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# **REFLECTIONS ON A DECADE OF EU MEMBERSHIP**

EXPECTATIONS • ACHIEVEMENTS • DISAPPOINTMENTS • THE FUTURE

## **Ten Years of EU Membership – The Maltese Parliament**

by Mark Harwood



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# Ten Years of EU Membership – The Maltese Parliament

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## Introduction

The European Union has long seen the use of enlargement as a means to transform its neighbours. For many of the 2004 enlargement countries, membership was a means to open economically and politically. For Malta and Cyprus, established democracies with extensive trade links across Europe, EU membership still had the capacity to transform their political and economic systems and hence the need, a decade on, to take stock. With this in mind and conscious that the EU political system has often raised concerns over legitimacy and accountability, attention is increasingly being focused on how the complexities of the EU political system, and the role national governments play in that system, impacts the legitimacy and accountability of the domestic political system, in particular the functioning of the national parliament. To this end, this paper will analyse how the Maltese Parliament has been impacted by membership and seek to establish whether there has been a significant alteration in its ability to hold the national executive to account.

## The Europeanization of National Parliaments

While the impact of the EU on domestic political structures and processes (taken to be Europeanization) has grown as an area of research since the 1990s, it is only in the last decade that we see a systematic analysis of how national parliaments (NPs) have been affected by the growing competence and political complexity of the EU's political system.<sup>1</sup> This reflects the fact that NPs were often slow to engage with EU affairs and therefore less likely to be directly impacted by Europeanisation while the highly differentiated outcomes seen across NPs made generalisations about the influence of the Union difficult.


In fact, the literature is not conclusive as to whether NPs come under Europeanisation, even though the early literature was clear that NPs were a principal loser from EU integration.<sup>2</sup> In this regard, the increased competence assigned to the EU and its political structures emboldened national executives to the detriment of their national legislatures. However, this did not automatically challenge the work of NPs; 'if the traditional functions of the parliaments can be listed as representation, deliberations, legislation, authorization of expenditure, and scrutiny of the executive, the formal increase in power and influence of the EU does not directly impact any of these except scrutiny of the executive'.<sup>3</sup> The result for NPs is that they lose manoeuvrability within the domestic political system but this does not automatically cause change in their role or structure,

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<sup>1</sup> Maurer, A and Wessels, W (eds.) (2001), *National Parliaments on their Ways to Europe. Losers or Latecomers?*, Germany: Nomos.

<sup>2</sup> Ibid.

<sup>3</sup> Ladrech, R. (2010), *Europeanization and National Politics*, UK: Palgrave, p. 80.



nor in the way they do business, something one would expect with Europeanisation. Indeed, some argue that the shift in the executive-legislative relationship merely reflects a process of de-parliamentarisation which is being seen across Europe and which is not specific to EU membership.<sup>4</sup> So while it could be argued that the NPs' loss of power relative to the national executive might reflect shifts in decision-making subsequent to EU membership (where no single state can control outcomes within the EU, which therefore, complicates the ability of NPs to hold the executive to account in policy areas decided in Brussels), it can also reflect wider shifts in European politics with the tendency for coalition governments to last longer, the presidentialisation of executives as well as the enhanced role and organisation of public bureaucracies, which all lead to the executive-legislative dynamic tilting in favour of the former.<sup>5</sup>

While we can question whether NPs come under Europeanisation, the fact that they reacted to the burgeoning power of the EU in a similar manner implies some link to EU membership, with Norton distinguishing three stages of adaptation: the first stage covered the period before the 1980s when NPs did not engage with EU affairs but appeared comfortable with giving the executive free reign to conduct business in Brussels, primarily because the general public was not engaged in EU politics and EU affairs were considered technical and of minor interest to MPs.<sup>6</sup> This was followed in the 1980s and 1990s with a second phase when, in reaction to the Single European Act and the federalist push surrounding the Maastricht Treaty, NPs established their first attempts to engage in EU affairs with the establishment of the European Affairs Committees (EAC). These EACs had the dual purpose of establishing the principle that NPs should monitor the executive's EU policy as well as creating a mechanism for sifting through the reams of information associated with EU policies.<sup>7</sup> This period was also complemented by the establishment of the Conference of EC Affairs Committees of National Parliaments and the European Parliament (COSAC) in 1989. With subsequent treaty reforms and the allocation of greater competence to NPs (for the right to information, to be involved in treaty amendments as well as to monitor subsidiarity), the NPs have entered a third stage where they are 'viewed as important means of addressing the democratic deficit in the union'.<sup>8</sup>

This increased involvement of NPs in EU affairs indicates that even though the EU's impact on the legislative branch is indirect, that impact is pervasive enough for NPs to have reacted in a very similar manner. In fact, NPs have reacted by either focusing on *ex ante* (seeking to influence the government's mandate) or *ex post* (seeking to hold the executive to account for outcomes) parliamentary procedures. In terms of the latter, this is often differentiated into political and monitoring scrutiny, with the latter taken to be *action* to ensure that adequate information is provided to monitor government while the former is taken to be *scrutiny* to ensure that the executive has exercised its power in a way that parliament (and the electorate) deem acceptable.<sup>9</sup>

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<sup>4</sup> O'Brennan, J. and Raunio, T. (2007), *National Parliaments Within the Enlarged European Union: From 'victims' of Integration to Competitive Actors?*, UK: Routledge.


<sup>5</sup> Ibid.

<sup>6</sup> This is generally referred to, in European Studies, as the period of the permissive consensus.

<sup>7</sup> Ladrech, p. 77.

<sup>8</sup> Norton, P. (ed.) (1996), *National Parliaments and the European Union*, UK: Routledge, p. 182.

<sup>9</sup> Auel, K. (2007), 'Democratic Accountability and National Parliaments: Redefining the Impact of Parliamentary Scrutiny in EU Affairs', *European Law Journal*, Vol. 13, No. 4, July 2007, pp. 499-500.



As noted above, while NPs have endeavoured to engage in EU affairs, the outcome has not always been effective involvement, with a central factor explaining outcomes being the institutionalised context of parliament, namely its traditional role in domestic politics.<sup>10</sup> In this way, the literature tends to differentiate parliamentary involvement in EU affairs into four broad categories with NPs often falling into more than one category:<sup>11</sup>

- 1) The *Policy Shapers* where the principal activity is issuing resolutions or mandates on government negotiation positions though this may not translate into influence.
- 2) *Debating Arenas* where the focus is upon mobilising the plenary through debates though this does not mean that the EACs' work is less important (Malta fits in this category).
- 3) *Commission watchdogs* where a principal dynamic is dialogue with the European Commission.
- 4) *Scrutiny Laggards* where the level of overall activity is so low that there is little attempt to influence government or European Commission positions.

This categorisation of the involvement of NPs in EU affairs reflects the structures they have established to oversee scrutiny, the types of scrutiny they engage in as well as the core dynamic which underscores how the political parties within a parliament interface with one another. In relation to political parties, it became clear that while EACs often perform the same functions across member states, their level of influence fluctuates heavily, which reflects the relationship between parties within the parliament. Auel and Benz give particular importance to the interaction between the majority and opposition parties and the dynamic between the national executive and the majority parties in Parliament.<sup>12</sup> In this way, majority parties have little interest in trying to control the executive's EU priorities because to do so hampers the executive's flexibility to negotiate in Brussels, undermining its ability to deliver, thus hurting the majority party's (or parties') ability to be re-elected. Hence, in this case there is little incentive to try and control the government's mandate with NPs finding it easier to invest in ensuring that government has followed procedures (in establishing its EU priorities) as well as holding government to account for what it actually delivers, something opposition parties will pursue with vigour.

This disincentive to engage in EU affairs is then complicated by the information asymmetry between the executive and parliament with the former often controlling the flow of information.<sup>13</sup> Parliaments therefore find it difficult to process the vast amounts of EU-related information, and majority parties have little incentive to restrict their government's mandate while the general public is often not engaged in EU affairs, meaning that there is little benefit for politicians to prioritise scrutiny of EU matters. While this paints an inauspicious picture, political systems based on consensus politics, as in Scandinavia, often do play an important role in EU affairs while parliamentarians appear to also be forging new skills to better position themselves in EU affairs,


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<sup>10</sup>Auel, K. and Rittberger, B. (2006), 'Fluctuant nec merguntur: the European Parliament, National Parliaments, and European Integration' in J. Richardson (ed.), *European Union: Power and Policy-Making*, UK: Routledge.

<sup>11</sup> Auel, K. and Hoing, O. (2014), 'Scrutiny in Challenging Times – National Parliaments in the Eurozone Crisis', *European Policy Analysis*, January Issue 2014, p. 7.

<sup>12</sup> Auel, K. and Benz, A. (2005), 'The Politics of Adaptation: the Europeanisation of National Parliamentary Systems', *The Journal of Legislative Studies*, 11:3-4.

<sup>13</sup> Moravcsik, A (1994), 'Why the European Union Strengthens the State: Domestic Politics and International Cooperation', CES Working Paper, no. 52, 1994.



such as forging direct links with EU institutions.<sup>14</sup> However, such consensus-based politics is not a hallmark of the Westminster system where a clear distinction is made between governing parties and the opposition and where politics can be highly partisan and often polarised. Therefore, when looking at Westminster, after which the Maltese Parliament is fashioned, the British parliament is seen as having weak policy influence over EU affairs with its principal role being that of communicating with and ensuring adequate information for the relevant committees to remain informed of EU business.<sup>15</sup> Ultimately, the majority party's strong control over parliamentary business means that the plenary is not often used to discuss EU matters while the European Affairs Committee is inadequate for this job. With this in mind and conscious that the Maltese Parliament is fashioned upon the Westminster model, we turn our analysis to ten years of EU membership and their impact on the Maltese Parliament.

### **The Maltese Parliament**

The Maltese Parliament traces its origins back to the 1921 constitution which established a diarchy over the islands with a colonial government overseeing reserved matters (primarily defence and external relations) while a Maltese government controlled internal affairs. The latter comprised a bicameral legislative with a lower house which was directly elected and a senate representing vested interests while the franchise was exclusively male. In addition to the establishment of a Maltese government, 1921 saw the introduction of the Single Transferable Vote (STV) system which allows voters to select individual candidates as opposed to parties and often leads to the creation of multiparty systems. In the case of Malta, while STV has been used for over 90 years, there have been only two parties elected to Parliament since 1966, making Malta a heavily polarised, often parochial two-party system with the Social Democrats to the left and the Christian Democrats to the right. These two parties have alternated in power for the last five decades, always enjoying an absolute majority within the House when in power.<sup>16</sup>

Under the Constitution, the Maltese Parliament comprises the President and the House of Representatives.<sup>17</sup> The Presidency is a symbolic office and there is little evidence of the head of state wading into domestic politics, though former presidents have been known to voice their opinion during key debates, as with the divorce referendum in 2011. However, the President is chosen by Parliament and is often from the ruling party with the result that there is little incentive in politicising the office. The House of Representatives is a single chamber legislative comprising 65 members but with provisions in the electoral law which allow parties to be compensated should the number of seats won not tally with the percentage of first preference votes won by the party in the general election. Thus, the current legislative comprises 69 seats with 39 being held by the Social Democrats, the Labour Party (PL), and 30 by the opposition Christian Democrats, the Nationalist Party (PN).

As noted, the 'Maltese Parliament is an institution that operates under a set of rules which have been modelled on the British House of Commons' general rules of procedure, but which have been

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<sup>14</sup> Auel and Benz (2005), pp. 386-387.

<sup>15</sup> Ibid., p. 380.

<sup>16</sup> The only exception to this rule was in 2012 when a member of the Nationalist Party resigned from the party but not the House, leaving the Nationalist government dependent on the Speaker's casting vote.

<sup>17</sup> Art. 51, Constitution of Malta.





tailored to suit the needs of a much smaller Parliament’ and the House of Representatives itself notes that when not provided for by the Standing Orders of the Maltese Parliament, the latter can ‘still access and benefit from precedents, customs and usages adopted by the House of Commons’.<sup>18</sup> To this end and reflective of developments seen in Westminster, one of the principal innovations introduced in the last two decades was the establishment of Standing Committees in 1995. While this enabled the Parliament to relieve and facilitate the work of the plenary, the reality remains that certain distinct features of the Maltese Parliament condition its ability to involve itself in EU affairs. This includes the fact that Parliament is heavily understaffed with no independent budget and subject to the recruitment logistics of the public service. There are less than 40 members of staff and only 2 research analysts working with Parliament, creating a staffing ratio of 2 MPs for each member of staff when the European average is 1 MP to every three to four members of staff. Moreover, the House is a part-time parliament that meets three times a week from six to nine in the evening. This means that all committee meetings and plenary sessions must take place during the 9 hours available each evening because all non-cabinet MPs retain their day jobs with the result that there is little incentive to cultivate a level of expertise often necessitated by Standing Committees. However, beyond the staff limitations and part-time nature of an MP’s job, a key issue remains the two-party system which impacts the executive-majority-opposition dynamic discussed earlier. While it is common for single-party government under the Westminster political system, the Maltese Parliament represents an extreme version of this with each government enjoying an absolute majority in Parliament. Additionally, the executive is often a majority of the ‘majority’ as in the case of the current government, where we find 23 PL MPs as members of the government (either as ministers or parliamentary secretaries) out of 39 PL MPs. Since the executive always has an absolute majority over the opposition, there are important consequences for the expectations one must have for Parliament’s involvement in EU affairs.

### **EU Membership and Parliamentary Involvement in EU Affairs**


Malta joined the European Union in May 2004. On the signing of the Accession Treaty the Committee for Foreign Affairs was renamed the Committee for Foreign and European Affairs (SCFEA) and given the responsibility to scrutinise: any proposal for legislation; any document published for submission to the European Council, Council or European Central Bank; any proposals for a common strategy, joint action or common position under CFSP; any proposal for a common position, framework, decision or convention under Justice and Home Affairs; as well as any document published by an EU institution.<sup>19</sup> However, ‘With regard to EU Affairs, Parliament is primarily engaged in the scrutiny of government actions in these matters, rather than EU Institutions directly. The Foreign and European Affairs Committee, on behalf of Parliament, examines EU proposals based on explanatory memoranda submitted by government’.<sup>20</sup> The government’s Explanatory Memoranda, which outline the government’s negotiating position in terms of the pipeline *acquis* being issued by the Commission, is then either cleared or can be sent back to the originating ministry for further clarifications. The SCFEA is composed of 9 members with the two parties having an equal

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<sup>18</sup> Parliament of Malta, *historical Background*, at <http://www.parlament.mt/historicalbackground?!=1> (accessed 25 June 2014).

<sup>19</sup> The Parliament of Malta (2014a), *Standing Orders 120F*.

<sup>20</sup> COSAC (2013b), *Twentieth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny*, Belgium: COSAC Secretariat, p. 280.



number of members while the chairman is from the ruling party. The Foreign Minister is an *ex officio* member while MEPs are non-voting members (though no MEPs have attended the committee in recent years).<sup>21</sup>

Much of the work of the committee is undertaken in four Working Groups, with the most important of these being WG1 which filters the Explanatory Memoranda and also decides whether issues need to be referred to other Working Groups or Standing Committees.<sup>22</sup> A reserve is placed on Explanatory Memoranda which are being processed by the House but which the government may have begun to negotiate upon within the EU institutions.<sup>23</sup> As with Westminster, the Maltese scrutiny system is a document-based one with the focus being upon examining EU legislative proposals while neither seeking to mandate the government nor to scrutinise proceedings within the EU institutions. It has become customary for the Foreign Minister to brief the SCFEA before and after meetings of the Foreign Affairs Council while the Prime Minister briefs the plenary after European Council meetings but there is no procedural norm for other Ministers to brief the SCFAE before or after Council meetings.

As the principal source of EU-related business within Parliament, one must question the efficacy of this system in light of the previous discussion of the limitations faced by NPs in involving themselves in EU affairs. It is clear that the SCFEA suffers from several limitations. First, it is hampered by resource limitations; the committee has two research analysts but these individuals must assist in the work of other committees and have also become increasingly pre-occupied with the Early Warning Mechanism, to be discussed shortly.<sup>24</sup> The politicians within the committee also lack adequate resources or incentives to invest in developing any expertise in European affairs due to their other commitments within Parliament (most MPs sit on multiple committees), their full-time jobs and the lack of public engagement with the work of the committee. In addition, the committee is also hampered by the fact that its 'working day' is brief; the SCFEA plenary meets on average for 20 minutes (with live streaming online) while Working Group WG1, where much of the committee's work is undertaken, meets in camera but cannot overstretch the 3 hour 'working day' of Parliament. Looking at Table 1, WG1 met four times in 2012, giving a total of 12 hours for the whole year to discuss all Explanatory Memoranda as well as the Early Warning Mechanism. While the WG prioritises issues, and earlier studies have indicated that 75% of all Commission proposals cover areas of no or limited interest to Malta, it still has to filter all Explanatory Memoranda, indicating that only a rudimentary appraisal of these Memoranda can be achieved.<sup>25</sup> It has also been noted that the government often begins substantive negotiations within the Council while the NP is still scrutinising its Explanatory Memoranda, indicating that parliament's role is not substantive. This is

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<sup>21</sup> Parliament of Malta (2014b), *mill-Parlament: Periodical issued by the Office of the Speaker*. No. 4, March 2014, Malta: Parliament of Malta, p. 10.

<sup>22</sup> In 2013 the Maltese Parliament established a new standing committee on Economic and Financial Affairs which 'on its own initiative, consider from an economic and financial perspective, any decision, recommendation or report published locally, by the European Institutions or by international organisations, that could have an impact on the Maltese economy' (Standing Order 120I).

<sup>23</sup> A reserve under the Westminster system is a commitment by the government not to commit to any final decision within the Council of the EU before Parliament has scrutinised the government's position.

<sup>24</sup> Interview with Parliament Staff (16 May 2014).

<sup>25</sup> Harwood, M. (2012), 'Malta's Europeanization Experience: How smallness enables a state to minimise the monitoring of its implementation of EU policy by third parties', *Journal of Public Administration and Policy Research*, vol. 4, no. 6, pp. 130-139.

to be expected in a system where there is little incentive for the majority party to try and interfere in the government's EU negotiating position when the majority party falls under the explicit control of the executive.

Year	No. of SCFEA Plenary meetings	No. of WG1 meetings	No. of Documents considered	No. of Documents Cleared by WG1	No. of Documents Referred back to Ministries	No. of New EU Legislative Proposals considered by the Irish Parliament	No. of Documents received under the Barroso Initiative
2008	9	5	265				
2009	17	8	456	410	39	391 <sup>26</sup>	1146
2010	18	8	361	338	21	382 <sup>27</sup>	851
2011	13	6	256	236	13	420 <sup>28</sup>	1206
2012	19	4	184	180	4	537 <sup>29</sup>	878

Source: Parliament of Malta, *Annual Report, 2009 – 2013*

The outcome, where parliament's scrutiny becomes more of a formality than an opportunity for added value, also reflects the simple fact that the government's system for coordinating EU affairs is a highly centralised and effective one. This highly centralised system means that all EU-related traffic passes through a single body, the EU Secretariat within the Ministry for European Affairs, and it is this body which then ensures that ministries establish a single position (the Explanatory Memoranda) which is then sent to the cabinet for approval. The centralised nature of this system means that even if parliament should wish to establish an independent position on an Explanatory Memorandum, it will often have to call on experts who were already involved in establishing government's original position, reflective of the fact that the executive always enjoys an information asymmetry over parliament, irrespective of the parliamentary model used by the country.

With reference to the Westminster system, it is clear that one should not expect a strong mandating role from the Maltese parliament and this is what is observed in reality. However, it is clear that by relying exclusively on what government sends to parliament (namely the Explanatory Memoranda), the SCFEA is effectively not following the wide remit permitted to it under the Standing Orders, resulting in the Government controlling the Committee's agenda and effectively deciding what will be discussed. As can be seen from Table 1, the amount of legislative proposals discussed fluctuates widely from year to year while the SCFEA has itself indicated repeatedly that it does not deal with

<sup>26</sup> Houses of the Oireachtas (2010), *Joint Committee on European Scrutiny: Seventh Annual Report on the Operation of the European Union*, Ireland: Irish Parliament, p. 6.

<sup>27</sup> Houses of the Oireachtas (2011), *Joint Committee on European Scrutiny: Eighth Annual Report on the Operation of the European Union*, Ireland: Irish Parliament, p. 8.

<sup>28</sup> Houses of the Oireachtas (2012), *Joint Committee on European Scrutiny: Ninth Annual Report on the Operation of the European Union*, Ireland: Irish Parliament, pp. 10, 16.

<sup>29</sup> Houses of the Oireachtas (2013), *Joint Committee on European Scrutiny: Tenth Annual Report on the Operation of the European Union*, Ireland: Irish Parliament, p. 10.

the CFSP (Common Foreign and Security Policy) and ESDP (European Security and Defence Policy).<sup>30</sup> Interviews confirm the fact that the Explanatory Memoranda are being used to establish the Committee's agenda, a narrow remit when compared to that provided for under the Standing Orders. More importantly, it means that Parliament is not pro-active in scrutiny but dependent on government to set the ball rolling. While the latter denies that any filtering of Explanatory Memoranda takes place, the fact that the number of these Memoranda discussed annually fluctuates to such a degree while other scrutiny committees abroad tackle a larger volume of matters (see Table 1), as well as the fact that the number of documents sent under the Barroso Initiative is also significantly higher, would indicate that the parliament is not scrutinising all government EU business. This therefore raises questions over Parliament's ability to hold government to account, a key function of the Westminster system.


In respect of holding government to account, the SCFEA faces several other limitations. Firstly, it does not have adequate resources to sift through the mountain of material related to the EU institutions, in particular when viewing this responsibility from the Opposition's perspective. While the committee does allow access to documents and also allows the Opposition to do so in order to ensure that procedures are followed, it is only able to react to that which is placed before the SCFEA by the government. Moreover, while the Foreign Minister sits *ex officio* on the committee and briefs it on developments within external relations, the Minister for Europe does not sit in the committee and hence has not addressed the SCFEA during the current legislature. There is no system to scrutinise what has been agreed in Brussels or to ensure that other ministers brief the committee regularly. In fact, the principal source of accountability is through Parliamentary Questions addressed to the plenary but even here, the engagement with EU affairs is limited, see Table 2.

Office of the Prime Minister	1000+
Ministry for the Family and Social Solidarity	1000+
Ministry for Energy and Health	1000+
Ministry for Transport and Infrastructure	1000+
Ministry for Education and Employment	1000+
Ministry for Home Affairs and National Security	926
Ministry for Sustainable Development, the Environment and Climate Change	643
Ministry for Tourism	576
Ministry for the Economy, Investment and Small Business Portfolio	467
Ministry for Gozo	367
Ministry for Finance	305
Ministry for Social Dialogue, Consumer Affairs and Civil Liberties	291
Ministry for Foreign Affairs	247
Ministry for European Affairs and Implementation of the Electoral Manifesto	183

As can be seen from Table 2, the two ministries dealing with EU affairs register the smallest amount of PQs, with the vast majority of those questions dealing with administrative matters and not the substantive issues of EU policy or EU politics. While certain issues can be tackled by the relevant

<sup>30</sup> COSAC (2008), Tenth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny. Belgium: COSAC Secretariat, p. 27.

<sup>31</sup> Compiled from <http://www.pq.gov.mt/PQWeb.nsf/home?openform> (accessed 26 June 2014).



ministry, a cursory appraisal of the PQs addressed to other ministries indicates a lack of engagement with EU affairs and scrutiny of government activity within the EU institutions. This lack of engagement in terms of EU affairs can reflect several realities of the Maltese Parliament, including the fact that politics is highly parochial. Politicians, due to STV, often engage in domestic affairs more willingly than EU affairs which are often seen as technical and not of direct interest to the general public. Therefore the outcome is parliamentary involvement which provides the veneer of accountability and which allows the opposition to access EU-related information. It ensures that the government sticks to procedures but with very little capacity or incentive to monitor the minutiae of government involvement in EU affairs or to hold the government to account for outcomes at an EU level, other than in terms of key issues which are normally addressed in the plenary anyway.<sup>32</sup>

### **The Early Warning Mechanism**

While NPs do not always engage effectively in the domestic coordination of EU affairs, the creation of the Early Warning Mechanism (EWM) under the Lisbon Treaty does provide an opportunity for NPs to involve themselves more directly in the EU legislative process. The system allows NPs to issue warnings on Commission proposals which are believed to be in breach of the concept of subsidiarity, although a third or more NPs must register their disapproval of a proposal for the Commission to undertake a review of the proposal. Until summer 2014 there have been only two instances where the quota was reached and a review triggered.

It is not the aim of this paper to go into detail on the EWM as this will be tackled in a separate paper in this series. However, it should be noted that the EWM operates under a different procedure from the scrutiny mechanism listed above, even if the same structures are involved. Thus, when Commission proposals are sent to the Maltese Parliament, these are scrutinised by the Committee's Research Analyst (RA) to check whether the Commission's proposal complies with the subsidiarity principle. The RA is helped in flagging such issues by the IPEX network and the Maltese Delegate to the EP. Once an issue has been flagged, the RA establishes a preliminary opinion which is then sent to the parliament's external legal expert, the 'subsidiarity expert'. If the conclusion reached is that the proposal breaches the subsidiarity principle, it is referred to the SCFEA, which then decides whether to proceed and register a Reasoned Opinion (RO). Once approved by the House, the Speaker then transmits the RO to the House Business Committee before passing it to the EU institutions.

Malta has registered 8 ROs since the establishment of this procedure, two of which included the yellow card cases listed above.<sup>33</sup> As can be seen from Table 3, Malta has registered ROs in several policy fields and the procedure outlined above would indicate that the Parliament is able to act efficiently and independently in this area. However, careful scrutiny of the documents submitted to the House in relation to the 8 ROs indicates that the picture may be more nuanced than the procedure would indicate. While the Parliament does take the initiative in establishing what proposals should be tackled, a careful study of each of the government's Explanatory Memoranda (in cases where an RO is then issued) indicate that the government itself registered concerns over the proposal's subsidiarity compliance (in such cases the Memorandum and draft RO for the Parliament's consideration will include a 'subsidiarity section'). While this does not preclude the

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<sup>32</sup> Such as the EU's reluctance to embrace burden sharing of irregular migrants or the EP vote against Malta's Individual Investors Scheme.

<sup>33</sup> IPEX (2014).

parliament from acting independently, interviews indicate that the RO could be used as a way to bolster the government's negotiating stance in the Council. Other ROs were sent during the summer recess when parliament was not in session and so the SCFEA processed these proposals without a formal meeting of the committee, suggesting that the government's position was a determining factor.<sup>34</sup> The result is that the EWM can be seen as an extension of the majority party's control of the legislative process and, while parliament has valiantly tried to utilise its limited potential in ensuring Malta's involvement in the EWM, the result is a more complex interface between the limited resources of parliament and the government's priorities.

Table 3: Reasoned Opinions Issued by the Maltese Parliament<sup>35</sup>

Commission Proposal	Adoption Date	Number of NPs registering a RO
COM/2013/0627 Proposal laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent	11/09/13	Austria Ireland Malta Sweden
COM/2013/0534 Proposal for the establishment of the European Public Prosecutor's Office	17/07/13	Cyprus France Ireland Romania Sweden The United Kingdom Czech Republic Hungary Malta Slovenia The Netherlands
COM/2013/0409 Proposal amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services	11/06/13	Malta
COM/2013/0410 Proposal on the implementation of the Single European Sky (recast)	11/06/13	Malta
COM (2013) 280 Communication empowering Local Authorities in partner countries for enhanced governance and more effective development outcomes	15/05/13	Malta
COM/2012/0130 Proposal on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services	21/03/12	Belgium Finland Latvia Malta Portugal The Netherlands Denmark France Luxembourg Poland Sweden The United Kingdom
COM/2011/0594 Council Directive on a Common System	28/09/11	Cyprus Malta

<sup>34</sup> In particular COM (2013) 296, 409 and 410 .

<sup>35</sup> IPEX (2014).



of Financial Transaction Tax (FTT)		Sweden	
COM (2011) 121 Proposal for a Common Consolidated Corporate Tax Base	16/03/11	Bulgaria	Ireland
		Malta	Poland
		Romania	Slovakia
		Sweden	The United Kingdom

### Observations of Ten Years of EU Membership

As noted in the introduction, the EU's impact on NP is often indirect, leaving the traditional roles of representation, deliberation, legislation and authorisation of expenditure largely unaffected. The shift of policy competences to the EU nonetheless means that NPs lose out in terms of being denied involvement in areas which traditionally came under their exclusive control. However, there is little doubt that a major impact has occurred in terms of the traditional role of scrutinising the executive, a cornerstone of maintaining accountability and legitimacy within democracies; with government unable to control outcomes in Brussels and often negotiating behind closed doors, NPs become disadvantaged in terms of the executive-legislative dynamic while an information asymmetry merely shifts the balance further in favour of the executive.

The Maltese Parliament has tried to maintain a role in EU affairs, scrutinising a mountain of EU proposals which even large parliaments struggle to cope with. However, parliament's involvement reflects many of the trends seen with Westminster; the party-dynamic, the part-time nature of the job, and the information asymmetry mean that the added value of parliamentary scrutiny is minimal and appears geared towards legitimising the process as opposed to influencing it. There is no systematic attempt to bring ministers to account but rather a general disengagement from European affairs with MPs not viewing the SCFAE as significant. However, it can be argued that this outcome does not represent any major shift in the executive-legislative dynamic because, as explained earlier, this relationship was always tipped in the executive's favour because of Malta's two-party system and strong executive control over the ruling party.

On a more positive note, the scrutiny of EU affairs allows for the opposition to ensure that the government follows procedures, that it provides information and that it even engages in defending major decisions by debating issues in the plenary. To expect it to deliver anything more, however, would go counter to the outcomes seen in Westminster and the realities of a two-party parliament. That being said, that the SCFEA does not scrutinise CFSP is of concern, as is the continued absence of the Minister for European Affairs from the Committee's work. Where one can argue that the EU empowers NPs, namely through the Early Warning Mechanism, we find that even this is being used as an extension of the executive's EU priorities. While innovations (such as the appointment of an EP Delegate in 2013) may provide room for optimism, Parliament's involvement in EU affairs appears primarily geared towards providing a veneer of legitimacy to the political process. Furthermore, considering the high legitimacy rate the Maltese political system enjoys (with turnout above 90% for general elections), that veneer at least *appears* to be adequate, with the result that one should not expect any significant changes in how the Maltese Parliament involves itself in EU affairs in the near future.

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## Interviews

A series of semi-structured interviews were undertaken with present and former members of the House.

Interview with three members (2 LP and 1 PN) of the SCFEA in May 2014, four former members of the Committee (2 LP and 2 PN) and two former Chairpersons.

Interview with the Clerk of the House, the Clerk to the SCFEA and the two Research Analysts in May 2014.