAC also faces a problem of integrating other committees in the working process. Yet, party politics take precedence again as the outcome of committee deliberations will be rigorously checked for compliance with the views of the Senate’s majority. The same pattern is discernible in Romania: very slow involvement of standing committees and dominance of the majority in the EACs.

So far contacts with EU level institutions or actors, as well as the dialogue between national parliamentarians and MEPs has not been the key mechanism of enhancing the quality of parliamentary scrutiny. The parliaments of Sweden, Czech Republic and Romania didn’t seek contacts with rapporteurs/shadow rapporteurs, attempt to consult each other or get in touch with Brussels based EU-wide organizations like ETUC or Business Europe. The active Czech Senate is an outlier in this situation, as it did directly complain to the European Commission about the conduct of the government and addressed the Romanian European Affairs Committee. Yet, these actions primarily depend on the party constellations. It was the opposition CSSD that initiated a complaint to the European Commission. At the same time the ODS chair of the Senate’s EAC,

who asked the Romanian parliament for support on the seasonal migrants case was not able to make it compile a reasoned opinion. In any case the balanced critical activity of the chair towards the EU is being curtailed by the Czech social-democratic party, which has more EU-positive convictions. There are some clues that further contacts can develop between opposition parties in national parliaments and their respective ideological family in the EP (for example, Swedish Social-Democrats) but it is by no means clear if and when such practice can take off the ground and to what extent they would be able to have an impact on the legislative process.

Hence, the effectiveness of parliamentary scrutiny in the aftermath of the Lisbon Treaty depends on the relations between the EAC and standing committees, as well as inter-party dynamics. Nevertheless, it seems that in none of the cases does involvement of sectoral committees translate into a better link between the EU and domestic policies. In all of the cases both Europhile and Eurosceptic parties had an incentive to make a direct connection between the EU proposals (Green Paper on pensions, Proposal for directive on seasonal migrants) and the domestic status-quo in the pensions / labor migration sector. Ultimately, although the political parties could address pension/migration issues to gain election points or use it as an extra excuse to raise their concerns.

Arguably, both strong and weak systems of parliamentary scrutiny of EU affairs have not become linked to the content of the domestic policy process. The resolutions passed on the Green Paper/Proposal for directive on seasonal migrants have primarily addressed the division of competences between the EU level and national level but not the domestic policies as such. This is happening exactly at the time of pension and labour migration reform are conducted or reassessed in Sweden, Czech Republic and Romania. The debates on the EU proposals mentioned above have also focused more on the EU and national competences, not on the domestic politics as such. In such a situation the wider impact of the Lisbon Treaty provisions on the policy-making process become ambiguous. On the one hand, national parliament do adapt their rules of procedures, create different new legal frameworks to internalize the “Lisbon acquis”. On the other hand these provisions are not used to have an impact on the legislative process and on the policy domains. The Lisbon Treaty does provide for a new “opportunity structure” but political parties do not perceive it as an additional instrument to achieve their policy goals.

This doesn't imply that the Lisbon Treaty doesn't have an effect. It has obviously triggered a change of procedures and formal working rules, allowed for more debates on the EU issues. Still, the impact on the deliberative functions of the parliaments will arguably take more time to have an impact. Socialization of MPs in the new “active Lisbon spirit”, change of parliamentary culture and modes of reasoning need time. Involvement in the legislative process via the Lisbon Treaty rules was a more direct way to “activate” national parliaments, as it potentially provided electoral

bonuses, at least in a number of cases. Yet, political parties don't consider using the Lisbon Treaty provisions to link EU and domestic policies. Parliamentary scrutiny of EU affairs is instrumentalized by political parties: it is either used as a bargaining chip in domestic power struggles or suffers from increased inter-party rivalry. Effective evaluation of EU proposals or government's policies is reliant on the "climate" of relations between the government and opposition as well as the capacity of coalition parties to coordinate their action and stick together. In other words, the ultimate tools for enhancing the effectiveness of parliamentary scrutiny may lie in a different toolbox, which is much more linked to party politics than the role of legislative institutions as such.

The following section would try to consider how the political parties in Sweden, Czech Republic and Romania address EU issues and whether the party systems of these countries exhibit cartel characteristics.

8.2. Potential explanations of the political parties' disinterest in the Lisbon Treaty rules.

Respondents in all of the countries considered mentioned that engagement in EU affairs isn't conducive for re-election. A good example could be the Chair of the Senate's EAC, who was instrumental in making the Czech parliament's upper chamber active in discussing EU affairs. Yet his chances of re-election are very slim and apparently a decision was made that he is to step down towards the end of 2010⁹². Ladrech (2002) argues that the creation of the European affairs committee is not just a sign of Europeanization of national parliaments but also of parties, as the MPs sitting there develop expert knowledge of the EU. This is obviously true but in the cases of Czech Republic and Romania the EAC are never at the top of the MPs' preference list when committee membership is assigned. Apparently, in the opinion of MPs scrutiny of EU affairs doesn't bring electoral benefits. Nevertheless, as representative institutions (parliaments, parties etc.) not only aggregate interest but also shape them, political parties could attempt to mobilize the electorate on EU affairs or develop a clear link between EU and domestic policies. One of the reasons why they avoid doing it would be cartelization of party systems.

The evidence for party cartelization in Sweden, Czech Republic and Romania is rather mixed.

⁹² Allegedly, the ODS party isn't willing to support the chairman's candidacy. It's by no means clear whether a new chairperson would be willing and able to develop an active profile in EU affairs.

Although Hlousek and Pseja (2009) confirm cartelization of the Czech party system, the outcome of the 2010 general elections clearly mean a restructuring of a cartel with two new parties entering the parliament and the key players like ODS and CSSD receiving less than 50% of votes (Haughton, Novotna, Deegan-Krause 2011). “Europe” is contested amongst the Czech political parties, providing a source of internal division in the center-right Civic Democratic Party (ODS) between the “hawks” aligned to Vaclav Klaus and the more pragmatic “doves”. The position of the ODS is somewhat endangered by TOP-09, another center-right party with a Europhile rhetoric which can attract a large number of ODS voters. The social-democrats adopted a more EU-positive stance in no small measure to differentiate themselves from the ODS, yet this doesn’t provide for a deeper level of analysis of EU issues. Arguably, the Eurosceptic attitudes in the ODS (Lewis 2008) have been moderated, but the debate on EU issues is still conducted in “black and white” (Interview 23.04.2012)⁹³. Arguably, the Czech parties become more EU-positive while the public debate is still dominated by the “hawkish” Eurosceptic figures.

There is indirect evidence that Romania party system is becoming cartelized, as in comparison to the other countries of Central and Eastern Europe new parties find it harder to get into the parliament (van Biezen, Rashkova 2011). Given that electoral volatility in Romania has increased from 1990s (17,8%) to late 2000s (23,0%) (Gallagher, Laver, Mair 2011) and the party systems in Central and Eastern Europe became less structured (Bertoa, Mair 2010), cartel tendencies can potentially increase as parties would try to protect themselves from electoral competition uncertainties. Despite acute inter-party rivalry, Romania can still be considered as a case for cartel party thesis as according to Mateescu (2010) high levels of conflict are not incompatible with cartelization. Restrictive electoral laws and “cartel practices” were enacted in Romania due to high electoral uncertainty and volatility. For example, the laws regulating party finance favour parliamentary parties, effectively denying non-parliamentary parties public financial support. Also, parties that do not enter candidates in at least 50% of electoral districts do not receive broadcast time; access of non-parliamentary parties to public media is also de-facto limited. Since 2000 elections no new party was able to enter the Romanian parliament. “Europe” was important topic during the pre-accession stage but since then has largely fallen out of the party discourse (Interview 07.04.2012)⁹⁴ and isn’t a topic of party competition (Interview 09.04.2012)⁹⁵.

⁹³ Interview with a think-tank expert

⁹⁴ Interview with a an NGO expert

⁹⁵ Interview with an academic expert

Sweden provides mixed support for the cartelization thesis. For example Blyth and Katz (2005, p.52) argue that Sweden doesn't show an clear-cut example of a fully-fledged cartel as in 1990s the social-democrats and the center-right parties had to give way to the popular demands during Swedish welfare system reform, while substantial numbers of social-democrats' electorate deserted to the Green and Left party. Dependency on public funding is something of a historical heritage as the practice dates back to 1960s (Vignaux 2008). Nevertheless the practice of "contract parliamentarism" (Bale, Bergman 2006; Bergman, Bolin 2011) in Sweden can be considered as a proxy for party system cartelization: it implies a written contract that commits parties to collaboration beyond a specific deal or a temporary commitment. Such cooperation took place in both left- and right-wing parties (Christiansen and Damgaard, 2008, p.56-58). For example, in 2002 the so-called 121 Points programme was signed and published, covering cooperation of the Green party, the Left party and the Social-Democrats in an increasingly large number of topics. In 2010 such cooperation was established between the Social democrats and the Green party. The trend amongst Swedish political parties to form pre-electoral coalitions in order to secure majorities in the Riksdag and minimize election risks is clearly discernable (Isberg 2011), what can corroborate the cartel party thesis.

Concerning the use of "Europe", Aylott (2002) claims that political leaders have indeed tried to isolate EU issues from intra-party discussion. He provides an examples on the basis of the Swedish social-democratic party (SAP) suggests: such compartmentalization can help the voters/party members stay in the party even if they disagree over an aspect of a party leader's policy. Such a strategy can indeed be useful for the SAP as among the Swedish parties it has the highest level of internal divisions. Except for the Sweden Democrats (anti-EU) and the Liberal party (very pro-EU) the Swedish political parties tend to be moderately EU-positive, yet in principle "Europe" remains somewhat of a taboo in the Swedish party discourse: it is being addressed but not discussed in great detail (Interview 26.02.2012⁹⁶, Interview 01.03.2012⁹⁷, Interview 07.03.2012⁹⁸).

Arguably, in all the above-mentioned countries there is a tendency to keep the electoral market closed and not to address EU politics in greater substance in the public debates/public competition. The tendency to de-link EU and national politics has been noticed with both

⁹⁶ Interview, journalist from a national newspaper

⁹⁷ Interview with an academic expert

⁹⁸ Interview with two members of a think-tank

Eurosceptic and Europhile parties. For example, the EU critical Czech ODS has not paid attention to the ECJ ruling C-343/2008 directly impinging on the sovereign rights of member-states to pension reform design. The EU-positive Swedish governing center-right coalition has not used the Green Paper on pensions to provide additional arguments for increasing the retirement age. Unwillingness to address EU affairs and to link them to national policy issues may come not only from unwillingness to mobilize the electorate on EU topics out of fear “breaking the cartel” and entering uncharted waters. Another cause would be the fear of losing credibility. The Czech social-democratic party has strong ties with the S & D group in the European Parliament and critical attitude towards EU issues could tarnish its image. This corroborates the findings of Netjes and Binnema (2007)⁹⁹, who suggest that this reluctance to address EU topics is shared by both opposition and governing parties to a large extent due to inter-party dissent. Also, the parties may assume that trying to mobilize the electorate on EU affairs wouldn’t be cost effective: there is evidence that amongst the general public EU issues are treated by and large with indifference (Duchesne et al, 2010) and parties would need to invest a lot of resources into “activating the electorate”. Although arguably the results of Duchesne’s work are valid only for specific social groups, the paper does show that there are serious constraints for EU issues to become a real constitutive cleavage.

The issues of pensions and migration are the areas where the link between the EU and national politics (no matter whether Eurosceptic or EU-positive) could have been clearly established. Yet, this was not done, constituting a case Katz and Mair (2009) have been looking for: issues that “should have” found a place on the political agenda but did not. In line with the conclusions of Batory’s study (2009), one could argue that “soft Eurosceptic rhetoric or Eurpohilia say little or nothing about a party’s willingness or ability to make use of opportunities offered by the EU level of the political game”. The EU proposals mentioned above fit the left-right divide (affect socio-economic rights), hence, according to Green Pedersen (2012), the necessary conditions for politicizing EU topics are created, although this opportunity is not addressed by political parties.

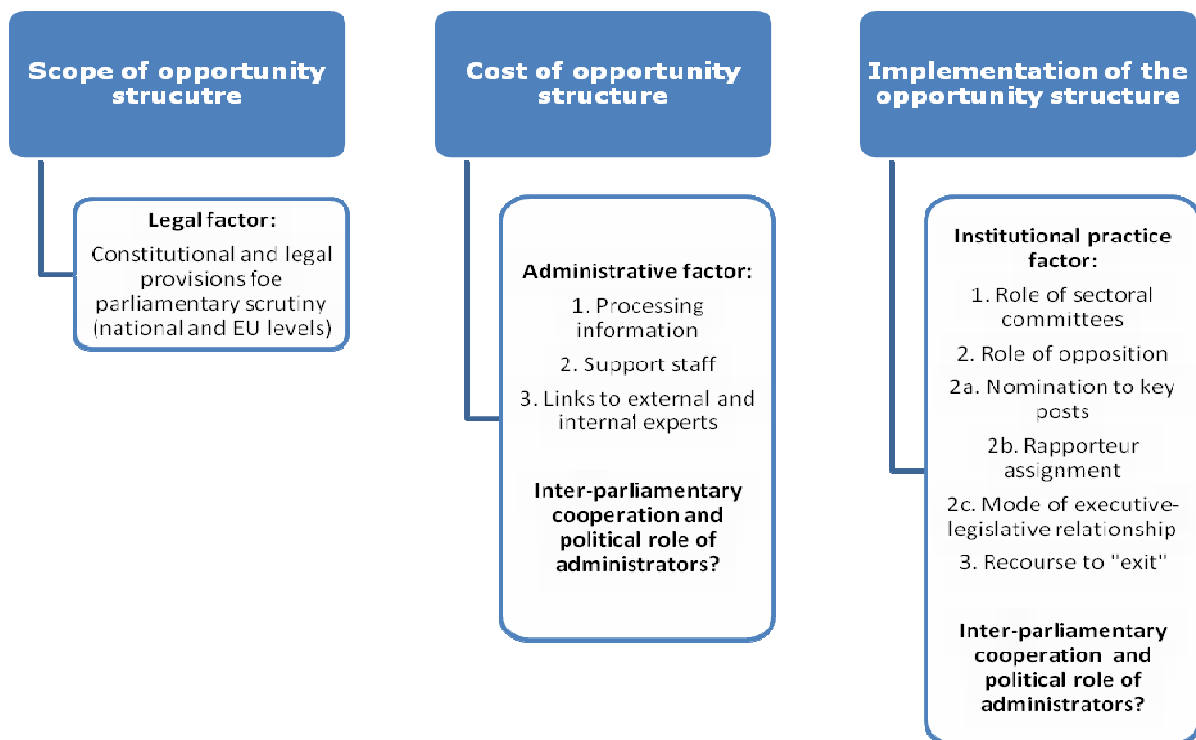
The unwillingness of mainstream political parties to take EU topics into consideration may constitute a major hurdle for the Lisbon Treaty attempts to diminish the democratic deficit and increase the role of national parliaments. Enhancing the power of the European Parliament or national parliaments is still a useful procedural mechanism. Yet the actors, political parties, which are to function within the new structures of participatory democracy seem unwilling to fully grasp the opportunity. Party incentives, or mainly the lack of them, put a break on the effective use of

⁹⁹ Netjes C., Binnema H. (2007) The salience of the European integration issue: Three data sources compared, in *Electoral studies*, 26, 39-49

Lisbon Treaty provisions for parliamentary scrutiny of EU affairs. The missing incentives for integrating EU and domestic topics in party competition diminish the effectiveness of EU scrutiny. At the same time if mainstream parliamentary parties fail to address the EU topics, they'd increasingly become used by social movements and non-parliamentary parties, which would play an increasingly important role in forming the public attitude towards the EU.

Ultimately, if the party relations are the key determinant/mechanism of how effective parliamentary scrutiny is, than more work has to be done on how parties internally discuss EU affairs. Poguntke et al. (2007) claims that the role of EU specialists in the internal party structure rises, yet it remains unclear what kind of influence these EU specialists are able to exert. If political parties are not willing to invest into parliamentary scrutiny of EU affairs and link EU and domestic policy proposals, expertise on EU may become too much detached from the party competition and the execution of a party's traditional functions. Political parties would refer to the EU in their rhetoric and develop connections with European Party groups but avoid EU topics in domestic political competition. Hence, national parliaments will be present in the decision-making towards the EU but their involvement would be "shallow": in the EU domain national parliaments would be dealing with "constitutional issues" and not so much with public policies/legislation

Figure 1 Opportunity structure and factors of effective parliamentary scrutiny



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