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# **Upper Chambers in EU Parliamentary Democracies**

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To

Giovanni

Your support is my strength



# Contents

<b>Acknowledgments</b> .....	<b>xiii</b>
<b>Vita</b> .....	<b>xv</b>
<b>Publications</b> .....	<b>xvi</b>
<b>Abstract</b> .....	<b>xviii</b>
<b>Chapter 1 Introduction</b> .....	<b>1</b>
1 Framing the Research.....	1
2 The Europeanisation of National Parliaments.....	2
3 Upper Houses in the EU .....	6
4 The Focus of the Research .....	10
5 Methodology .....	17
<b>Chapter 2 Theoretical Framework</b> .....	<b>19</b>
1 Theories of Europeanisation .....	19
1.1 Political Approaches.....	20
1.1.1 Definitional Issues.....	22
1.1.2 Theoretical Approaches.....	25
1.2 Legal Approaches .....	26
1.2.1 Definitional Issues.....	27
1.2.2 Theoretical Approaches.....	31
2 Theories of Bicameralism .....	32
2.1 Defining Issues .....	34
2.2 History of Bicameralism .....	36
2.3 Rationales for Bicameralism.....	39
2.3.1 Principle of representation.....	40
2.3.2 Proactive Reflection .....	44
3 Framing Europeanisation of Upper Chambers in the EU .....	49

**Chapter 3 Treaties reforms and the increasing role of the National Parliaments in the EU Decision-making process.....53**

1	Strengthening the National Parliament's role in the EU decision-making process.....	53
1.1	The 'Barroso' initiative .....	55
1.2	The Lisbon Treaty .....	56
2	The Early Warning System: monitoring subsidiarity .....	60
2.1	The 'Yellow card' and the 'Orange card' .....	61
2.2	National Parliaments and the Subsidiarity Principle.....	64
3	National Parliaments: an answer to the EU 'disconnected' democracy?.....	68
3.1	Theorising Democracy in the EU.....	69
3.2	National Parliaments in the EU Parliamentary democratic system .....	73

**Chapter 4 Upper Chambers in the EU .....76**

1	The Lisbon Treaty: definitional issues and bicameral implications.....	76
2	Upper Chambers' involvement in the EU decision-making process .....	84
2.1	The most Active Upper Chamber in the EU .....	87
2.1.1	The French <i>Sénat</i> and the European Oriented Approach .....	87
2.1.2	Upper Chambers in Federal Systems: Effective territorial representation.....	89
2.2	Upper Chambers actively involved in the 'political dialogue' with the European Commission.....	91
2.2.1	The Peculiarity of the Italian Senate .....	91
2.2.2	The active participation of the Czech Senate.....	92
2.2.3	House of Lords: non-partisan membership and effective scrutiny of EU affairs .....	93
2.3	Understanding the low participation of the Belgian and Slovenian Upper Chamber .....	94
2.3.1	The Belgian Senate: a void Upper House .....	94
2.3.2	The Slovenia <i>National Council</i> and the National Constitutional limits .....	96



**Chapter 5 Bicameralism into context: Italy, United Kingdom and Germany.....98**

1 The Italian Constitutional Settlement and the ‘centrality of Parliament’.....98

1.1 The Italian Senate and the Symmetric bicameral system ..  
.....103

1.2 Reforming the perfect bicameral system .....108

2 The United Kingdom and the doctrine of Parliamentary Sovereignty.....110

2.1 The House of Lords .....113

2.2 Functions of the House of Lords.....116

3 The German cooperative federal system.....120

3.1 The German *Bundesrat*.....124

3.2 Functions of the German *Bundesrat* .....125

**Chapter 6 Bicameralism in the light of the European integration process .....128**

1 Italy and the dualistic approach to EU .....128

2 British exceptionalism in the EU .....132

2.1 Supremacy and Sovereignty.....135

2.2 Supremacy and Sovereignty in the European Union Act 2011 .....141

3 Germany and its Constitutional Court: reinforcing parliamentary participation in the EU.....145

**Chapter 7 The Europeanisation of the internal Parliamentary Structure and Procedures .....151**

1 The Europeanisation of the Italian Senate: Internal Structure and Procedures .....151

1.1 From the ‘centrality of Parliament’ to the ‘decisionismo’ phase: understanding the *inertia* of the Italian Parliament in EU Affairs .....151

1.2 The slow process of adaptation: historical of the national legislative provisions.....154

1.3 The Structural organisation of the Italian Committee on European Affairs and its evolution .....157

1.4	The Procedural Organisation of Scrutiny in the Italian Senate.....	159
1.4.1	The Scrutiny Procedure of EU draft legislative acts..	160
1.4.2	The Provisional procedure for Subsidiarity Assessment.....	162
2	The Europeanisation of the House of Lords' Internal Structures and Procedures .....	164
2.1	The UK Parliamentary sovereignty doctrine and the 'early warning scrutiny' of EU legislation.....	164
2.2	Historical origins of the scrutiny procedure in the House of Lords .....	168
2.3	The Structural organisation of the Lord's Select Committee on European Union and its evolution .....	171
2.4	Procedural Organisation of the Lord's Select Committee on European Union and its evolution.....	174
2.4.1	The sift procedure .....	178
2.4.2	The outcomes of scrutiny procedure: reports, detailed inquiries and ministerial correspondence ...	180
2.4.3	The Scrutiny Reserve .....	182
2.4.4	Developments and the 'not so many' novelties brought by the Lisbon Treaty in the already established practice of scrutiny procedure of the House of Lords .....	186
3	German federalism and the role of the <i>Bundesrat</i> in EU affairs .....	187
3.1	Historical origins: the slow involvement of the <i>Bundesrat</i> in EU affairs .....	190
3.2	The Structural organisation of scrutiny in the <i>Bundesrat</i> ...	196
3.3	The Procedural organisation of scrutiny in the <i>Bundesrat</i> .	198

**Chapter 8 Upper Chambers: Holding the Government to account in the EU.....201**

1	Executive Accountability in a symmetric bicameral parliamentary system.....	202
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1.1	Information rights and Government's obligations.....	204
1.2	Participation in the EU decision-making process: the scrutiny reserve and special procedures .....	206
2	Executive Accountability and the role of the House of Lords... ..	208
2.1	Government Explanatory Memoranda.....	212
2.2	Inquiry, Ministerial correspondence, oral and written evidences and reports.....	213
2.3	Scrutiny Reserve Resolution and Government's overrides .....	217
3	Executive Accountability and the role of German <i>Bundesrat</i> ....	220
3.1	Information rights and Government's obligations.....	222
3.2	Government's obligations in formal forwarding the 'projects' of the European Union.....	225
3.3	Participation in the EU decision-making process.....	227

**Chapter 9 The Europeanisation of the Intra-bicameral relationship**  
.....231

1	The Italian symmetric bicameral system and the Senate proactive participation in the EU.....	232
1.1	The Lisbon Treaty: the mono-cameral logic in a symmetric bicameral system.....	232
1.2	The Chamber of Deputies and the Senate: structural and procedural differences.....	233
1.3	Participation in the EU decision-making process and assessment of the principle of subsidiarity .....	236
2	The House of Lords leadership in scrutinising EU affairs...241	
2.1	Structural and procedural differences with the House of Commons .....	241
2.1.1	Terms of reference.....	243
2.1.2	Role of the Chairman, the Committees' structure and membership.....	246
2.1.3	Debates on the floor of the House.....	248
2.2	Participation in the EU decision making process and assessment of the principle of subsidiarity .....	250
3	The <i>Bundesrat</i> : representing the <i>Länder's</i> interest in the EU	255

3.1	Bundestag and <i>Bundesrat</i> : structural and procedural differences.....	255
3.2	Committees' structure and membership .....	257
3.3	Participation in the EU decision-making process and assessment of the principle of subsidiarity .....	259
<b>Chapter 10 Conclusion.....</b>		<b>265</b>
1	Findings of the Case Selection .....	268
2	Final Considerations .....	274
2.1	Future Research and investigation on the topic .....	274
2.2	The Italian Constitutional Reform of the Senate.....	275
<b>Appendix 1 National Parliaments Participation in the EU Decision-Making Process .....</b>		<b>277</b>
<b>Appendix 2 Comparison between the House of Commons and the House of Lords .....</b>		<b>279</b>
<b>Appendix 3 House of Lords: holding government to account.....</b>		<b>281</b>
<b>Appendix 4 Number of Opinions retrieved from EC's Annual reports .....</b>		<b>283</b>
<b>Appendix 5 Number of Reasoned Opinions .....</b>		<b>284</b>
<b>Appendix 6 Detailed Reasoned Opinions .....</b>		<b>285</b>
<b>References .....</b>		<b>292</b>

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2. (2013) 'Beyond the Parliamentary 'bicameral blueprint'. Europeanization and National Identities in Belgium', in M. Cartabia, N. Lupo and A. Simoncini (eds.) *Democracy and Subsidiarity in the EU. National Parliaments, Regions and Civil Society in the Decision-Making Process*, Series 'Percorsi- Nova Universitas', Il Mulino, Bologna, pp. 285-317
3. (2012) "Federalizing process all'Italiana. Istituzionalizzazione del principio della leale collaborazione" in S. Mangiameli (ed.), *Il regionalismo italiano dall'Unità alla Costituzione e alla sua riforma*, Giuffrè editore, pp. 427-443



# Presentations

1. **16 July 2014** Luiss School of Government Summer School “The Europeanisation of National Parliaments”. Chair of the workshop “The Europeanisation of the internal organization of national parliaments”
2. **8 July- 19 July 2013** Luiss School of Government Summer School “Parliamentary Democracy in Europe. The European Parliament: Organization and Functioning”. Paper on “*The international role of the European Parliament. The Swift Affair and the ‘re-assessed’ European institutional balance of power*”
3. **8 May 2013** Florence 2nd European Festival, Panel on The European Parliament as an International Actor. Paper on “*The role of the European Parliament in the International Arena. The SWIFT Affair*”
4. **6-8 December 2012** The Second Euroacademia International Conference (Budapest) “The European Union and the Politicization of Europe”. Paper on “*Empowerment of National Parliaments and the European Democratic Disconnect*”
5. **16 July 2012 -20 July 2012** Luiss School of Government Summer School “Parliamentary Democracy in Europe”. Paper on “*Europeanization and National Constitutional Identities in Belgium: How Parliaments change?*”
6. **19 June 2012** Centro di Studi Sul Parlamento of Luiss Guido Carli. Workshop “National Parliaments in the European Integration Process. The Treaty of Lisbon”. Presentation “*Europeanization of National Parliaments. The Case of Belgium*”
7. **2-10 September 2011** ECPR Summer School on Federalism and Regionalism “Federalism, Regionalism and the Governance of Diversity In Europe and Beyond” University of Kent in Canterbury. Paper on “*Peculiarities of the ‘Italian Federalizing process’. The Principle of Cooperation and Regional Representation*”

# Abstract

The Lisbon Treaty and the Early Warning System represent the culmination of a long process of European treaties reform, among whose aims was to increase the EU democratic legitimacy. Which was not only undertaken through the enlargement of the European Parliament's functions, but also through a greater involvement of National Parliaments in the EU decision-making process. However, the Treaty of Lisbon reaffirms the EU blindness toward the internal constitutional setting of its Member States and National Parliaments are treated equally, notwithstanding their powers and functions. Hence, the role of upper houses appears reinforced, because regardless of the internal constitutional setting of its Member States, the Early Warning System establishes an equal distribution of votes between the two houses of the parliament. Hence, the 13 Member States with a bicameral system cannot liberally assign the two votes according to the internal repartition of competencies, but rather the houses must have one vote each.

The aim of this research is to explore the impact of the Europeanisation process on upper houses and to assess their value in the Europeanisation discourse. Scrutinising the Italian, the UK and the German upper houses, the research stresses on the differential impact of Europeanisation and it elucidates that the diverse participation patterns reflect the profound heterogeneity of the institutional landscape of National Parliaments. In this respect, the research argues that the upper chambers which are more likely to promptly adapt to the impact of the Europeanisation process, both in terms of structural and procedural organisation and of active involvement in the EU decision-making process, are those characterised by two basic features: the non-partisan membership and the territorial representation of interests. However, it goes without saying that formal powers and party affiliation remain two essential factors. Moreover, as for the issue of executive accountability, the research, beyond the classical political cleavage, affirms the central role of upper chambers in taking the Government into account. In fact, the lack of the confidence vote

assures the impartiality of the upper house, which is more likely to act independently from the executive.

# Chapter 1

## Introduction

### 1 Framing the Research

The Lisbon Treaty introduced important novelties to the European Union's institutional framework. One of the most noticeable was the establishment of the so-called early warning system (thereafter EWS), which finally formalised the participation of the National Parliaments (thereafter NPs) in the European decision making process. The system provides to NPs the power to review EU draft legislative acts and to express concerns on subsidiarity directly to the European institutions through a written objection called reasoned opinion. The national legislatures acquired an individual power, because they do not depend on any other political actors to trigger the procedure. In this respect, reasoned opinions are calculated as votes, whose distribution differs between mono-cameral and bicameral parliaments. According to Art. 7 (2) Protocol No. 2 annexed to the Lisbon Treaty "Each National Parliament shall have two votes, shared out on the basis of the national Parliamentary system. In the case of a bicameral Parliamentary system, each of the two chambers shall have one vote".

The Lisbon Treaty and the EWS represent the culmination of a long process of European treaties reform, among whose aims was to increase the EU democratic legitimacy. This was not only undertaken through the enlargement of the European Parliament's functions, but also through a greater involvement of NPs in the EU decision-making process. Thus, over the time, NPs have been subject to several challenges and the EU system has always been characterised by its executive nature with a parliamentary marginalisation in the EU decision-making process. However, today, the Lisbon Treaty recognises the role of the NPs in the complex institutional architecture and calls

them to “contribute actively to the good functioning of the EU”. Since then, NPs have started to actively participate and establish a direct dialogue with the European institutions and the de-parliamentarisation thesis seems to be replaced by a change in the parliamentary attitude toward EU affairs. It is already given that not all NPs reacted in the same way, however despite the differences, a greater awareness arose and NPs have started to shape their institutional grounds and powers in accordance with the new European provisions. In this way, they stopped being just national actors and started recognising their new role, embedded in a wider a more complex constitutional setting.

However, despite the above, the Lisbon Treaty reaffirms the EU blindness toward the internal constitutional setting of its Member States and NPs are treated equally (Art. 7(1) of the Protocol No. 2), notwithstanding their powers and functions in the State. In fact, in bicameral systems, the two votes are assigned regardless of their internal distribution of competences and regardless of the formal role played by each chamber in the national decision-making process. According to the Treaty provision, the votes cannot be liberally assigned in line with the national division of competences but rather, in a bicameral system, the houses must have one vote each (Art. 7(1) of the Protocol No. 2). In this way, the upper houses have seen their positions reinforced at the European level. Contrary to the fact that upper houses have usually fewer formal powers compared to the lower ones: e.g. the confidence relationship is prerogative of the sole lower house –except Italia and Romania- and upper houses usually play a less crucial role in the legislative process. Today, they have acquired an autonomous power to participate in the EU decision-making on equal footing with the lower ones, with important legal consequences in the national constitutional systems (Kiiver 2012).

## **2 The Europeanisation of National Parliaments**

The role of the NPs in the European Union has always been associated with the widespread concern on EU democratic legitimacy (Marquand 1979, Hayward 1995; Anderson & Ellassen 1996; Norris 1996; Majone 1996, 1998, 2006; Moravcsick 2002, 2004; Follesdal & Hix

2006), with scholarly debate focused on the 'dual democratic deficit' argument (Judge 1995). Accordingly, not only have Parliaments suffered from the transfer of power to the European level, but they were also characterised by an increased incapacity to control their own government on EU affairs (Auel 2006)<sup>1</sup>. In other words, NPs lost much of their legislative sovereignty and "policy areas that were formerly controlled by national parliaments [were] appropriated by executive and moved to the European level" (Ivy Orr 2003, 1; see also Norton 1996a; Andersen & Burns 1996; Raunio 1999; Maurer & Wessels 2001; Dimitrakopoulos 2001; Hansen and Scholl 2002; Mittag & Wessels 2003; Auel 2005). In this first wave of the literature, scholars mainly focused on outlining the challenges to NPs ensuing from the progressive European integration (Judges 1995; Moravcsik 1994; Norton 1996a; Schmidt 1997; Wiberg 1997). Researches provided strong evidences that the Europeanisation process has fostered the so-called de-parliamentarisation trend (Norton 1996a 1996b) and the national legislatures were widely considered as the "losers" of the European integration process (Maurer and Wessels 2001; Maurer, Mittag and Wessels 2003<sup>2</sup>; Kassim 2005), with a twofold impact on the decision making process. First, the policy agenda neither originated from a national programme nor was the result of an agreement between the national executive and its parliamentary majority. Secondly, the executives gained in terms of powers and autonomy, with parliaments

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<sup>1</sup> Auel pointed out that "National parliaments not only lack a formal role in EU decision-making, but the lack of transparency of Council negotiations, the highly technical nature of many EU documents and decisions, as well as the overall complicated policy processes within the European Union also create additional barriers against effective parliamentary scrutiny. National parliaments simply lack the resources necessary to effectively scrutinize their governments under these conditions." (2006, 255)

<sup>2</sup> "Due to the growing supremacy of the national governments in the European decision-making process on the one hand and because of the governments' capability to use the knowledge and powers of administrations on the other, national parliaments were left outside of the decision-making process or they were only marginally involved. Neither their financial nor their human resources could cope in any way with the still increasing amount of EU legislation –though in all national systems the formal legislative competencies are traditionally in the hands of parliaments" (Maurer, Mittag and Wessels 2003, 71)

losing their capacity to control their own governments and to legislate over European policies. The upshot was a shift of power in favour of the executive, with an increased lack of transparency and accountability in the process (Lodge 1994; Héritier 2003; Auel 2007).

Hence, a widespread consensus emerged that NPs needed to be more involved in EU policy-making (Katz and Wessels 1999; Schmidt 2006; Strøm et al. 2003; O'Brennen 2007).

In this direction, over time, there have been gradual steps aimed at reinforcing the role of the NPs in the EU institutional architecture (Hrbek 2012) and, since the Maastricht Treaty, several provisions have been introduced for strengthening parliamentary participation in EU policy-making. This progressive involvement of NPs in the EU triggered a new stand of research on the Europeanisation of NPs (Auel and Benz 2005; Wessels, Maurer and Mittag 2003). Scholars started analysing how NPs responded and adapted to the European integration process in institutional terms (Bergman 1997; Raunio 1999; Maurer and Wessels 2001; Kiiver 2006a 2006b; O'Brennan and Raunio 2007). The focus was mainly on the role played by the European Affairs Committees (Bergman 1997; Dimitrakopoulos 2001 Auel 2005) and on the formal provisions established both for scrutinising EU affairs and taking the national executives into account. The findings have always pointed out the differential impact of the Europeanisation process, with national legislatures 'path-dependent' (Benz 2004) to their national legal culture and tradition (Bergman 1997, 2000; Maurer and Wessels 2001). Beside the institutional analysis, scholars started recognising that the formal provisions do not always give evidence about the effective scrutiny practice. In this regard, some part of the literature looked at the behavioural aspect (Holzhacker 2002; Benz 2004; Auel and Benz 2005) and they started investigating the practical use of parliamentary prerogatives. Findings proved that some of the NPs considered among the strongest in terms of formal powers, in reality rarely made use of them. This approach was mainly focused on the executive-legislative relationship and the effective parliamentary capacity to hold the government into account (Auel 2005; Benz 2004 Auel and Benz 2006). On this, scholars extrapolated the risk of the majoritarian trap in parliamentary systems, which leaves to the sole opposition party the duty to check over the executive (Holzhacker 2005; Auel 2007, 2009).

With this wider approach, scholars started investigating the cross-national variation (Bergman 1997; Hansen and Scholl 2002; Holzhaacker 2005; Raunio 2005; Saalfeld 2005) through a comparative perspective and tried to create ranking which could depict the NPs strength in scrutinising EU affairs (Bergman 1997, 2000; Raunio 2005; Raunio and Wiberg 2010, Winzen 2012, 2013; Rozenberg and Tacea 2014).

Today, since 1<sup>st</sup> December 2009, after the entry into force of the Lisbon Treaty, a new wave of research has emerged, which reviews the classical 'de-parliamentarisation' thesis. In fact, through both the 'political dialogue' and the EWS, NPs started to actively participate and establish a direct dialogue with the European institutions and the de-parliamentarisation thesis seems to have been replaced by a change in the parliamentary attitude toward EU affairs. Therefore, they stopped being just national actors and they started to recognise their new role, embedded in a wider, more complex constitutional setting. Thus, "over time the 'poor losers' of integration have learned 'to fight back' and obtained stronger participation rights in the domestic handling of European policy" (Auel and Höing 2014).

Although some studies have already diminished the initial enthusiasm (Kaczyński 2011; De Wilde 2012; Maatsch 2013), the entry into force of the Lisbon Treaty undeniably increased - at least formally- the competences of NPs in the EU. NPs are thus under scrutiny and scholars are looking at how they can benefit from the novelties introduced by the Lisbon Treaty (Manzella 2009) and more specifically, how they can be able to take advantage of the EWS (Kiiver 2008, 2012). Obviously, the NPs adaptation to the EU varies across countries (Bergman 1997; Maurer and Wessels 2001; Mittag Wessels and Wolfgang 2003; Saalfeld 2005; Raunio 2005; Kiiver 2006b; O'Brennen & Raunio 2007) and each case implies NPs' ability to reform and adapt to the new provisions (Louis 2009; Matarazzo and Leone 2011; Kaczyński 2011).

Today, triggered also by the Euro-crisis (Lupo 2013c), the attention to NPs intensely increased and groups of scholars both from the political and legal field started gathering in order to compare their own knowledge and expertise on the topic (Heffler, Neuhold, Rozenberg, Smith and Wessels 2014 forthcoming). Moreover, conferences and summer schools (Cartabia, Lupo and Simoncini 2013) were devoted to



the issue, involving both the political and the legal approach, which again proves the complexity of the issue and the need to adopt a wide approach for analysing the effective impact of the Europeanisation process on NPs (Winzen 2012).

### 3 Upper Houses in the EU

Despite the abundant literature on the Europeanisation of NPs, there is a substantial gap on the role of upper houses in the European decision-making process and most scholars have generally approached the issue, without exploring their potential role in the EU. Thus, most of the studies have neglected their role and NPs have been investigated as a sole actor, focusing just on the powers granted to the lower house. The main reason for this gap rests on the general misperception of their “secondary-ness” (Uhr 2006, 478) when compared to their “Big brother” (Scully 2001). In fact, while the latter has always been considered as the emblem of the democratic representation principle and thus the core of national decision-making process, the modes of the election of upper houses vary a lot according to the specific national constitutional settings. Despite this misperception, we should be aware that there is no such institutional creature as “insignificant bicameralism” (Liiphart 1999, 211). Where bicameralism exists, it always matters and “even unelected or indirectly elected upper houses with limited legislative powers can exercise great policy power” (Uhr 2006, 478). This situation is termed “Cicero’s puzzle” (Money and Tsebelis 1992) and it refers to the “power able to be deployed by upper houses in the face of constitutional pre-eminence of lower houses” (Uhr 2006, 478).

The role of upper houses appears crucial also in the executive-legislative relationship. Parliamentary systems are based on the special relation between legislative and executive branches, where ‘holding a gun to each other’s head’ (Gallager, Laver and Mair 1995, 43). The chamber can remove the executive with a vote of no confidence, while the executive may have the power to dissolve the legislature. This relationship –although some exceptions exist- is the prerogative of the lower house alone, while generally there is no principle of confidence vote in the upper house. In this respect, generally, the point of

departure for analysing the parliamentary form of government is the confidence relationship between the Parliament and the executive (Elia 1956, 1957, 1960, 1960a; Rescigno 1967; Manzella 1969; Olivetti 1996; Midiri 2006; Lupo 2008; Rivosecchi 2008; Lippolis 2011), which represents the legal prerequisite for assuring executive accountability. In other words, as Bagehot stressed, “it is the assembly which chooses our president” (1867) and thus the main function of Parliament is to safeguard that the holders of the executive power are accountable. In this way, the Government is called to give evidence to the legislature and to people on how it uses the power conferred to it. That is, “the holders of the executive power must be subjected to scrutiny and exposure to ensure that the power is properly employed” (Evans 2008) and if they try to implement policies that are opposed by the parliamentary majority, than the majority may vote the government out of office (Bagehot 1867; Beer 1966; Crick 1964; Wheare 1963; Mezey 1979; Huber 1996; Frosini 2005).

However, this is not always the case and there is a long standing debate on the declining role of the parliament (Bryce 1921a) and its capacity to hold the government to account. According to this argument, the Parliament’s capacity to control the executive has been weakened by the increasing role played by the party groups. According to Bryce “as party organisations are stronger, the discretion of representatives is narrowed, they must vote with their leaders” (1921a), this has led to government dominance of the legislature. This argument was further supported by Wheare, who writing in the mid-1960s argued that “if a general survey is made of the position and working of legislatures in the present century, it is apparent that, with a few important and striking exceptions, legislatures have declined in certain important respects and particularly in powers in relation to the executive government” (Wheare 1967, p. 148). This argument has been challenged because of lack of empirical data (Mezey, 1995, p. 196) and Norton has also stressed that the executive-legislative relationship should be analysed in a wider context taking into account internal and external factors (1998). Using his own words, “in terms of policy effect, perceptions of ‘decline’ have also not been borne out in recent years [...] Contrary to what we hypothesised, parliament has avoided the extremes of marginalisation in the policy cycle. This is not to assert that parliament has witnessed some accretion of policy-making power [...]”

What it does assert is that parliament has not slipped back, and certainly not collapsed, to the extent that many critics feared" (Norton, 1990, p. 31).

Despite the different positions with regard the declining powers of the legislatures and the way it should be assessed (Lupo 2001), what appears largely acknowledged is the general trend of an increasing role of the executive over parliament, which, dominated by the logic of the party system, it limits the individual independence of the MPs. In fact, the reinforcement of the party organisation and the general tendency to ensure cohesiveness (Diermeier and Feddersen 1998) has led to the establishment of party discipline, which obliges MPs to vote in line with their own party, and thus with the government, when the party represents the majority in the parliament<sup>3</sup>. In this sense, particularly in majoritarian democracies, it is largely perceived that there has been a substantial change in the role of the parliament. That is, rooted in the logic of party majority and its loyalty to the executive, the parliament seems to have stopped to perform its role of controller (Strøm 2000; Strøm *et al.* 2003) and it has become an instrument in the hands of the executive government for implementing its own policies (Carrer 2011). In other words, "instead of executive governments being responsible to parliaments, parliaments have become responsible to executive governments. The body which is supposed to be scrutinised and controlled by parliament has actually come to control the body which is supposed to be doing the scrutinising and controlling - a reversal of roles" (Evans 1992). This is particularly evident in the UK parliamentary system, where already in 1976, Lord Hailsham described the British system of government as an 'elective dictatorship'<sup>4</sup>.

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<sup>3</sup> On the notion of Majoritarian democracy see Bobbio 1995, Pasquino 1995, Lijphart 1999, Bartole 2001, Chessa 2004,

<sup>4</sup>"Until recently the powers of government within parliament were largely controlled either by the opposition or by its own backbenchers. It is now largely in the hands of the government machine, so that the government controls the parliament, and not parliament the government. Until recently, debate and argument dominated the parliamentary scene. Now it is the whips and party caucus. More and more, debate is becoming a ritual dance, sometimes interspersed with catcalls... we live under an elective dictatorship, absolute in theory, if hitherto tolerable in practice" Lord Hailsham cited in

These patterns have been strongly accentuated by the European integration process (Fabbrini 2000). According to the majoritarian logic introduced above, the capacity of the Parliament to scrutinise its own government becomes more complicated in EU affairs. On this point, two positions emerged. On the one hand, some scholars have underlined that the European integration process and, today, the introduction of the EWS would represent a threat for the same principle of parliamentary democracy, since it could lead the national parliament to be in opposition with its own government (Raunio 2007, 86). On the other hand, other academics have pointed out that although in European affairs NPs can be more likely to have a stronger motivation to control their governments, in practice they do not, because “the majority party or coalition which holds the veto power” (Auel and Benz 2005, 375) will not use it publicly. Because, “the result would be similar to a defeat of a government bill, namely a public and therefore humiliating opposition to the government by its own parliamentary majority, something the majority will usually have no incentive to risk, because it may undermine their own political credibility” (Auel 2007, 492). “Thus, the views of the cabinet and of the parliament, in the sense of the majority in at least the lower chamber, tend to coincide” (Kiiver 2009, 1293).

It becomes evident that the duty to check over the executive relies only in the hands of the opposition<sup>5</sup>, which mainly in majoritarian democracies has a tough task (Pasquino 1995) and can “force the executive to defend publicly what has proposed” (Mezey 1998, 784; see also Saalfeld 2005). At this point, it should be specified what is the meaning of opposition and to what usually we refer. According to the Resolution 1601, adopted on 23 January 2008, by the Parliamentary Assembly of the Council of Europe (PACE)<sup>6</sup>, the opposition is described as “an essential component of a well-functioning democracy”

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(Prasse 2009). For an analysis of ‘elective dictatorship’ see and Aldons 2002; Evans 1992

<sup>5</sup> Contrary to this argument see Lupo 2008

<sup>6</sup> Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament

and the definition is restricted to the party political opposition<sup>7</sup>. More specifically, the Venice Commission argued that:

“The defining characteristic of the “opposition” is that it is not in power, and that it opposes (more or less strongly) those who are. The parliamentary opposition then consists of those political parties that are represented in parliament, but not in government, since in most (but not all) parliamentary systems the government will usually enjoy the direct support of the majority”<sup>8</sup>.

Starting from this definition, this research wants to enlarge the concept of ‘opposition’, bringing it beyond the political cleavage between minority and majority parties in parliament. Hence, the notion of ‘opposition’ can be broadly understood as the “dialectic contraposition with regards the established power” (De Vergottini 1973, 1), which opens up the concept and allows the introduction of the upper houses in the political arena, and specifically in the dilemma of executive accountability.

## 4 The Focus of the Research

The aim of this research is to explore the impact of the Europeanisation process on upper houses and specifically to look at the first effects of the new provisions established by the Lisbon Treaty.

In this regard, the role of upper houses appears reinforced, because regardless of the internal constitutional setting of its Member States, the EWS establishes an equal distribution of votes between the two houses of the parliament. According to the procedure, the vote cannot be liberally assigned but rather, in bicameral systems, the houses must have one vote each. In this way, the upper houses have reinforced their positions and contrary to the fact that, usually, they have fewer formal

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<sup>7</sup> For an analysis of the parliamentary opposition see De Vergottini 1973; Zucchini 1983; Massari and Pasquino 1990; Manzella 1990; Gennusa 2000; Rizzoni 2012

<sup>8</sup> European Commission for Democracy Through Law, Venice Commission (2010), *Report on the Role of the Opposition in a Democratic Parliament*, CDL-AD(2010)025, Venice 15-16 October 2010  
[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)025-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)025-e)

powers with respect the lower ones, today, they have acquired an autonomous power to participate on equal footing into the EU decision-making process.

Under these preliminary considerations, some scholars have predicted a potential “rise of the Senates” (Kiiver 2012) at the EU level, with a positive implication for the decision making process. Because “Senates which are more independent from the cabinet than lower chambers in fact offer a greater prospect that their opinion will not merely be a repetition of what the government thinks already, and they can thus potentially add further ideas to the discourse” (Kiiver 2012, 66).

The aim of this research is to testify this prediction and to verify in which cases it should be expected. However, against any risk of any generalisation this research stresses on the differential domestic adaptation to the European integration process (Bergman 1997; Maurer and Wessels 2001; Mittag, Wessels and Wolfgang 2003; Saalfeld 2005; Raunio 2005; Kiiver 2006b; O’Brennen and Raunio 2007). In fact, the institutional landscape of NPs is profoundly heterogeneous (Kiiver 2012; Kaczyński, 2011; Olivetti 2013, Lupo 2013, 2013a<sup>9</sup>, 2013b). This

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<sup>9</sup> Interesting is the observation developed by Lupo on the use of the term ‘National Parliaments’ instead than ‘Parliaments of Member States’ “It is, in fact, well-known how the phenomenon of European integration is generally placed in contraposition to the nationalistic tendencies which have long prevailed throughout the continent, and how the development of this phenomenon, following forms and modalities which differ greatly from the traditional character of inter-national organisations, often tends to be considered as one of the indices of the overcoming of the logic of the nation-state in the contemporary world. It thus comes as no surprise that the entire European construct has endeavoured – and, indeed, continues to endeavour – to resist the call to a return to every form of terminology that makes explicit reference to the idea of the nation (especially where it is conceived in an ethno-linguistic manner). And yet, contrary to this tendency, the term “national” reappears, in the European treaties, precisely in the very discipline addressed to those who, with more neutral terms which are only slightly more articulate, could have been called the “Parliaments of the Member States”. This essentially seems to be due to practical identification reasons, which establish the need to distinguish, with a concise and unambiguous formula, every reference to such parliaments with regard to those made at the European Parliament and also

heterogeneity is far more evident in bicameral systems, where diversity has been the rule over time and among the countries: “bicameral institutions have been adopted by class societies and by federal states, by republican polities and by unitary political systems. They have been used to maintain the status quo, to amalgamate the preferences of different constituencies, and to improve legislation, and have been justified in all of these terms” (Tsebelis and Money 1997, 13).

Thus, completely sharing the positive implications that the independent role of upper houses may bring to the EU institutional architecture. This research does not expect a general “rise of the Senate”, but rather the active participation of the upper houses is expected to be contingent upon the existence of some specific conditions, which reflects the aims of the active involvement of NPs in EU affairs.

Specifically, two approaches can be depicted: the European oriented approach and the national oriented approach. According to the first, the will to actively participate in the EU decision-making process is boosted by two opposing reasons. On the one side, the effective participation is seen as a way to contribute to the legitimation of the European Union. On the other side, active participation is fostered by a more eurosceptic stance. As for the national-oriented approach, also in this case, a twofold attitude can be depicted. The first aims towards preserving the national prerogatives and the active participation in the EU, and is seen as a tool for checking over the national government’s decision. The second sees the active participation as an “opportunity structure” (Neuhold and Strecklov 2012), that is an instrument to extend the national prerogatives and reinforce its role also at the national level. Obviously, it is very difficult to draw a precise line between the two approaches, but rather the positions of each House can be a mixture of both.

Having set this premise, the research argues that the upper chambers which are more likely to promptly adapt to the impact of the Europeanisation process, both in terms of structural and procedural organisation and of active participation in the EU decision-making

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those which, as we have just seen, Article 6 of Protocol 2 defines as “regional parliaments with legislative powers” (2013b)

process, are those characterised by two basic features: the non-partisan membership and the territorial representation of interests. The first represents an important assumption which overcomes the majoritarian trap and goes beyond the classical political cleavage of majority and opposition. The second, although related to the first, is rooted in the territorial bicameral model, which is a distinguishing, but not essential, trait of federal systems.

Referring to the issue of executive accountability, mainly political scientists have devoted special consideration to the issue. Specifically, using the standard model of delegation in agency theory (Saalfeld 2000, 2003, 2005; Strøm *et al.* 2003; Auel 2005; Sprungk 2010), they have tried to identify the main variables which could better grasp the executive-legislative relationship and they focused on the reasons why some parliaments “invest more resources in holding their governments accountable in matters relating to the European Union” (Raunio 2005, 319).

Scholars unanimously agree that the basic and essential feature for assuring accountability is access to information (Kiewiet and McCubbins 1991; Krehbiel 1991; Lupia 2003; Strøm *et al.* 2003; Auel 2005), which ensures that parliaments can effectively evaluate the executive’s decisions. One of the main problems related to EU affairs is indeed the information asymmetries between the executives and their own NPs. With the entry into force of the Lisbon Treaty, parliaments’ access to information has been strongly improved, however domains still persist where decisions are taken behind closed doors and through informal negotiations. This asymmetry is far more evident with regards EU ‘limité’ documents, where NPs access often relies on the will of the national executives. It follows that the full access to information remains one of the basic feature for assuring a stronger participation of NPs in the EU decision-making process and reinforce the chain of accountability. In other words, “in order to enhance the elected representative’s accountability to the electorate, citizens need information about their representatives’ decision-making and the outcomes of their decisions” (Héritier 2003, 814).

Having said this, scholars have tried to explore in detail the executive-legislative relationship and the capability of legislatures to hold their governments to account. According to Bergman “the



strength of the parliament is often the reverse of government strength" (1997, 381). It follows that in countries with minority governments "the parliament can have a greater influence over policy than where the government controls a majority of the votes in the parliament" (1997, 381), which implies a higher ability to scrutinise and limit the executive's discretion in the European decision-making process (Judge 1995). Based on the same political cleavage, Auel stressed on the limits of a majoritarian parliamentary system and acknowledged the parliamentary majority and the political opposition as two distinct political agents, playing a different role in scrutinising the executive. On the one side, the majority –supporting the government- is inclined to play a limited 'monitoring scrutiny'<sup>10</sup>. On the other side, the duty of the parliamentary opposition would be to engage in the so-called 'political scrutiny', that "involves the second stage of assessment and political judgement on the appropriateness of the government's decision and the respective outcome of European negotiations" (2005, 500). Starting from this central notion, other scholars have tried to measure the level of parliamentary scrutiny and to explain the main patterns of cross variation among Member States. Rozenberg scrutinised the impact of public opinion, minority governments and the role of the parliament in the national system on the level of scrutiny (2002). Pahre identified three essential conditions for resilient parliamentary oversight: "there must be a significant portion of the public, and at least one party represented in parliament, that prefers the status quo to further integration. Second, a country must have frequent minority governments. Third, there must be some party that would rather enjoy a policy veto through an oversight committee than join a majority government" (1997, 165). Raunio investigated five variables: the power of parliament independent of integration, public

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<sup>10</sup> "i.e. the demand for information on the agent's actions and their context to reduce information asymmetries, is of particular importance in European policy making, as national parliaments, or, more specifically, the majority parties, are not directly involved in decision making at the European level. [...] both the agenda setting and decision making take place at the European level. As a result, European proposals may well have policy aims that counter domestic policy preferences. We can therefore expect the majority parties, too, be highly motivated to question their government on the context of decision making [...]" (Auel 2005, 500)

opinion on membership, party positions on integration, frequency of minority government and political culture (2005).

All of those studies have tried to capture the strength of the NPs in holding the government into account in EU affairs, with an extensive analysis of both the parliamentary political dialectic and the national constitutional constraints. However, all of them have failed to capture the different structural organisation of parliamentary systems, neglecting to mark the distinction between mono-cameral and bicameral parliaments. It follows that so far scholars have looked mainly at the lower chamber, even when a bicameral structure was in place. The reason resides on the assumption that the lower chamber has always been considered as the emblem of the democratic representation principle and thus the core of the national decision-making process. Moreover, specifically in the executive-legislative relationship, the confidence vote is deemed to be one of the strongest legal mechanism for assuring executive accountability, which generally is prerogative of the lower chamber alone, while -although some exceptions exist- there is no confidence vote in the upper chamber.

This research argues that the lack of the confidence vote implies important consequences in terms of relationships with the executive and with the EU institutions. And what it should be made clear is that it does not weaken the position of the upper house with respect to the executive, but rather the absence of this legal prerogative assures the impartiality of the house, which is more likely to act independently from the executive and it "may therefore provide an important forum for parliamentary scrutiny, strengthening parliament's overall control over government" (Russell 2001a, 448; see also Druckman Martin and Thies 2005; Russell and Sanford 2002).

This assumption is expected to be evident in those upper houses which are characterised by two basic features: the non-partisan membership and the territorial representation of interests.

The two features are both rooted in the main theoretical justification of bicameralism, that is representation, and although they are not dependent on each other and neither are mutually exclusive, it is important to stress that upper houses based on a different representation pattern than the one established in the lower one are more likely to effectively control the executive. However, it should be

further underlined that the national legal provisions which set the mode of composition and election of upper chambers, do not necessarily assure the political independence of the house. Hence, an in-depth analysis, which takes into account both the legal provisions and the political reality, is essential for considering some possible deviations. In other words, the formal provisions do not completely illustrate the real role played by the upper house and also in the presence of a federal house, the political relationship should be carefully investigated, since, contrary to its formal provisions, in some cases the house might not be able to effectively represent the territorial interests and, on the contrary, be influenced by the national political cleavage, falling into the majoritarian trap. Thus, the territorial representation should be effective.

To sum up, the non-partisan membership and the 'effective' territorial representation are the two essential features for an independent chamber, which could assure an effective parliamentary scrutiny.

Bearing in mind the abovementioned premise, this research focuses on three main features. First, it looks at how upper houses have adapted to the challenges posed by the move toward greater integration. On this issue, this research investigates the impact of Europeanisation on institutional terms and specifically on its structural and procedural organisation. Moreover, aware of the fact that the process of adaptation has been slow and problematic, this research takes an historical perspective and points out the evolutionary and continuous process of change, which better promises to shed some light on the impact of the novelties introduced by the Lisbon Treaty. Second, this research investigates the impact of Europeanisation on executive-legislative relationship and specifically on upper houses' capacity to scrutinise and direct government decision-making. Finally, the last focus is on inter-chamber relationship and the aim is to look at the possible impact on the core of the bicameral system. This analysis scrutinises how the two houses deal with EU issues and to which extent their internal structure and procedures differ from each other.

## 5 Methodology

The present research is placed in the field of comparative constitutional law and the innovative aspect of the research lies in connecting the fields of constitutional law and political science. The aim is thus to link the legal analysis of the formal prerogatives and powers recognised to upper houses with an empirical evaluation of their actual operation in political practice.

Accordingly, the research relies on constitutional literature and parliamentary documents. It investigates the formal powers of upper houses in the national constitutional framework and it examines the provisions enacted for assuring both the participation in the EU decision-making process and for checking over national executives' decisions. Besides this legal approach, the research verifies the effective operation of the formal prerogatives. This is mainly done through the use of data available on NPs' and European Commission's websites.

The most important choice made in this research was with respect to the case selection. Among the 13 bicameral systems in the European Union, the first choice was to focus on Member States characterised by a Parliamentary form of government. The main reason was strictly dependent on the need to capture a similar balance of power among the national institutional actors. Second, the research is specifically focused on upper houses and thus it was decided to exclude all of those houses which scrutinise EU matters and participate in the EU decision making process, through shared structure and procedure with the lower ones. Finally, although timing of accession is considered one important factor for understanding the differential impact of Europeanisation, it was decided to exclude all the new Member States. This choice was justified on the fact that most of the new Member States with a bicameral structure are still characterised by weak institutional actors and unstable democracies (i.e. Romania), which makes it difficult to effectively grasp the internal distribution of powers among the branches of government. Moreover, being one of the first researches specifically focused on the Europeanisation of upper houses, it was considered essential to limit the field of investigation to some specific patterns.

Following those criteria, Italy, the United Kingdom and Germany were retained for the purpose of this research. Moreover, the choice also respects the classical Hirschl's principle of case selection based on the "most different cases" logic (2005). In fact, the upper houses of the three countries strongly differ in terms of composition and functions: the Italian Senate is rooted in a symmetric bicameral system with both houses retaining the confidence relationship with the executive; the UK House of Lords is rooted in the *elitist* bicameral model, with few formal powers to control over the executive; finally, the German *Bundesrat* represents the essence of an upper chamber representing territorial interests and rooted in a strong federal system.