The Scottish Parliament – Active Player in a Multilevel European Union?

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1. Introduction: A New Impetus for Regional Parliaments?

Having been created only in 1999 the Scottish parliament is a relatively young parliament. It was established at a time when European integration had already progressed far and when parliaments were generally seen as facing a number of challenges. For more established parliaments, the transfer of competences to the European level over time was seen as leading to a loss of legislative and control powers on the part of parliaments (Maurer and Wessels 2003). The Scottish Parliament is an interesting case, as its domestic competences were formally extended during that period and *de facto* immediately limited by the EU's competences.

In addition, the European Union can be seen as a complex system of multi-level governance, with the 'existence of overlapping competences among multiple levels of governments and the interaction of political actors across those levels' (Marks et al. 1996: 41). Such complex systems challenge the ability of parliaments – regional or national – to control European policy-making and the actions of their executives therein. As Rittberger (2010: 239) argues, it is national governments, not parliaments, that take part in decision-making in European institutions. Regional and national parliaments generally tend to be reactive institutions vis-à-vis their executives (Raunio and Wright 2006: 281f.), but the informational imbalance between executives and legislatures in the EU decision-making system further exacerbates this and also presents a challenge to accountability (O'Brennan and Raunio 2007: 4; Benz 2011: 1; Rittberger 2010: 240).

In general, the challenge of European policy-making is seen as leading to a transformation of the roles of regional and national parliaments. Abels and Eppler (2011: 20f.), who distinguish between electoral, legislative, control, representation, and articulation functions, expect European integration to have a particularly strong impact on legislative and control functions. As Sprungk (2011: 213) argues, in areas of European competence national parliaments lose the ability to initiate laws and constructively shape policy-contents. They can only try to

prevent laws. This leaves them with two options: On the one hand, they can demand better participation and control rights in domestic European policy-making (Abels and Eppler 2011: 27). However, because of the informational imbalance, European integration also strengthens governments in the intra-state coordination of EU affairs, which means that new forms of controlling the government need to emerge (Sprungk 2011: 214). On the other hand, the parliaments can network with other parliaments and actors in the EU multi-level system to gain information there (Sprungk 2011: 216, Eppler 2011; Abels and Eppler 2011: 27). As networking can alleviate the information imbalance, the two options can complement each other. Regional parliaments can thus play the roles of networker, controller of the government, and guardian of integration by scrutinizing the actions of the European institutions (Sprungk 2011: 211).

Conceptually, a number of authors have begun to try and capture interparliamentary relations and networks between parliaments and EU institutions, albeit mostly in the context of national, not regional, parliaments. Thus, the '*Mehrebenenparlamentarismus*' (multi-level parliamentarism) of Maurer (2002) and the 'multilevel parliamentary field' of Crum and Fossum (2009: 250) both refer to interparliamentary relations, their structure and the resulting impact on the distribution of authority, as well as the implications for democracy in the EU. Benz (2011) also argues that the EU has not one demos but multiple demoi. Thus, it requires compound representation in the form of a multi-level representative democracy.

While much of the literature thus emphasizes the challenges that European integration presents to parliaments, one can also identify some positive trends. Hrbek argues, for example, that 'both revisions of the EU Treaties [...] and amendments to the constitutions of EU member states have, as a general trend in the past two decades, strengthened the role of parliaments in decision-making on EU matters' (Hrbek 2010: 136). The introduction of the Early Warning Mechanism (EWM) in the Lisbon Treaty is an important step in providing legislative regional parliaments with an opportunity for participation, even if the tight deadlines and need for coordination with the national parliaments are a challenge.

Another part of the picture is the control of governments, which remains largely unaffected by Lisbon. It is especially important as much of EU policy-making depends on formal or informal interaction of executives at different levels. Thus, Hazell and Paun (2010: 159) argue that 'effective scrutiny of Intergovernmental Relations [...] is a matter of growing importance for parliaments in today's globalized world.' An important part of reducing the democratic deficit is to hold governments to account in this system. But intergovernmental relations are still a challenge for three reasons: a) they are dominated by executives; b) agreements are

difficult to unpick once they have been made, and c) intergovernmental agreements do not fall neatly into competence of any one parliament (Hazell and Paun 2010: 160). Carter and McLeod agree and argue that the primary challenge for regional parliaments is to make sure that regional interests are taken into account in the development of the national position: 'The domestic model of regionalism adopted by regional or devolved governments and the centre thus becomes a key variable in assessing regional parliamentary scrutiny' (Carter and McLeod 2005: 69).

These considerations also raise questions for the Scottish case. What kinds of mechanisms were put in place to reconcile devolution with the co-existence of a strong supranational organization? How have these been adapted to seize the opportunities offered by the Lisbon Treaty? To what extent has the Scottish parliament tried to hold its executive to account, and to what extent has it embraced interparliamentary cooperation and networking? Has the Scottish parliament managed to carve out a role for itself in EU policy-making and has it become a networker, guardian of integration, and controller of the government?

In order to address these questions, the paper will first discuss the role foreseen for the Scottish government and parliament under devolution, then review how the parliament has adapted to the Lisbon Treaty so far, and finally discuss to what extent it has engaged in networking, scrutiny, and control of the government in practice.

2. Scotland and the EU after Devolution

2.1 Scotland's Role in EU Affairs

Scottish devolution is a comparatively recent phenomenon. After a successful referendum on devolution, the UK parliament passed the Scotland Act in 1998 and devolution finally came into effect on 1 July 1999. Around the same time, powers were also devolved to Wales and Northern Ireland. However, while Scotland and Northern Ireland gained extensive competences that resemble dual federal systems, Wales gained more limited powers and England remained altogether a responsibility of the UK government. In addition, civil conflicts in Northern Ireland led to a suspension of the Northern Irish Assembly. The United Kingdom is thus a highly asymmetrical system. Devolution also means that – unlike in federal systems – devolved powers are not constitutionally guaranteed and the central government and parliament retain in principle the right to legislate in those matters (Leach et al. 2011: 289–304).

Unlike in the case of more established federal states, like Germany or Austria, where European integration led to a gradual overlap of subnational and supranational competences, the Scottish parliament and government had to face the challenge of an extensive overlap already at the time of their establishment, especially in areas such as fisheries, justice, agriculture, the environment, and economic development, where the Scottish parliament had extensive competences under the Scotland Act (Carter and McLeod 2005: 67), but so did the EU under its supranational Treaties. To complicate matters further, EU affairs are a reserved matter (Scotland Act 1998), which means that when the European Commission makes a proposal in an area that falls under Scottish competence, the UK government is responsible for the negotiations. However, as the resulting European legislation may force the Scottish institutions to change their policies or embrace new policies, they have an obvious interest in shaping the UK line in the negotiations (Hazell and Paun 2010: 167).

It is not just EU affairs that create a need for coordination. In addition, the budgetary set-up in the UK, potential spill-over effects of actions at one level, and the fact that the UK government and parliament can still legislate for Scotland in devolved areas with the consent of the Scottish parliament (Sewel convention)[i] all require coordination (Hazell and Paun 2010: 168). The Scotland Act of 1998 contained little guidance on day-to-day coordination between the two levels of government. On EU affairs it ensures compatibility by stating that an act of the Scottish Parliament in breach of EU law cannot become law; furthermore, the UK government can implement European obligations through secondary legislation even in devolved areas.

As a result, the Scottish parliament and executive have no statutory right to participate in EU decision-making, unlike their counterparts in Germany or Belgium (McFadden and Lazarowicz 2010: 171; see the contributions by Abels, Bursens et al. in this volume). The rules on political coordination were instead laid down in the Memorandum of Understanding (MoU), a legally non-binding agreement between UK and devolved administrations (Högenauer 2012: 203). In addition, intergovernmental relations in EU affairs are covered by legally non-binding Concordats, especially the Concordat on Coordination of European Union Policy Issues, but also by bilateral concordats between specific government departments. These guidelines are 'binding in honour only' (Concordat on Coordination of European Union Policy Issues: 22). The main tenets of the Concordat on Coordination of European Union Policy Issues are:

- The provision of full and comprehensive information to the Scottish executive by the UK government as early as possible (22).
- The use of Joint Ministerial Committees (JMC) where informal contact cannot resolve disagreements between the UK and Scotland (30).
- Scottish ministers and officials can attend Council meetings, but only subject to the agreement of the UK lead. They can also represent the UK line, but the UK lead retains responsibility for the negotiations (31–32).
- The right to establish an office in Brussels for relations with other regional governments and EU institutions. However, the office has to work not in competition to UK representation but in cooperation (35).
- Agreement by the UK government to provide Explanatory Memoranda on relevant issues to the devolved executives so that they can provide these to the devolved assemblies for scrutiny (36).

Overall, the concordats thus aim to encourage information-sharing and cooperation, but focus on intergovernmental lines of cooperation (Carter and McLeod 2005: 72). The main mechanisms are Joint Ministerial Committees (JMCs), which have in practice largely fallen into disuse, with the exception of the JMC Europe. In practice, coordination on EU affairs takes place largely through informal and *ad hoc* channels between ministers and at the level of civil servants (Högenauer 2012: 202–206; Carter and McLeod 2005: 72).

2.2 The Competences of the Scottish Parliament in EU Affairs
While the Scottish government is usually fully involved in the formulation of the UK line on EU issues through intergovernmental relations with the UK government, the Scottish parliament was originally mainly allocated the role of scrutinizing EU documents. For this purpose, it was recommended by the Consultative Steering Group in preparation of devolution that a specialized European Affairs Committee (EAC) should be set up and put in charge of sifting incoming EU documents. Specialized committees should be in charge of following up on documents falling into their areas of competence (Carter and McLeod 2005: 74). Both recommendations were followed and the EAC was given the tasks of reporting on proposals for EU legislation, the implementation of EU legislation, and any EU issue in general. Later, the standing rules also gave the EAC responsibility to develop 'the Scottish Administration's links with countries and territories outside Scotland, the European Union (and its institutions), and other international organisations' and to coordinate the international activities of the

Scottish Administration (Scottish Parliament 2012: 6.8). However, it emerged soon that the EAC lacked the staff and resources necessary for thorough scrutiny, that the high turnover of committee members prevented learning, and that the staff received insufficient political guidance (Carter and McLeod 2005: 77f.). Heggie (2003) also reports that there were not enough EAC meetings and that some documents were only considered after a decision had already been taken in the Council of Ministers.

According to Carter and McLeod (2005: 18–82), 2001 marked a turning point as the EAC began to develop a more effective scrutiny system following a report into EU affairs and Scotland. Most importantly, the Scottish Executive agreed to send annotated agendas before internal UK meetings and post-meeting reports, as well as information on European Council meetings. A few years later it agreed to also provide information on its position on forthcoming Council presidencies (Raunio and Wright 2006: 289). This does, of course, reflect a certain resource-dependency of the parliament on the executive.

There were also internal reforms of the parliament, as an effort was made to provide better in-house training for staff, short secondments to the European Parliament, and visits to the EU institutions (Carter and McLeod 2005: 81f.). On the political level, the EAC no longer recommended specific actions on each proposal but allocated them to the specialized committees, which then had to decide whether and how to follow up the proposals (ibid.: 82f.). However, Heggie (2006: 42) disputes the effectiveness of the involvement of sectoral committees, pointing out that only the environment committee and the two justice committees routinely reviewed EU developments.

The Scottish parliament also faced another problem – the control of the executive. Carter and McLeod (2005: 69) argue that the domestic relationship between regional and central governments is an important variable in regional parliamentary scrutiny. The UK system makes effective parliamentary scrutiny difficult to achieve. The two main challenges are the informal and *ad hoc* nature of large parts of intergovernmental relations within the UK in combination with the emphasis on confidentiality in the MoU and Concordats. Ministers and civil servants also emphasise confidentiality in practice, as the MoU is interpreted as meaning that devolved administrations might be excluded from negotiations if they were seen as breaching confidentiality (Horgan 2004: 127). Initially it was thus difficult for the parliament not only to find out what was being discussed between governments, but even when it was discussed and by whom (Hazell and Paun 2010: 169; Raunio and Wright 2006: 286). The agreement by the Scottish government to provide more information on intergovernmental negotiations was thus an important step, and while problems still remain, the devolved

assemblies are seen as being a little more successful in scrutinizing these meetings than the UK parliament (Hazell and Paun 2010: 174f.).

In addition to the largely reactive scrutiny of documents and the control of the executive, the Scottish parliament also makes use of reports and inquiries as a more proactive instrument (Raunio and Wright 2006: 288). The advantage of these reports is that they can be directly addressed to the EU institutions, as in the case of proposals to the draft Constitution for Europe. Especially in the early years, the impact of these reports was greater than that of the scrutiny procedure (Heggie 2003).

Pre-Lisbon, the Scottish Parliament can thus be said to have adapted to European integration early, at the point of its creation, but also to have struggled with the effective control of the executive and European policy-making due to the intricacies of the UK system and limited manpower. A positive development was the increasing cooperation with the Scottish Executive, which facilitated scrutiny of European policy-making and the British position therein, but of course also created a certain dependency on the executive.

3. EU Scrutiny after Lisbon

3.1 The Impact of the Lisbon Treaty

In the Lisbon Treaty and the *Protocol on the application of the principles of subsidiarity and proportionality* subnational parliaments are for the first time formally mentioned in EU primary law, even if the actual involvement of regional parliaments in the EWM depends on intra-state arrangements. For regional parliaments it presents an opportunity for direct participation in EU policy-making. At the same time, as the precise term of participation needs to be negotiated nationally and as the eight-week timeframe for participation is quite narrow, a measure of adaptation is required. After all, the eight-week timeframe of the EWM applies to national parliaments, which means that regional parliaments have to transmit their views to national parliaments much earlier, if they want them to be taken into account. An early assessment of the capacity of the Scottish parliament to work within that timeframe was sceptical, as the parliament was unable to provide the House of Commons and the House of Lords with opinions in time during the first years (Raunio and Wright 2006: 293). Despite participation of the Scottish European and External Relations Committee (EERC) in the COSAC pilot study of the EWM, no subsidiarity concerns had been raised by the end of 2010 (Vara Arribas and Bourdin 2011: 122).

Implementation of the EWM is by now well under way in the UK and has affected both procedures and interparliamentary cooperation. According to Vara Arribas and Bourdin (2011: 122), there has been an ongoing dialogue on subsidiarity issues between the chairs and officials of the UK's European affairs committees. In addition, the staff of the UK and devolved parliaments maintains informal contact; the UK staff alerts the staff of the devolved parliaments to potential breaches of the principle of subsidiarity (ibid.: 27). The clerk of the Scottish EERC is to forward all reports on issues of subsidiarity to the European Commission (Scottish Parliament 2011a: 13).

Within Scotland, the implications of the Lisbon Treaty for the Scottish Parliament were first evaluated by the parliament in a report (EERC 2010). The parliament then decided that each committee should appoint a European Reporter and ran a short pilot study from 28 January to 23 March 2011 on that basis (Scottish Parliament 2011a). The aim of the study was to check

- the formal and detail of information from the Scottish government,
- whether the information sent to the European Reporters was sufficient to allow them to identify relevant issues,
- the process of agreeing a view and notifying the UK parliament,
- if procedural guidance is sufficient,
- if sufficient support is available to committees on EU proposals,
- the flexible approach allowing committees to determine necessary action in relation to individual legislative proposals (including the requirement for further briefing or additional evidence) is appropriate (Scottish Parliament 2011a: 1).

The pilot study identified a number of weaknesses, but allowed also for substantial improvements. The information from the Scottish Government was deemed to be incomplete as explanatory memoranda were received without proposals and vice versa. In response, the Scottish Government developed its own internal system of documentation and now only forwards proposals once both the proposal and the explanatory memorandum are available. For instance, the Scottish Government now retains proposals until the accompanying EWM has been received before forwarding both documents to the Parliament as one file. In addition, the government used colour-coding to indicate whether a proposal falls into a devolved, partially devolved or reserved area and provides the name of the lead official in the government (Scottish Parliament 2011a: 2).

Within the parliament, the European Reporters, who were in charge of the preliminary assessment of the proposals for their committee together with the convenor of the committee and a clerk, were satisfied with the information received and the system of sending them proposals on a weekly basis. However, in terms of information management, European Reporters requested that the documents should first be sent to the relevant committee clerk to filter them further, and only those documents that had been highlighted at the time of reviewing the Commission Work Programme and a few new pressing issues should be sent to EU Reporters for consideration (ibid.: 3). In those cases, the EU Reporter should then also receive a briefing note on the significance on the proposal in the Scottish context and options of engagement (ibid.: 4).

During the pilot phase only one proposal raised subsidiarity concerns. However, the EWM period for consideration had already started; the UK House of Commons had already concluded its review of the proposal and the House of Lords was already discussing it. The relevant committee of the Scottish Parliament managed to review the proposal, but due to the time constraints, the Convenor had to transmit the subsidiarity concerns of the committee before the plenary could be consulted. The House of Lords committee included those views in its report to the UK Government and the European Commission (ibid.: 5). Despite the inclusion of the Scottish view in this case, it should be noted that the UK House of Commons and House of Lords generally maintain that the protocol on subsidiarity solely applies to national parliaments and that they are not obliged to follow the submissions of the devolved assemblies (Vara Arribas and Bourdin 2011: 134). The report on the pilot study drew an important lesson from the one case under the pilot study, namely that the Scottish Parliament may sometimes have days rather than weeks to formulate its position and that the rules of procedures should reflect this (Scottish Parliament 2011a: 5f.).

On the basis of the pilot study, the Standards, Procedures and Public Appointments Committee produced a report on a revision of the standing orders of the Scottish Parliament (SPPA 2012). In October 2012, the Standing Orders of the Scottish Parliament were then revised to include a number of recommendations from the evaluation of the pilot study, such as the appointment of EU Reporters in the committees (Scottish Parliament 2012: 12.6). They reconfirm that sectoral committees shall conduct inquiries into EU matters that fall under their remit (ibid.: 6.2); more importantly, they include a chapter on the subsidiarity checks that specifies that the convenor of a committee can transmit the view of the parliament to the UK parliament before putting the matter before the Scottish Parliament as a whole, if time pressure prevents him or her from following the full procedure. If a proposal is referred to a

committee that is in recess for more than four days, the convenor of that committee can even transmit to the UK parliament an opinion on behalf of the committee (ibid.: 10A).

According to Vara Arribas and Bourdin (2011: 142), the Scottish Parliament regarded the EWM as a positive development. The focus on efficiency in the design of the Scottish procedure for the EWM and – especially – the willingness to give committees, and even convenors, plenary-type powers, if the circumstances require it, would suggest that the Scottish Parliament is hoping to be an active player after Lisbon. At the same time, the parliament is slow to use the new opportunities in practice. After the detection of a subsidiarity concern by the Rural Affairs, Climate Change and Environment Committee during the pilot study in early 2011, the committee noted another related instance of subsidiaries concerns in late 2011 (Rural Affairs, Climate Change and Environment Committee 2012).

From 2012 onwards, the EERC has developed more formal procedures for monitoring and reporting on the activities of sectoral committees in EU affairs. The first such report in late 2012 showed that two more scrutiny concerns were raised in 2012 by the Infrastructure and Capital Investment Commitee and subsequently taken on board in a 'reasoned opinion' by the House of Commons to the European Commission. The Justice Committee detected a legislative proposal on which they had potential concerns, but there was no time for a meeting to fully discuss these concerns and agree a formal position. It nevertheless informed the House of Lords of its general concerns. Finally, the Health and Sport Committee identified two possible concerns (EERC 2012). The report again suggests that there are active attempts to achieve greater scrutiny, but that the ability of sectoral committees to adopt formal subsidiarity concerns remains limited. The small size and large remits of the committees is at least partially responsible for this.

3.2 EU Affairs beyond the EWM

At the same time, parliamentary involvement in EU affairs cannot be boiled down to just the EWM. Another important element is the control of the executive. This section will thus focus on the scrutiny activities of the Scottish Parliament more generally.

While the committees of the Scottish Parliament were meant to be strong originally, they suffered from time pressures, limited resources in terms of staff, and the number of committee members and a high level of turnover due to committee restructuring and ministerial reshuffles in the early years of devolution (Carman and Shepard 2009: 22–24). Hazell and Paun (2010: 164f.) also point out that Scotland had 3.5 members of EAC staff compared to 14

for the UK House of Commons and 24 for the UK House of Lords and only 13 (originally) and then nine EERC members. They also criticised that the Scottish EAC met only once a fortnight, about 17 times per year, for about 2 hours on average (Raunio and Wright 2006: 287).

Despite the changes to the procedures of the Scottish Parliament in adaptation to the EWM, a quick look at the reports of the EERC and the parliamentary statistics shows that not much has changed with regard to committee membership, meeting times, and staff (Table 1). The EERC still has a clerk, two assistant clerks and a committee assistant. It met only 16 times between mid-May 2011 and mid-May 2012; and it had only eight members that year (EERC 2012). In fact, the committee met as little as 12 times annually in recent years. It is of course not only the number of meetings that matters, but also their duration. The average EERC meeting lasted only one hour and 37 minutes in the parliamentary year 2010–2011 (Scottish Parliament 2011b: 40). At the same time, the lack of change could be explained by the lack of complaints about resources during the EWM pilot study in 2011 (Scottish Parliament 2011b). The vast majority of the meetings were held at least partially in private.

Insert Table 1. EERC Meetings 2008–2012 about here

Nevertheless, staff played an important role in the first overhaul of the Scottish scrutiny system in 2001 (Carter and McLeod 2005: 81f.), in the development of new procedures, structures and mechanism (e.g. the establishment of the Brussels office of the Scottish Parliament) and within existing procedures. Thus, the committee clerks have always been involved in the initial sift of EU documents (Heggie 2003) and provide important procedural and content-related advice under the new procedures for the EWM (Scottish Parliament 2011b).

On the political side, the EERC has produced a steady supply of reports on EU affairs both on internal reforms and important EU issues such as the Structural Funds (Table 2). However, the number of reports produced has been markedly lower than the output of the Justice Committee, the Rural Affairs and Environment Committee or the Transport, Infrastructure and Climate Change Committee in the last couple of years, but picked up in 2012.[ii] While the sectoral committees could produce reports on relevant EU issues as they are responsible for EU issues within their remit, a look at the output of the Transport, Infrastructure and Climate Change Committee, the Justice Committee, the Finance Committee, the Equal Opportunities Committee, and the Rural Affairs and Environment Committee from 2009–2011 shows that

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none of these committees produced a report on EU affairs. Only one of the reports of the Rural Affairs and Environment Committee also touched upon the Common Agricultural Policy.[iii] However, since 2012, the first EERC report of the year focuses on the European priorities of the Parliament, and the last one provides an overview over parliamentary activities in those priority areas, including a report back from every sectoral committee that had priorities for the year. The first report on the EU activities of sectoral committees shows that a number of sectoral committees followed European dossiers. Nevertheless, as in the case of the EWM, it seems like the formal procedures are still better than the actual practice.

<mark>Insert Table 2. EERC Reports 2009–2012 about here</mark>

However, a look at questions and motions in the Scottish Parliament in 2011 shows that there is some awareness of EU issues also among the members of sectoral committees. A search of the parliamentary database shows that 20 EU-related motions were logged in 2012 (24 in 2010 and 19 in 2011). 117 EU-related questions were logged (98 for 2010 and 72 for 2011).[iv] Only questions and motions that focused specifically on EU affairs either in the form of influencing, implementing or gathering information about EU affairs were counted. Questions and motions that only mentioned EU affairs in passing or as one example among many were excluded.

These numbers are still very small compared to the general level of activity of the Scottish Parliament, i.e. about 2,000 motions and 10,000 question logged in 2011, for example (Scottish Parliament 2011b: 21–29). However, they are spread across all five political parties (Table 3). The lower number of questions and motions in 2011 is related to parliamentary elections that year. Otherwise, in 2010 and 2012, the overall number of motions and questions has been relatively stable, with a slight increase in questions in 2012. This is mostly due to the higher level of activity of Scottish Labour. The number of questions asked by the Scottish National Party is comparatively low, especially taking into account that it asked the highest number of EU related motions in all three years and that it is the largest party in parliament. This suggests that there is a government effect, whereby the governing party has privileged access to information.

<mark>Insert Table 3. Motions and questions by party group for 2010–12 about here</mark>

In addition, the motions and questions covered a wide range of issues (Table 4). In general, the Common Agricultural Policy, environment policy, structural funds, fisheries, and the internal market attracted particularly high interest, especially where the implementation of these policies was seen to affect Scottish economic actors (i.e. sheep farmers, land owners and the fishing industry, the rail or ferry service providers etc.). However, there is fluctuation in the level of interest for specific topics. For instance, in 2012 the debate about Scottish independence triggered a large number of questions about the place of an independent Scotland in the EU. Similarly, 2010 saw a high number of question on the European Investment Bank (under 'others') and 2011 a high number of questions on Justice and Home Affairs.

<mark>Insert Table 4. Number of EU-related questions and motions by topic 2010–2012 about here</mark>

Overall, the Scottish Parliament has thus a stronger record as controller of the government than as guardian of integration. While it is still struggling to adapt to the EWM, there is a consistent use of parliamentary questions and motions on European topics. Awareness of constituency-related topics and the European dimension of wider debates (i.e. independence) is particularly high. Nevertheless, when it comes to *committee* work, the mainstreaming of European affairs through the involvement of sectoral committees has still a limited effect. Only a few highly Europeanized committees show a consistent interest and most sectoral committees do not cover European matters in their reports. The monitoring of the activity of sectoral committees by the EERC may be a step in the right direction.

4. The Scottish Parliament in the Multi-Level System

As Kiiver (2006: 4f.) notes, networking is an attractive option as it allows parliaments to bypass the centre, especially since national government cannot be held into account by regional parliaments. The Scottish Parliament is also networking with other actors in a variety of fora. Within the UK, interparliamentary coordination takes place in the EC-UK Forum of European Committee Chairs or informally between parliamentary staff (Vara Arribas and Bourdin 2011).

On the European level, the Scottish Parliament has an officer in Brussels who is responsible for supporting the EERC in the coordination of European relations, the flagging up of potentially important issues at an early stage, and for information-provision to the subject

committees. The officer also produces a fortnightly Brussels Bulletin for the EERC with subject sections that allow an easy screening by subject committees (EERC 2011). The focus of the Brussels Bulletin lies on Europe 2020, cohesion policy, justice and home affairs, energy and climate change, agriculture and fisheries, and the multi-annual financial framework, thus reflecting the core interests of the Scottish Parliament in EU affairs (www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/31755.aspx).

Nevertheless, Heggie (2006: 33) considers the links with the European Commission to be informal and restricted to annual visits to Brussels and discussions with Commission officials based in Edinburgh.

With regard to interparliamentary networks, the Scottish Parliament made a good start in its early years. After a failed bid to join the Conference of European Affairs Committees (COSAC) as an observer, the EERC of the Scottish Parliament began to set up a network of EACs of parliaments of legislative regions (*Network of Regional Parliamentary European Committees*, NORPEC) together with its Flemish and Catalan counterparts (ibid.: 36). Subsequently, the Basque parliament and the parliament of Saxony-Anhalt, Germany joined. NORPEC is seen to have been active in the negotiations for the Draft European Constitution, pushing for a role of regions in the EWM, for example. Scotland used it to receive backing for one of its submissions to the Convention from Catalonia (ibid.: 36; Hazell and Paun 2010: 166). However, the EERC decided to withdraw from NORPEC on 4 September 2007 and no further information on the network has been found (archive.scottish.parliament.uk/business/committees/europe/norpec.htm; last updated: May 26, 2013).

The Scottish Parliament is currently a member of CALRE (*Conference of the European regional legislative assemblies*), a network of the presidents of regional parliaments with a focus on general and institutional matters (see Bußjäger in this volume). CALRE has currently six working groups, including one on subsidiarity. This working group is currently looking into the possibility of participating in the political dialogue with the European Commission and seeks to participate in the efforts of the Committee of the Regions to establish a database on subsidiarity and the EWM for regional parliaments (CALRE 2012). Thus, while Hrbek judges that 'the resonance in other institutions has remained very modest' (Hrbek 2010: 149; see also Eppler 2011: 310), there might now be an opportunity for CALRE to define a role for itself in subsidiarity monitoring.

The Scottish Parliament is also represented in the Committee of the Regions. It can nominate two of the eight Scottish members and has to approve all eight (CoR 2009: 64). However, it

does not participate directly in the latest initiative of the CoR called REGPEX. This is intended to be a regional variant of IPEX, i.e. a database of EU documents and reactions by national parliaments to support regional activities under the EWM. In addition, regional parliaments can upload their documents. However, currently only the Welsh and Northern Irish assemblies are represented. The official Scottish member is the Scottish Government (extranet.cor.europa.eu/subsidiarity/regpex/Pages/partners.aspx).

Similarly, the Scottish Parliament is not yet a member of the Subsidiarity Monitoring Network, which was set up in 2007 to exchange information between local, regional, and European institutions on subsidiarity. The Welsh and Northern Irish Assemblies have already joined. Overall, it appears that the enthusiasm of the Scottish Parliament for interparliamentary networks has somewhat abated since the mid-2000s.

5. Conclusion: The Scottish Parliament – Active Player in EU Affairs?

Overall, the record of the Scottish Parliament in European affairs scrutiny is mixed. On the one hand, the Scottish Parliament has spent much time and thought on the careful design of procedures that would, in principle, enable it to effectively scrutinize EU affairs. From the early years until today, the European Affairs Committee has played a proactive role in developing a sophisticated scrutiny mechanism covering the provision of information by the government, filtering procedures, and the involvement of sectoral committees to manage the workload and benefit from policy expertise. The provisions adopted in reaction to the introduction of the EWM should enable the Scottish Parliament to submit its views to the UK parliament even under great time pressure. One could argue that the Scottish Parliament was willing to compromise on democratic scrutiny in the plenary and committees for the sake of efficiency and a voice, if necessary. Also the use of questions and motions suggests that there is some interest in EU affairs across a range of areas.

On the other hand, it is not clear to what extent the Scottish Parliament has been able to fully benefit from these procedures. The number of subsidiarity concerns that have been raised appears to be quite limited, and the question remains whether this is due to a lack of interest or to a lack of concerns. Similarly, the Scottish Parliament was an active networker during the mid-2000s but seems to have become less active in recent years. This is reflected in the fact that the Welsh and Northern Irish Assemblies are now represented in a wider range of European fora, despite the fact that Scotland is a bigger region and a stronger region under devolution, especially compared to Wales.

In sum, European affairs scrutiny is currently somewhat of a mixed bag with the parliament playing a moderate role as networker, guardian, and controller. The main challenge for the years ahead lies not so much in the procedural realm, as the procedures have been overhauled and allow for speed and effectiveness. It rests in the task of motivating the sectoral committees to fully exploit their European competence and – in the process – to find ways to manage the tight deadlines and new procedures. The introduction of European Reporters was an important step in this regard, as is the attempt to make the EU-related work of sectoral committees more visible through annual reporting. In light of the big differences between sectoral committees, the renewed attempts on the part of the EERC to monitor the European activities of the committees is also an important initiative.

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Table 1. EERC Meetings 2008–2012

	2008–2009	2009–2010	2010–2011	2011–2012
meetings per year	18	13	12	16

Source: Data extracted from the annual reports of the EERC, which go from mid-May to mid-May, online: http://www.scottish.parliament.uk/parliamentarybusiness/PreviousCommittees/19570.aspx.

Table 2. EERC Reports 2009–2012

	2009	2010	2011	2012
No. of EERC reports	3	4	3	6

Source: compiled by the author.

Table 3. Motions and questions by party group for 2010–12[v]

		2010	2011	2012
Scottish Conservative and Unionist Party	*Motions*	0	3	2
	Questions	10	11	10
Scottish Green Party	*Motions*	0	3	0
	Questions	8	1	3
Scottish Labour	*Motions*	3	2	7
	Questions	43	40	58
Scottish Liberal Democrats	*Motions*	4	2	2
	Questions	32	16	30
Scottish National Party	*Motions*	17	9	9
	Questions	5	4	16

Source: Compiled by the author.

Table 4. Number of EU-related questions and motions by topic 2010–2012

	2010	2011	2012
Environment	16	11	22
Agriculture	21	6	21
Scottish independence and EU	1	0	19
Structural Funds and economic development	7	16	17
Fisheries	21	4	16
Internal market	12	6	14
Public procurement	6	1	7
Health	4	6	4
Transport and infrastructure	4	5	3
EU and Scotland (general)	5	12	2
Other*	33	35	19

* In 2010, the European Investment Bank attracted an unusually high amount of interest (11 questions and motions), whereas 12 motions and questions were adopted on Justice and Home Affairs in 2011.

Source: Compiled by the author.

Endnotes

[i]   While the Sewel motion officially requires the consent of the Scottish parliament, its use is largely determined by the executive in practice: the governments first agree its use and then the parliament is asked for its consent (Hazell and Paun 2010: 173).

[ii]   Several of the Committees were renamed and reorganized in 2011. Thus, the Rural Affairs and Environment Committee (2007–2011) is now the Rural Affairs, Climate Change and Environment Committee, whereas the Transport, Infrastructure and Climate Change Committee (2007–2011) is now the Infrastructure and Capital Investment Committee (including transport issues). The text always uses the names that are the most accurate for the period under discussion.

iii   For the annual reports see http://www.scottish.parliament.uk/parliamentarybusiness/PreviousCommittees/19570.aspx (last updated: May 26, 2013).

iv   The number of submitted motions was counted, not the number of adopted motions.

v   The statistic was compiled by searching the parliamentary database of motions and questions containing the word 'European' and then filtering the results manually. The statistics counts the motions that were logged, not the motions that were actually adopted, as the aim is to measure the level of interest and activity. It ignores motions related purely to internal reforms in the parliament.