

How the 'red card' system could increase the power of national parliaments within the EU

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One of the reforms included in the deal negotiated by David Cameron in February was the provision of a so called 'red card' system, under which national parliaments would be able to veto new EU legislation if 55% of parliaments registered opposition. [Ian Cooper](#) writes that while some have argued the system would be rarely used, it should be seen as merely the latest step in a trend toward giving national parliaments a greater role in the politics of the EU.



British voters contemplating the dire negative consequences of a Brexit may be looking for a more positive reason to vote to remain in the EU. They should consider the 'red card'. The red card is a democratic reform contained within the the [EU-UK deal](#) that has been largely overlooked in the referendum debate. It would effectively give national parliaments a collective veto over new EU legislation. Under this system, if 55% of national parliaments raise objections to a new EU legislative proposal, then it must be either amended or discarded.

[Some observers argue](#) that the red card is likely to be rarely used, and so will have little practical impact. However, such an analysis misses the larger story. The mechanism would be only the latest step in a series of democratic reforms that have increased the involvement of national parliaments in the politics of the EU. The British have long been among the strongest advocates for these reforms.

It should be noted that the red card was not David Cameron's idea. It was originally proposed by a [Labour MP](#) in 2003. More generally, the British parliament has long advocated reforming the EU to give a stronger voice to national parliaments. This position has enjoyed cross-party support in both houses of parliament, also under previous (Coalition and Labour) governments.

Historically, national parliaments have been sidelined within the EU system of decision-making, which is dominated by national governments (represented in the Council), the European Parliament and the Commission. This has contributed to the EU's 'democratic deficit'. The red card should be seen as part of a broader effort to redress this.*

A strengthened role for national parliaments

In addition to scrutinizing their governments' conduct of EU affairs, national parliaments also participate directly in EU politics – in four ways. Each of these has been strengthened in recent years, with active UK support.

First of all, under the [Early Warning Mechanism](#), since 2009 national parliaments may collectively object to EU legislation by issuing a Yellow Card or an Orange Card. The UK's Red Card proposal would build upon this system, putting a more powerful tool in the hands of national parliaments. (More on this below.)

Second, since 2006 national parliaments engage in a wide-ranging policy [debate](#) with EU institutions. Within this Political Dialogue, in 2015 the House of Lords launched a [Green Card](#) plan in which a group of national parliaments would positively initiate new EU legislation. Remarkably, the Lords' pilot proposal, aimed at the reduction of food waste, received support from 15 of the 28 national parliaments in the EU.

Third, national parliaments are ever more involved in the direct oversight of EU activities. In 2012 and 2013 new oversight bodies were created for national parliamentarians to directly scrutinize the [foreign policy](#) and [economic governance](#) of the EU. Even Bill Cash, the Conservative MP who is Chair of the House of Commons European Scrutiny Committee and an arch-Eurosceptic, is a frequent attendee and respected voice within these forums.

Fourth, all national parliaments now have permanent staff [representatives](#) stationed in Brussels, which allows them to coordinate with one another and scrutinize the EU directly. The House of Commons was one of the first chambers to establish such an office, in 1999. The House of Lords followed in 2005.

Yellow card, orange card, red card

The red card would be an add-on to the existing Early Warning Mechanism, which has been in operation since December 2009. Under this system, every national parliamentary chamber has a right to raise objections to new legislative proposals in the first eight weeks after they are proposed. Such objections take the form of a “reasoned opinion” finding that the proposal violates “subsidiarity” – i.e. that the matter in question should be left to the member states.

The reasoned opinions count as “votes” against the proposal. Each national parliament is allotted two votes (two votes for each unicameral parliament, one vote for each chamber in bicameral systems). With 28 EU member states, there are 56 votes in all. Under current rules, if one third raise objections (19/56), this is a yellow card, after which the proposing body (normally, the Commission) is required to review the proposal, after which it may “maintain, amend, or withdraw” the proposal. As the name implies, the yellow card is a “warning” rather than a veto. So far, three proposals have been issued a yellow card: the [first](#) was withdrawn, the [second](#) was maintained, and the [third](#) happened so recently (May 2016) that the Commission has not yet decided what to do with it.

If a simple majority of parliaments raise objections (29/56), this is an orange card, which triggers an immediate vote in the Council and the European Parliament, either of which may vote to reject the proposal. This is a stronger instrument – it is hard to imagine a proposal becoming law in the face of such opposition – but still not a veto. To date, there has not been an orange card.

Under the new proposal, a red card would be triggered if, in the first *twelve* weeks, 55% raise objections (31/56). In this circumstance, the Council would be required to “discontinue the consideration of the draft legislative act in question unless the draft is amended to accommodate the concerns expressed in the reasoned opinions”. In this way, national parliaments would effectively be able to veto the measure – though formally, it would be done by the Council.

It has been [noted](#) that the red card system is of limited scope because it only permits objections on the grounds of “non-compliance of a draft Union legislative act with the principle of subsidiarity”, rather than on policy grounds. Yet [experience](#) has shown that national parliaments view subsidiarity as a broad political principle rather than as a narrow legal or technical principle, and they freely raise other related concerns – proportionality, legal basis, policy effectiveness – in their reasoned opinions.

The impact of the red card

Will the red card make a difference? This is a reasonable question, given that no proposal has yet reached the threshold for an orange card, let alone a red card. In fact, when the Early Warning Mechanism was launched, it was [doubted](#) whether there would ever be a yellow card. National parliaments lacked the capacity to coordinate their efforts to reach the threshold; moreover, they had no incentive to do so since they would be unlikely to affect EU policy.

However, the first yellow card, in 2012, [showed](#) that national parliaments were indeed both able and willing to act together to influence EU policy. Twelve parliamentary chambers from across the EU, including the House of Commons, raised objections to a proposal regarding the right to strike. The Commission subsequently withdrew the proposal. The red card would give national parliaments an additional incentive to take action, the knowledge that they could effectively veto a proposal. Moreover, it would give them an additional four weeks (twelve, rather than eight) to coordinate their opposition.

Still, [some](#) have argued that the red card will ultimately make no practical difference, given that if a proposal elicits a red card from national parliaments it would have been rejected later on in the Council anyway. Yet such an analysis is too narrowly focused on legislative outcomes. It neglects the broader point that national parliaments themselves can and should be independent actors in the democratic process at the EU level.

Arguably, if a proposal is collectively rejected by national parliaments, this is a qualitatively different outcome from defeat in the Council. Certainly, when the first yellow card prompted the Commission to withdraw its proposal, this was seen as a victory for national parliaments, even though the proposal would have faced certain defeat at a later stage. It showed that national parliaments are now a [collective force](#) in EU politics.

The red card proposal would not give the UK parliament a veto over EU laws; for this reason it is unlikely to satisfy a hardened Conservative [Eurosceptic](#). Rather, the purpose of the red card is to improve the collective position of all national parliaments within the EU system.

The red card will not revolutionise EU decision-making, but it would nevertheless be a positive development for democracy in the EU. The fact of its inclusion in the EU-UK deal shows both that the UK can have a positive influence on the democratic institutions of the EU, and that those institutions are capable of reform. In this, it encapsulates much of what is worth keeping in the relationship between the UK and the EU.

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