

The story of the first ‘yellow card’ shows that national parliaments can act together to influence EU policy

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The Treaty of Lisbon introduced a so called ‘yellow card’ system under which national parliaments can force the European Commission to review an EU legislative proposal if one third of parliaments issue an objection. As [Ian Cooper](#) writes, the yellow card system was initially treated with scepticism by some commentators on the basis that it would be difficult for parliaments to co-ordinate sufficiently to meet the one-third threshold. He argues, however, that the experience of the first use of the procedure in May 2012 illustrates the potential for parliaments to act together and exercise real influence over EU policy-making.



In May 2012, the national parliaments of the EU made history by passing their first ‘yellow card’. Within an eight-week deadline – with just hours to spare – twelve parliamentary chambers from across the EU formally objected to a Commission legislative proposal. This meant that, under a never-before-used provision of the Lisbon Treaty, the Commission was obliged to review the proposal, which it subsequently withdrew.

[New research](#) shows that this outcome was not a coincidence, or a fluke. Rather, a detailed reconstruction of the process shows that the yellow card happened because national parliaments coordinated with one another to an unprecedented degree. While this story is mostly public knowledge, it is still largely unknown as it played out not in a single location but in parliaments and committee chambers scattered across the capitals of Europe.

When the yellow card procedure was introduced in 2009, many doubted that it would ever be used. National parliaments, it was thought, would be neither able nor willing to act together to influence EU policy. They lacked the capacity to do so, because interparliamentary coordination was weak. Moreover, they lacked the incentive because such action would be unlikely to change EU policy.

These obstacles were overcome in the case of the first yellow card, which targeted the “Monti II Regulation”. The Monti II proposal provoked intense opposition because it was seen as interfering in domestic labour relations and placing limits on workers’ right to strike. As the treaty required, national parliaments’ objections took the form of “Reasoned Opinions” alleging that the proposal violated the principle of subsidiarity – i.e. that EU action in this instance was unnecessary – but they also raised doubts about its legality and its policy effectiveness.



The Monti II proposal was officially transmitted to national parliaments on 27 March 2012. A yellow card is triggered when the equivalent of one third of national parliaments pass Reasoned Opinions. Each national parliamentary system is allotted two ‘votes’ – one vote for each chamber in a bicameral parliament, two votes for a unicameral parliament. To achieve a yellow card, national parliaments needed to amass 18 votes by 22 May.

National parliaments do, it turns out, have a number of tools of interparliamentary coordination at their disposal, three of which proved quite effective in this case. First, while it is up to each parliament to decide how it will respond to a proposal, one parliament may take a leadership role by being the first to pass a Reasoned Opinion and then encouraging others to do so. In the case of Monti II, the leader was the Danish *Folketing*, whose powerful European Affairs Committee speaks for the whole parliament on EU matters. When the chair of the committee, Eva Kjer Hansen, saw that opposition to Monti II was unanimous among all parties in the *Folketing*, she realised that it presented an ideal target for the first yellow card, which she then deliberately set out to attain.

Second, periodically there are interparliamentary meetings which enable coordination among MPs on a face-to-face basis. Opposition to Monti II spread at a meeting of COSAC (a twice-yearly conference of European Affairs Committees of EU parliaments) that took place on 22-24 April. This was well-timed, in that it was right in the middle of the Monti II review period. It was also well-placed: it was held in Copenhagen, hosted and chaired by the Danish parliament, because Denmark held the rotating Council presidency at the time.

The *Folketing* drafted its Reasoned Opinion objecting to Monti II on April 20: this was quickly translated into English so it could be circulated to the other national parliament delegations attending the COSAC conference in Copenhagen. On the margins of the conference, Ms. Kjer Hansen and her colleagues personally raised the issue of Monti II with their counterparts from other parliaments, which influenced their subsequent deliberations on the proposal. For example, such a personal appeal prompted the Latvian parliament to closely scrutinise Monti II, in response to which it passed its first-ever Reasoned Opinion.

Third, almost all national parliaments have their own permanent representatives in Brussels, who can help to coordinate a yellow card by sharing real-time information about scrutiny in their respective parliaments. These representatives are in constant contact with one another as they share a suite of offices provided by the European Parliament, and meet together weekly, on Monday mornings. It was at one of these meetings, just after Monti II was proposed, that the Danish representative told his colleagues that the *Folketing* would be scrutinising it closely.

As the eight weeks wore on, these representatives kept one another informed about the scrutiny process in their respective parliaments – in particular, notifying them when a Reasoned Opinion had been passed. It was in this way that, as the 22 May deadline approached, these representatives were able to keep an accurate and up-to-date ‘vote count’, and to inform their parliaments that a yellow card was within reach.

What about the national parliaments’ supposed lack of incentive to participate? This was overcome, at least in part, by the prospect of success. With momentum building for a yellow card, fence-sitting parliaments were influenced to take action knowing it could actually affect the outcome, adding votes towards the 18-vote threshold.

This dynamic is apparent in the timing and sequence of Reasoned Opinions as the process unfolded. Between late April and mid-May, five parliamentary chambers that are among the most active in the yellow card system – the French *Sénat*, the Swedish parliament, the Polish *Sejm*, the UK House of Commons, and the Luxembourg parliament – also moved to pass Reasoned Opinions. With Denmark, these would bring the total to 9 votes.

However, the tide really turned when a number of parliaments that had rarely or never passed a Reasoned Opinion before – the parliaments of Finland, Portugal, Latvia and Malta – all passed Reasoned Opinions in the final days before the deadline. As all of these parliaments are unicameral – the yellow card system treats member states equally, regardless of population size – each counted for two votes.

Thus on the morning of 22 May, the vote count stood at 17 – just one vote short of a yellow card. Then at about 3 o’clock in the afternoon, the Social Affairs Committee of the Belgian *Chambre des Représentants* passed a Reasoned Opinion on behalf of the whole house, bringing the total to 18. Finally, about 7 o’clock in the evening, the Dutch *Tweede Kamer* adopted a Reasoned Opinion in plenary session – despite the continuing vocal opposition from the government minister present in the chamber – bringing the final tally to 19.

After the yellow card passed, the Commission had three choices: it could maintain, amend, or withdraw the Monti II proposal. In September 2012, the Commission announced its withdrawal. In truth, the proposal had by then become so unpopular that it is very unlikely that it would ever have been adopted. But national parliaments were the proximate cause of its defeat, in that the yellow card forced the Commission to make an immediate decision regarding the fate of the proposal.

Since then, there has been just one other yellow card, in October 2013, in response to the proposal to create the European Public Prosecutor's Office; in that case, the Commission maintained the proposal. The new Commission, which took office in 2014, has promised to take national parliaments' concerns more seriously, and to give a political – rather than merely bureaucratic – response to any future yellow cards.

The first yellow card showed that national parliaments can be a collective force in EU politics, insofar as that they are able and willing to act together to influence EU policy. Moreover, it showed that the yellow card system is not primarily a legal or technical exercise. Rather, it is a new arena for democratic politics in the EU.

For more on this topic, see the author's article in the [Journal of European Public Policy](#)

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