



## **Technical Report**

The Early Warning System (EWS): a faulty playground on which to trigger the “solidarity card”

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## Country codes

AT	Austria
BE	Belgium
BG	Bulgaria
HR	Croatia
CY	Cyprus
CZ	Czechia
DK	Denmark
EE	Estonia
FI	Finland
FR	France
DE	Germany
EL	Greece
HU	Hungary
IE	Ireland
IT	Italy
LV	Latvia
LT	Lithuania
LU	Luxembourg
MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
SK	Slovakia
SI	Slovenia
ES	Spain
SE	Sweden
UK	United Kingdom

## List of abbreviations

COSAC	Conference of Parliamentary Committees for Union Affairs
EACs	European Affairs Committees
EP	European Parliament
EU	European Union
EWS	Early Warning System
IPEX	Inter-parliamentary Information Exchange System
MEPs	Members of the European Parliament
MPs	Members of National Parliaments
NPs	National Parliaments
NPRs	Network of Permanent Representatives of National Parliaments in the European Parliament
OLP	Ordinary Legislative Procedure
OPAL	Observatory of Parliaments after the Lisbon Treaty
PD	Political Dialogue
ROs	Reasoned opinions
TEU	Treaty on European Union
TFUE	Treaty on the Functioning of the European Union

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## **Abstract**

The Treaty of Lisbon recognized national parliaments (NPs) as partners of the supranational institutions in legislative procedures, among other EU policy processes. The most innovative formal mechanism to involve NPs in EU law-making is the Early Warning System (EWS), according to which national chambers develop and share opinions on draft EU legislative acts, only as regards the principle of subsidiarity and with an eight-week deadline from the time the proposal is submitted by the Commission.

This means that the EWS is both reactive and negative, since the NPs are merely allowed to play a watchdog role within this constraining framework. In theory, NPs were granted a collective right to stop an EU legislative procedure by achieving certain thresholds, as established under Protocol No. 2 (Article 7). In practice, from 1 December 2009 to 3 September 2021, the 41 national chambers of the EU-28 that were potential players under the EWS from the side of the NPs (39 after the Brexit) authored barely a total of 489 reasoned opinions. The threshold to force the European Commission to reexamine a legislative proposal (or to trigger a so-called “yellow card”) was achieved on just three occasions, and only once did the Commission decide to withdraw the draft EU legislation that proved to be unacceptable to enough national chambers. However, this was not due to a true breach in subsidiarity, rather it revealed a lack of support for the content of the proposal within the Council.

This study examines how the EWS works, and its questionable link to greater democracy within the EU. It emphasizes effective parliamentary administration, especially administrative inter-parliamentary cooperation, as the essential requirement to make the EWS practicable.

In short, after carefully examining the available data and the literature of reference, considering the redundancy of the EWS as an ex-ante mechanism to scrutinize subsidiarity from its very inception, its costs of opportunity for NPs, the rationale of its functioning, which makes the EWS a faulty playground on which to trigger the “solidarity card”, how vividly the representative dimension of the EU has improved since the 2014 European election, and the fact that the European Commission has already sidelined NPs as subsidiarity watchers in the framework of the Better Regulation initiative, a central question emerges: Does it pay to play the EWS game once again for most national chambers and in the general interest of the EU?

## **1. Introduction: the EWS, a mechanism for an EU that never existed**

In 2021, 39 chambers that make up the 27 national parliaments (NPs) of the European Union (EU), whose institutional positions vary from country to country and even between the chambers of the same bicameral NP, have a direct say on EU decision-making.<sup>1</sup> This status derives not just from the attributes they are assigned within their respective national institutional settings, but also from those granted by the EU Treaties.<sup>2</sup> The latter, in theory, occurs on an equal basis; however, in practice, the participation of NPs on the Union level is not homogenous, due to numerous factors that are addressed in this study.

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<sup>1</sup> In 2021, the chambers of the EU national parliaments are the following: the Bundesrat and the Nationalrat (Austria), the Sénat de Belgique/Belgische Senaat and the Chambre des Représentants de Belgique/Belgische Kamer van volksvertegenwoordigers (Belgium), the NarodnoSabranie (Bulgaria), the HrvatskiSabor (Croatia), the Vouli ton Antiprosopon (Cyprus), the Senát and the Poslaneckásněmovna (Czech Republic), the Folketing (Denmark), the Riigikogu (Estonia), the Eduskunta (Finland), the Sénat and the Assemblée nationale (France), the Bundesrat and the Bundestag (Germany), the Vouli ton Ellinon (Greece), the Országgyűlés (Hungary), the Houses of the Oireachtas: Dáil and Seanad Éireann (Ireland), the Camera dei Deputati and the Senatodella Repubblica (Italy), the Saeima (Latvia), the Seimas (Lithuania), the Chambre des Députés (Luxembourg), the Kamra tad-Deputati (Malta), the Eerste Kamer and the Tweede Kamer (Netherlands), the Sejm Rzeczypospolitej Polskiej and the Senat Rzeczypospolitej Polskiej (Poland), the Assembleia da República (Portugal), the Senatul and the Camera Deputaților (Romania), the Národnárada (Slovakia), the Državnisvetnd and the Državnizbor (Slovenia), Las Cortes Generales: Senado de España and Congreso de los Diputados (Spain), and the Riksdag (Sweden). Prior to the Brexit, there were 41 chambers. The final contributions authored by the UK Parliament were submitted in 2019. Both the House of Lords and the House of Commons were active players on the EU level.

<sup>2</sup> The expression “the Treaties” refers to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFUE).

National parliaments are key players in the EU as a multi-level democracy, regardless of what has been argued in terms of them being paramount losers of power throughout the European integration process. During the construction of the EU, the parliaments of the Member States have continued to be the crucial scenes where politics is played, using the most familiar languages, codes, and symbols, and NPs are essential sources of democratic legitimacy for the political system of the EU even today. Additionally, the Lisbon Treaty, in force since December 2009, empowered not only the European Parliament, but also the EU NPs, which were recognised as “multi-level actors” or partners of the supranational institutions.

Besides, the EU is not only a multi-level democracy with a mature representative dimension both on the national level and the Union level, but also a system of multi-level governance where problem-solving comes first and institutional arrangements, which are remarkably fluid in the political system of the EU, are secondary. National parliaments might always be special institutions within the EU, but supranational politics is moving forward since 2014. Among other developments, the European elections have been enhanced, and within the framework of the Better Regulation or Better Law-Making agenda, territorial authorities, along with representatives of interest groups or individual citizens, in recent times, are more welcome to share their views on EU initiatives.

Furthermore, in addition to their symbolic value (as has been previously stated), national parliaments might currently be better prepared to make a meaningful contribution to EU decision-making than other actors, because of the experience they have earned within the scope of the Early Warning System (EWS) and the Political Dialogue (PD).

The PD is an open conversation between the national parliaments of the EU and the European Commission established by José Manuel Durão Barroso in 2006 during his first mandate as President of the European Commission (2004-2009), prior to the entry into

force of the Lisbon Treaty. This encompasses “questions of proportionality, legislative substance, legal basis, political opportuneness and other considerations”, but it “is informal, non-binding in its entirety, and wholly dependent on the Commission both for its existence and for its impact” (Jančić, 2015: 940).<sup>3</sup>

The EWS was introduced through Protocol No. 2 of the Treaty of Lisbon. It is more specific than the Political Dialogue and even more than the Better Regulation agenda. The EWS is limited to the subsidiarity check of any new legislative proposal, and it is at the exclusive disposal of the NPs.

This notwithstanding, it must be also acknowledged that the EU is a political system with federal elements, where subsidiarity is key to balancing EU and national competences beyond the domains of exclusive EU competence.<sup>4</sup>

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<sup>3</sup> However, “the number of contributions [under the Political Dialogue] increased dramatically after 2010, which arguably shows that it is complementary to the EWS rather than an alternative method of scrutiny” (Cooper, 2019, 923). Moreover, it must be pointed out that “in practice, there is little difference between the Political Dialogue and the EWS as NPs rarely send two different types of reasoned opinions. A first part of their reasoned opinion is dedicated to the subsidiarity principle (under the EWS) and the second to any other aspect of the draft legislation” (Brack, 2021: 27).

<sup>4</sup> Article 1 of the TEU states that “this Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen”, and Article 5.3 of the TEU establishes that: “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National

Also, since 2010, most national chambers have started to make efforts to adapt their working methods and resources to the possibility of getting involved in the ex-ante control of the principle of subsidiary (or the EWS).

Besides, despite the fact that supranational institutions were created in the 1950s to deliver common regulations, and the EU's regulatory power remains the most relevant source of EU influence on the international scene, it must be clarified that EU law-making as a policy process is in decline within an increasingly complex system of multi-level policy-making, in terms of both procedures and the array of actors engaged (Arregui, 2019: 45, 50; Rozenberg, 2017: 26).

Additionally, the EWS was introduced, in the first place, to contribute to enriching the representative dimension of the EU as a multi-level democracy. Its evolution, since the entry into force of the Treaty of Lisbon and especially after the 2014 European election, demonstrates that representation on the Union level can be noticeably boosted by introducing adjustments in the appointments, functioning and policy agenda of the supranational institutions.

Likewise, it can be argued that the EWS is not so much an instrument of multi-level governance that supports more effective and democratic policy outputs to achieve the objectives of the EU as it is a case of flexible integration applied to constitutional affairs instead of particular policy domains, such as monetary policy, or defence, among many other policy areas nowadays. The main advocates of enhancing NPs in EU decision-making tend to be Member States that are in favour of further flexible integration and are unwilling to increase the EU budget. These latter ideas are connected. It is worth

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parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol”.

emphasising that the EWS may function as an obstacle to delivering effective policy responses to the currently broad and expanding EU agenda.

Finally, the practice of the EWS sheds light on some other risks associated with the mobilisation of national parliaments on the EU scene, such as having the voice of Eurosceptic parties in parliament on a national level amplified to the level of the Union or the empowerment of certain parliamentary officials over the parliamentarians themselves. The EWS is thus problematic, considering the perils of both playing politics against supranational institutions and unnecessary bureaucratisation.

Next, this study examined the available data and the literature of reference on the EWS. From this overview, the objective of this report is to indicate how pointless this mechanism was from its very inception, even more so today following the 2014 and 2019 European elections and under a progressively more relevant Better Regulation initiative.

There was never a need to charge NPs with the responsibility for scrutinizing subsidiarity in EU draft legislative acts. The European Commission, at the earlier stages of the legislative procedures, and the European Court of Justice *ex post* are suitable and sufficient to carry out this task. The EWS is mainly a burden for MPs, whose mission within the EU should be more focused on the national level, on communicating with citizens, controlling their respective domestic governments, and delivering policy alternatives, also with regard to EU themes. This applies to the parliamentary officials of the national chambers that are more active on the EU level, who are overloaded too.

In a nutshell, the EWS is at present basically bad for democracy in the EU. This study recommends abandoning it. This notwithstanding, it proceeds to point out minute details of its functioning, including positive effects from the point of view of the general interest

of the EU or just the NPs, or certain supranational institutions, such as the Commission or the European Parliament.

## **2. Are national parliaments “multi-arena players” within the EU?**

The Lisbon Treaty opened up different possibilities for NPs to become “multi-arena players” (Auel and Neuhold, 2017:1; Auel and Neuhold, 2018: 13) or to also act on the supranational level of the EU political system. Prior to it, national parliaments were mentioned in protocols annexed to the Treaties, but now they are also referred in Article 12 of the TEU, which states that “National Parliaments contribute actively to the good functioning of the Union”, among other means, by scrutinising draft legislative acts (mainly regarding subsidiarity), taking part in future revisions of the TUE and the TFUE, and cooperating with the European Parliament.

### **Textbox 1. Article 12 TEU**

National Parliaments contribute actively to the good functioning of the Union: (a) through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union; (b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality; (c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article 70 of the Treaty on the Functioning of the European Union, and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles 88 and 85 of that Treaty; (d) by taking part in the revision procedures of the Treaties, in accordance with Article 48 of this Treaty; (e) by being notified of applications for

accession to the Union, in accordance with Article 49 of this Treaty; (f) by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament, in accordance with the Protocol on the role of national Parliaments in the European Union.

Protocol No. 1 on the role of national parliaments and Protocol No. 2 on the application of the principles of subsidiarity and proportionality elaborate on the provisions of Article 12 of the TEU.<sup>5</sup> Protocol No. 1 is focused on the information that must be delivered from the supranational institutions to NPs (Articles 1-8). It includes two articles on inter-parliamentary cooperation, as well. Article 9 states that the European Parliament and NPs are responsible for building and nurturing inter-parliamentary cooperation within the EU. And Article 10 recognises the conference of Parliamentary Committees for Union Affairs (COSAC), not just as an instrument to improve the information flow between the European Parliament and national parliaments, but also as a political actor in charge of helping the parliament and NPs to arrange inter-parliamentary cooperation. Indeed, it is capable of issuing its own contributions regarding any topic on the EU agenda to the European Parliament, the Council, and the Commission. These “contributions from the conference shall not bind national Parliaments and shall not prejudice their positions.”

**Textbox 2.** Article 10 of Protocol No. 1 on the role of national parliaments in the EU

A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission.

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<sup>5</sup> The full texts of Protocol No. 1 on the role of national parliaments in the European Union and Protocol No. 2 on the application of the principles of subsidiarity and proportionality are included in this study as Annexes I and II, respectively.

That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. Contributions from the conference shall not bind national Parliaments and shall not prejudice their positions.

Furthermore, Protocol No. 2 on the application of the principles of subsidiarity and proportionality is more ambitious. Even though it is restricted to the scrutiny of subsidiarity, it identifies every chamber of a national parliament as a formal source of inputs on EU legislative proposals. Thus, national chambers are recognised as institutional partners of the supranational institutions regarding EU law-making.

**Textbox 3.** Article 6 of Protocol No. 2 on the application of the principles of subsidiarity and proportionality

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers. If the draft legislative act originates from a group of Member States, the President of the Council shall forward the opinion to the governments of those Member States. If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the opinion to the institution or body concerned.

Moreover, as regards subsidiarity, Protocol No. 2 granted national parliaments a collective right to force supranational institutions to review EU draft legislative acts (“yellow card”), or even delete them in the framework of the ordinary legislative procedure (“orange card”). As Auel and Neuhold (2017: 1549) highlight, under Protocol No. 2: “although involved only at the very first stage of the legislative process and excluded from the EU process thereafter, parliaments are considered as European actors in their own right – in a direct and unmediated relation to the European institutions. In this role, they have also become more than just random stakeholders: the European Commission must send them draft legislative acts and wait for incoming opinions, which are then weighed and counted as votes.”

It must be pointed out that the “orange card” had not been articulated within the Convention on the Future of Europe, as the “yellow card” was. The election of the colour was not neutral, either. The orange card was added in the final intergovernmental bargaining on the Lisbon Treaty to persuade Dutch citizens to support the reform. Their Prime Minister Jan-Peter Balkenende requested the orange card with the argument that the failure of the referendum on the Constitutional Treaty held in 2005 in the Netherlands had been caused by democratic concerns that can be linked to NPs (De Wilde, 2012: 3).

In summary, the new provisions on national parliaments contained in the Lisbon Treaty: “challenge the notion of representation provided by parliaments at different levels and within clearly demarcated areas of authority: the unmediated role of NPs within the EU’s constitutional and legislative process, as well as their direct relation to the EU institutions, clearly eliminates the demarcation of levels within the multilevel system” (Auel and Neuhold, 2017: 1549). These experts proposed the notion of a “multi-arena playing field” to examine the activation of NPs on EU issues, individually and/or collectively, in diverse arenas within the political system of the EU: i) individually on the national level

(“traditional scrutiny”), ii) individually on the Union level (treaty revisions, actions brought before of the Court of Justice of the EU, and Political Dialogue, among others), iii) collectively (e.g., inter-parliamentary cooperation, EWS) (Auel and Neuhold, 2017: 1550-1551).

**Table 1.** Colour cards of the national parliaments

	<b>Status</b>	<b>Legal basis</b>	<b>Threshold (% of the votes allocated to the NPs)</b>	<b>Effect</b>
<b>Yellow Card</b>	EWM entered into force in 2009	Protocol No. 2	33%	Commission to reconsider a draft legislative act
<b>Orange Card</b>			50%	
<b>Green Card</b>	Informally used since 2015	None	25%	Suggesting a legislative initiative to the Commission
<b>Red Card</b>	European Council Proposal in 2016, which did not enter into force	(Draft) European Council decision	55%	Common understanding that the draft legislative act would be discontinued

Source: Rozenberg (2017: 36), slightly adapted.

Another mechanism to be added to the catalogue of possibilities at the disposal of national parliaments in order to give their say on EU initiatives is the “green card”. This was

promoted by the UK House of Lords, the Danish Folketing and the Dutch Tweede Kamer, and discussed in a meeting between the European Parliament and 14 national chambers on 19 January 2015 (Borońska-Hryniewiecka, 2021: 10; Jančić, 2015: 966). After that meeting, *the “Green Card”: further discussion paper* signed by Lord Boswell of Aynho, as Chairman of the EU Committee of the House of Lords, states that “proposed green cards could call for new legislative actions, or the review, amendment or repeal of existing legislation, including delegated and implementing acts” (House of Lords, 2015: 4).

The green card is more proactive and constructive than the EWS, although it is also a collective mechanism required for smooth inter-parliamentary cooperation. According to the above-mentioned discussion paper, one chamber (the so-called “initiating chamber”) proposes “a draft green card on a specific issue”, but “to qualify as a green card that could be sent to the Commission using that title” it “should gain an agreed minimum threshold of signatories within a certain time-frame”, which has been established as  $\frac{1}{4}$  of the votes that national parliament poses under the EWS in six months (House of Lords, 2015: 5-6). “Once the six-month deadline has passed, and if the threshold has been reached, the proposing chamber should send the co-signed text to the Commission under the political dialogue, making clear that the proposal is considered by the co-signatories to be a green card. If a proposal fails to reach the required threshold, the initiating chamber may wish to send it to the Commission under the political dialogue, but the proposal should not be presented as a green card” (House of Lords, 2015: 6).

“The purpose of the green card is, on the one hand, to compensate for the loss of legislative powers by creating an informal collective right of legislative initiative at the EU level; and, on the other, to enhance the agenda-setting powers of NPs” (Jančić, 2015: 966). The characteristic feature of the green card is precisely that the Commission is expected to deliver a response to it indicating whether or not it will endorse it and why.

It must be said that, as of today, on the agenda of both the European Commission and the European Parliament, the only relevant item in this regard is the right of initiative of the latter.

Finally, the agreement reached with the British government in February 2016 in preparation for the Brexit referendum included a compromise to add a “red card” within the framework of the EWS. This idea had been proposed by David Cameron in November 2015, in the letter he sent to Donald Tusk, then President of the European Council. The red card required a threshold of 55% of the votes of NPs/chambers, which has never been attained under the EWS, in this case garnered during the first three months following the submission of the legislative proposal. The red card included the obligation to amend the draft legislative act to incorporate the subsidiarity objections given in the ROs, or otherwise to drop the proposal (Cooper, 2019: 926). “Although the 27 Member States agreed on the principle, the idea of the red card was buried with Brexit” (Brack, 2021: 25).

Moving from theory to practice, the activities of national parliaments on EU issues, considering all the channels that are currently available, are extremely diverse, and the explanations for this variety are not straightforward.

Empirical studies have failed to find any systematic association between the involvement in EU affairs and the NP’s/chamber’s institutional strengths or resources to play on the Union level, such as the number of parliamentarians or officials. For instance, “parliamentary resources as a factor conditioning the actual level of activities do not explain the findings either as the French and Polish lower chamber’s EACs have a similar number of MPs (48 and 43 accordingly) and exactly the same number of administrative staff (12 people). Moreover, none of the interviewed heads of EAC secretariats admitted

that administrative resources pose any constraint to their chamber's EU-oriented activity” (Borońska-Hryniewiecka, 2020: 12).

How and why some NPs act on different levels or as “multi-arena players”, while others do so to a lesser extent is not institutionally related, rather it is dependent on the strategies of the MPs and the parties in government on the national level.

A frequent argument in the literature on democracy in the EU is the disenfranchisement of NPs in the process of European integration. At least until the Treaty of Amsterdam, they were considered “the ‘victims’ of European integration due to a process of ‘de-parliamentarization’” (Brack, 2021:11; Christiansen, Högenauer, Neuhold, 2014: 122; Raunio, 2005: 1).

Since under the Lisbon Treaty, EU laws can be conjointly drafted between the Council and the European Parliament in many additional policy areas, the EWS was introduced through Protocol No. 2 as a balancing mechanism to give NPs the opportunity to get involved in EU law-making, at least by improving the information they receive on legislative proposals, which is a necessary resource to control the activity of their respective national governments in the EU Council.

This notwithstanding, within the framework of the EWS and beyond it, “clearly, NPs becoming multi-arena players is not necessarily a normatively desirable development” (Auel and Neuhold, 2017: 1557) for a variety of reasons.

First, any formal role of national parliaments in the EU arena introduces confusion about the functioning of representation on the supranational level and makes accountability more complex (Auel and Neuhold, 2017: 1557). Second, mechanisms of participation on EU dossiers such as the EWS or the Political Dialogue have a cost of opportunity regarding time and other scarce resources for MPs and national parliamentary officials

(Auel and Neuhold, 2017: 1557; Auel and Neuhold, 2018: 17). Moreover, there is scarce evidence that the efforts made by NPs to be active in the EU arena, both individually and collectively, have reached citizens and made them more aware of EU legislative procedures.

In short, even the best participation of a national parliament in inter-parliamentary cooperation, the EWS, the Political Dialogue or any other mechanism in the EU arena has almost no chance of improving the connection between the EU citizens and the decisions taken on the EU level. On the contrary, the role of NPs is crucial to contribute to enhancing representative democracy within the EU by acting individually on the national level. Thus, a bit counterintuitively, Title I “Information for National Parliaments” of Protocol No. 1 on the role of national parliaments in the EU might be the most helpful source of balance to correct the asymmetries of information between national governments and NPs, which had truly hindered the control by the MPs over the positions and strategies of national executives on the supranational level of the EU.

### **3. How does the EWS really work?**

As has already been stated in this study, the EWS is a reactive and negative mechanism that grants all NPs the right to collectively block EU legislative proposals, theoretically only on the grounds of subsidiarity. Article No. 7 of Protocol No. 2 sets the procedure and thresholds required to trigger a “yellow card”, which obliges the European Commission to reexamine a draft legislative act, along with an “orange card”, under the OLP, that would open up the possibility for the Council and the European Parliament to halt the legislative proposal, also as regards the application of subsidiarity.

**Textbox 4.** Article 7 of Protocol No. 2 on the application of the principles of subsidiarity and proportionality [yellow card 7(2) and orange card 7(3)]

The European Parliament, the Council and the Commission, and, where appropriate, the group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, shall take account of the reasoned opinions issued by national Parliaments or by a chamber of a national Parliament. Each national Parliament shall have two votes, shared out on the basis of the national Parliamentary system. In the case of a bicameral Parliamentary system, each of the two chambers shall have one vote.

2. Where reasoned opinions on a draft legislative act's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the draft must be reviewed. This threshold shall be a quarter in the case of a draft legislative act submitted on the basis of Article 76 of the Treaty on the Functioning of the European Union on the area of freedom, security and justice. After such review, the Commission or, where appropriate, the group of Member States, the European Parliament, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, may decide to maintain, amend or withdraw the draft.

Reasons must be given for this decision.

3. Furthermore, under the ordinary legislative procedure, where reasoned opinions on the noncompliance of a proposal for a legislative act with the principle of subsidiarity represent at least a simple majority of the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the proposal must be reviewed. After such review, the Commission may decide to maintain, amend or withdraw the proposal. If it chooses to maintain the proposal, the Commission will have, in a reasoned opinion, to justify why it considers that the proposal complies with the principle of subsidiarity. This reasoned opinion, as well as the reasoned opinions of the national Parliaments, will have to be submitted to the Union legislator,

for consideration in the procedure: (a) before concluding the first reading, the legislator (the European Parliament and the Council) shall consider whether the legislative proposal is compatible with the principle of subsidiarity, taking particular account of the reasons expressed and shared by the majority of national Parliaments as well as the reasoned opinion of the Commission; (b) if, by a majority of 55 % of the members of the Council or a majority of the votes cast in the European Parliament, the legislator is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal shall not be given further consideration.

The EWS tends to be negatively assessed, first because its effects have been few and far between. Since the entry into force of the Lisbon Treaty, in December 2009, national parliaments have produced no “orange cards” and just three “yellow cards”; additionally, they have never initiated any action before the EU Court of Justice on subsidiarity grounds according to Article 8 of Protocol No. 2. See Annex II.

**Table 2.** Yellow cards triggered by national parliaments (2010-2021)

<b>Proposal from the Commission</b>	<b>Topic</b>	<b>No. of chambers that issued ROs (and votes represented, out of 41)</b>	<b>Response from the Commission</b>
Proposal for a regulation “On the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services” (the so-called “Monti II”) [COM (2012) 130]	Workers’ rights	12 (19)	Withdrawal of the proposal, but not due to a subsidiarity infringement; the reason was the apparent lack of support for its content in the Council
Proposal to create a European Public Prosecutor’s Office (EPPO) [COM (2013) 534]	EU budget, judicial cooperation	13 (18)	Proposal maintained, but it must be said that EPPO was established through an enhanced cooperation (this is a case of flexible integration) with the participation of just 20 Member States out of 28
Amendment proposal for a Directive concerning the posting of workers in the framework of the provision of services (the so-called Posted Workers Directive, PWD) [COM (2016) 0128]	Workers’ rights	14 (22)	Proposal maintained, although in this case there actually was a procedural infringement of subsidiarity as regards the justification of the EU action according to Article 5 of Protocol No. 2

Source: author’s own work, based on institutional data, and Borońska-Hryniewiecka (2021) and Cooper (2019).

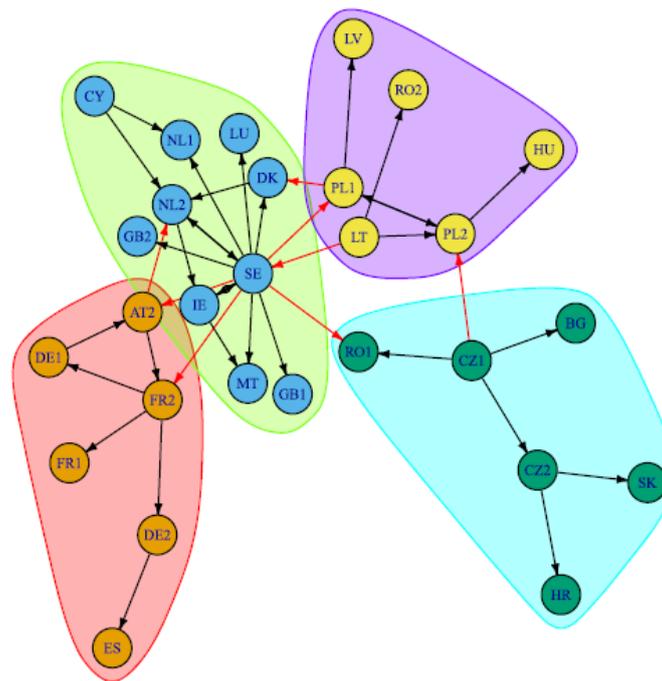
With regard to the first yellow card (Monti II, 2012), “the Danish Folketing played the role of ‘initiator’, acting rapidly to adopt the first RO, based on a conscious decision to try to persuade other NPs to do so with the express goal of achieving the first yellow card” (Cooper, 2015: 1412). Concerning the second yellow card, on the creation of the European Public Prosecutor’s Office (2013), although the legislative proposal prospered and the EPPO was established, the NPs of six out of the eight Member States that decided

not to participate in this enhanced cooperation from its very inception (Hungary, Ireland, Malta, the Netherlands, Sweden, the UK) issued a reasoned opinion (Cooper, 2019: 936). Regarding the third yellow card, on the Posted Workers Directive (2016), it must be pointed out that a regional block of NPs from Central and Eastern Europe (plus Denmark) was created (Borońska-Hryniewiecka, 2021: 4). “The split between East and West, between 'old' and 'new' Member States, has not only divided parliaments and led to the emergence of a regional block of reasoned opinions from national parliaments in Central and Eastern Europe (plus Denmark)”, it can also be said that “the East-West split has divided government representatives in the Council and even Members of the European Parliament” (Fromager, Kreilinger, 2017: 151).

More importantly, the third yellow card was clearly “used as an instrument to express an overall opposition to the 'Social Europe' agenda that the Juncker Commission has presented” (Fromager and Kreilinger, 2017: 133). More generally, it must be noted that the topics of the three yellow cards issued were workers' rights (twice), and EU budget. All of them concern social issues and solidarity. This is a clear indication about the practice of the EWS and the paramount risks it poses from the point of greater Social Europe.

Beyond the yellow cards, Malang and Leifeld examined all the ROs issued under the EWS from January 2010 until April 2019, looking for underlying patterns of coordination among national chambers. Their findings are crystal clear as well. “The emerging diffusion network is characterised by a compartmentalization into communities of European Union budget net contributor and net recipient countries” (Malang and Leifeld, 2021: 873). See Figure 1 below.

**Figure 1.** Diffusion network among NPs under the EWS (January 2010-April 2019)



Note from the graph's authors: nodes with the suffix '1' and '2' denote first and second chambers, respectively.

Source: Malang and Leifeld, 2021: 882.

Besides, the response given by the European Commission to the three yellow cards improved over time. Regarding “Monti II” (2012) the Commission prepared a general comment for all NPs, but it “did not properly address the concerns of NPs expressed in their ROs nor engaged in any form of a dialogue with them.” On the second occasion that a yellow card was triggered (EPPO, 2013), the Commission issued both a 13-page wide-ranging argumentation and individual replies to each of the 11 chambers that had authored an RO; this practice of addressing individually all chambers that had submitted an RO was maintained for the third yellow card (PWD, 2016) (Borońska-Hryniewiecka, 2021: 4).

The triggering of a yellow card or an orange card depends on the mobilisation of enough national chambers to achieve the thresholds established in Protocol No. 2, but the total

number of ROs submitted and the fact that these opinions were concentrated on a limited number of draft legislative acts are equally relevant.

According to the *State of Play on Reasoned Opinions and Contributions Submitted by National Parliaments under Protocol 2 of the Lisbon Treaty*, authored by the Directorate for Relations with National Parliaments of the European Parliament, on 3 September 2021: “since the entry into force of the Lisbon Treaty, a total of 1022 draft legislative acts have been sent to national Parliaments for examination under the terms of Protocol No. 2 of the Treaty of Lisbon. In response, the European Parliament has received 3605 submissions from national Parliaments. Of these, 498 are reasoned opinions, while the remaining 3108 are contributions”.<sup>6</sup>

**Figure 2.** Total number of reasoned opinions (ROs)



Source: author's own work.

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<sup>6</sup> The regular notes on the *State of Play on Reasoned Opinions and Contributions Submitted by National Parliaments under Protocol 2 of the Lisbon Treaty* issued by the European Parliament\_Directorate-General for the Presidency\_Directorate for Relations with National Parliaments can be read at: <https://www.europarl.europa.eu/relnatparl/en/subsidiarity-and-ipd/state-of-play-note>.

The number of ROs issued per year fluctuates a lot. The peak was in 2013 (99 ROs registered), while in 2019 no RO was submitted. This longitudinal variability is due to various factors, such as simply the moment of the five-year institutional cycle, which explains differences in the number of EU draft legislative proposals that are sent to the NPs by the European Commission; for instance, the number of ROs decreases in European electoral years (2014, 2019).

Table AIII (Annex III) details the 498 ROs registered from 1 December 2009 to 3 September 2021 by author and year.

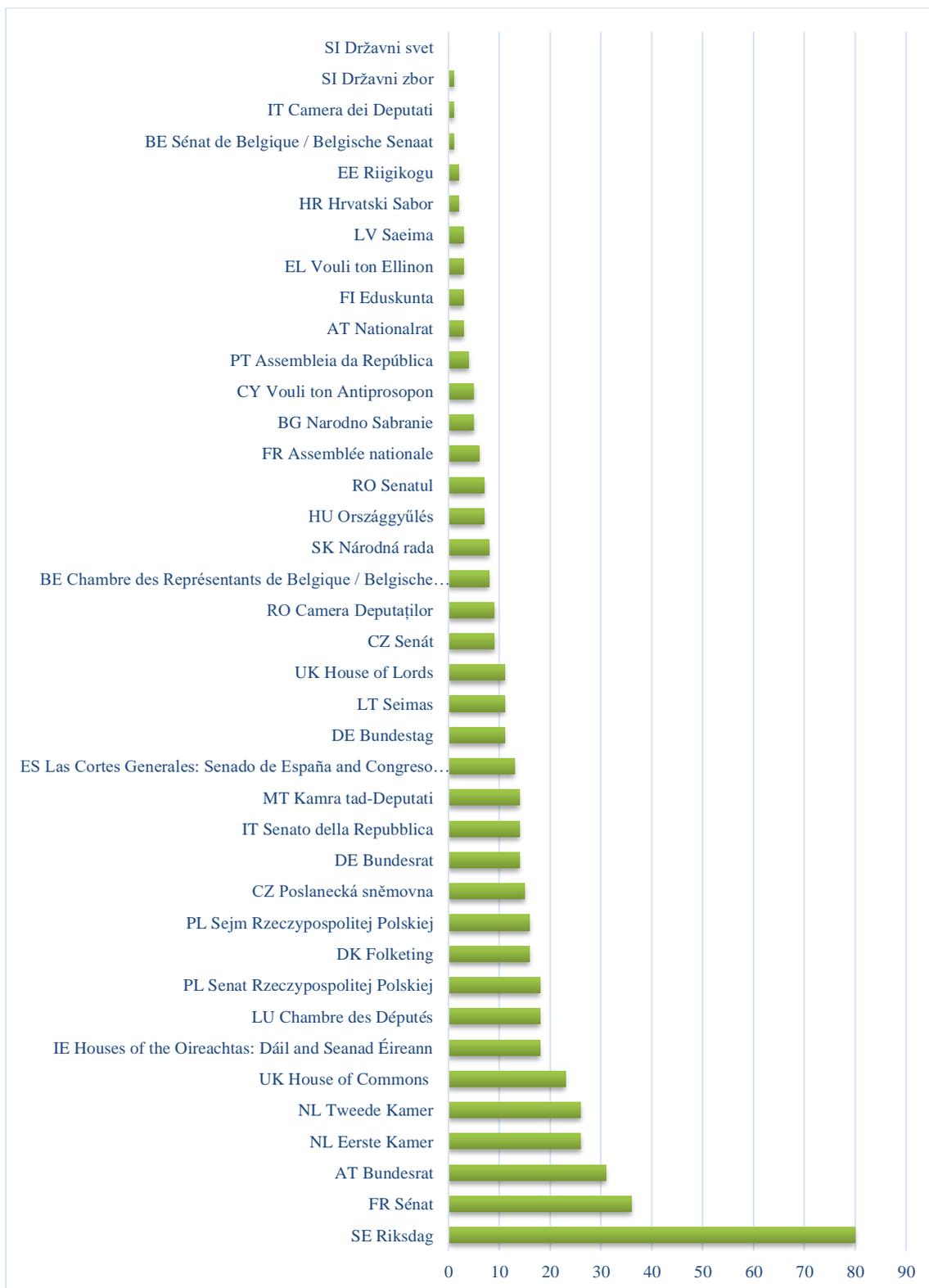
The concentration of ROs by author is extremely relevant. The chamber that is largely the most active under the EWS is the SE Riksdag, which must be considered as a deviant case, as it concentrates about 16% of the ROs issued (80 ROs). The second most active chamber is the FR Sénat, which authored 36 ROs (7%).

Moreover, six national chambers, the two mentioned above plus the AT Bundesrat (31 ROs), the NL Eerste Kamer (26 ROs), the NL Tweede Kamer (26 ROs) and the UK House of Commons (23 ROs) produced approximately 45% of the 498 ROs authored by the 41 chambers.

Furthermore, these chambers represent rich Western European countries: Sweden, France, Austria, the Netherlands and the United Kingdom. Two of them (Sweden and the UK) were not members of the Eurozone, nor was the country that issued the first yellow card (Denmark).

Again, the question is: does the EWS best serve the interests of some net contributors to the EU budget? If it is so, the perils for the present EU, with a broader policy agenda than in 2009 and more challenges in terms of solidarity, are more than evident and relevant.

**Figure 3.** Total number of ROs issued by each NP/chamber



Source: author's own work.

In addition, the practice of the EWS is characterised more generally by multiplicity. This applies not only to the opinions submitted by NPs under Protocol No. 2, but also to the processes followed within each national parliament/chamber to prepare their ROs and contributions. This multiplicity includes inter-institutional cooperation on the national, transnational, and supranational levels to differentiate among and examine documents as well as achieve the thresholds required when a chamber/NP/Member State or a group of them is interested in triggering a yellow card.

Moreover, variety is also the rule with regard to the scope and contents of the opinions delivered under Protocol No. 2, and these differences may be significant. Explaining the variation that exists in the contents of the opinions issued by NPs might be as relevant as explaining the diversity in the number of outputs, in order to assess the strategy of national chambers/NPs/Member States under the EWS. In this regard, more empirical research is needed.

Concerning some national parliaments, valuable data on the substance of the opinions submitted within the framework of the EWS have already been gathered. For instance, Borońska-Hryniewiecka compared French and Polish NPs, and she found that “as regards the contents of ROs, Polish and French chambers usually stick to subsidiarity-related arguments, while the Polish ones tend to focus more on the question of competences, and the French on the essence of EU proposals” (Borońska-Hryniewiecka, 2020: 9).

Furthermore, regarding processes, the EWS may be a synonym for bureaucratisation, to the point that the following question might be posed: is the EWS a sort of bureaucracy in the wild?

“Parliamentary administration” is, following the definition given by Christiansen, Griglio and Lupo “the work carried out by unelected officials for and on behalf of elected representatives, providing support services to the institution of parliament” by “civil servants who execute their responsibilities with an expectation of neutrality, objectivity and loyalty to the institution as a whole”. This excludes advisors appointed by political groups, as well as the assistants of individual parliamentarians (Christiansen, Griglio and Lupo, 2021: 2).

The rationale of having parliamentary officials is to match the qualifications available within parliaments with their constitutional role (Christiansen, Griglio and Lupo, 2021: 3). Thus, the contribution of parliamentary administrations to the proper functioning of the EU as a multilevel democracy, as occurs with any other representative democracy, is beyond reproach.

The EWS, as we already know, requires both expertise within each national chamber and intense collaboration amongst them. This partially explains why parliamentary officials are crucial to making the EWS work, especially national parliament representatives at the European Parliament (also known as *liaison officers*).<sup>7</sup> Since 1991, to foster inter-parliamentary cooperation within the EU, the European Parliament has hosted members of the national parliamentary administrations, who have their offices in the same building as the Directorate for Relations with National Parliaments. The number of people sent by the national chambers to Brussels varies; for instance, the German Bundestag appoints three representatives, who are accompanied by three assistants, while Spain sends only

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<sup>7</sup> The entire list of representatives of national parliaments in the European Parliament or *liaison officers* can be retrieved at: <https://www.europarl.europa.eu/relnatparl/en/networks/representatives-of-national-parliaments>.

one person to represent both the Congreso de los Diputados and the Senado, which work conjointly under the EWS.

The liaison officers collaborate with each other on a normal basis, and also with the members of the secretariat of the Conference of Parliamentary Committees for Union Affairs (COSAC). Another instrument that is vital for NPs to play the EWS game is the Inter-parliamentary Information Exchange System (IPEX), which is “a platform for the mutual exchange of information between the national Parliaments and the European Parliament”, according to its website. The IPEX provides a legislative database and all the information and documentation that NPs might need to participate in EU affairs. One good example of the extent to which IPEX can help those NPs willing to be involved under the EWS is the section called “Documents with high activity”, which “refers to documents attracting a high degree of interest from national parliaments. This interest is calculated according to a pre-defined formula which takes into account the number of adopted reasoned opinions, documents submitted through the political dialogue or other documents adopted by national parliaments and scrutiny procedures in national parliaments at a given time”.<sup>8</sup>

Parliamentary civil servants involved in inter-parliamentary cooperation within the EU, because of the information and expertise they provide, are essential for the contribution of NPs at any level, and independently of the mechanism employed to give their say. With regard to the EWS, it simply would have been impracticable without the liaison officers in Brussels and IPEX.

“The Lisbon Treaty seems to have favoured technical expertise and administrative advice in multiple ways” (Christiansen, Griglio and Lupo, 2021: 10). One question that remains

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<sup>8</sup> Available at <https://secure.ipex.eu/IPEXL-WEB/document/highActivity>.

to be answered in order to evaluate the democratic impact of the status of NPs as multi-level actors within the EU is whether this empowerment of the national chambers has reinforced only some legislative officials as opposed to the national parliamentarians, as assumed by the “bureaucratisation thesis” proposed by Christiansen, Högenauer and Neuhold, (2014), Neuhold and Högenauer (2016) and Winzen (2014), among others.

According to the evidence gathered by the Observatory of Parliaments after the Lisbon Treaty (OPAL) research project: “The initial impression – yet to be confirmed through more substantive research – here is not encouraging from a democratic theory perspective: whereas the involvement of national parliaments in EU decision making was meant to reduce the ‘democratic deficit’ by giving national MPs a greater role in European affairs, it may actually lead to the creation of new bureaucratic networks and thereby empower administrative actors rather than elected representatives. If one takes into account the complexity and the reduced transparency stemming from the inclusion of yet another set of institutions in the EU decision-making process, the potential of the treaty changes to provide a significant improvement regarding the ‘democratic deficit’ appears to be in question” (Christiansen, Högenauer and Neuhold, 2014: 136).

Furthermore, Neuhold and Högenauer have demonstrated that liaison officers remain agents of their respective NPs. The network they collectively constitute is focused on information exchanges, as opposed to an emerging epistemic community with its own values and shared beliefs, which would have been problematic in democratic terms; this network located within the EP is a “‘hub of information trading’, where each individual liaison officer could be seen as constituting a ‘hub of information exchange’ between his or her institution, other parliaments and the European arena” (Neuhold and Högenauer, 2016: 241).

Beyond the criticality of inter-parliamentary cooperation, national chambers need to adjust and implement their internal procedures and practices for the preparation of their respective opinions within the framework of the EWS, and bureaucratisation is expected not only on the transnational level, but also domestically within each national chamber to discriminate and scrutinise the EU legislative proposals and many other documentation received on EU affairs (Christiansen, Högenauer and Neuhold, 2014). “Delegation to administrators is quite extensive in most parliaments, where staff plays a role in pre-identifying relevant EU issues, provide substantive, subsidiarity and procedural advice and often assist with the drafting of (reasoned) opinions, mandates and resolutions” (Högenauer, 2021: 6).

**Table 3.** The role of staff in EU affairs scrutiny

		(Pre)selection	Subsid. adv.	Procedural adv.	Drafts
A	EU	x	x	x	(x) assists political
B Lo	EU	x	x		(x) on request
	SC	x		x	
B Up	EU	x		x	
	SC	(x) mostly MPs		x	
BG	EU	x	x	x	x
HR	EU	x	x	x	x
	SC	x	x	x	
CY	EU	x	x	x	x
CZ Lo	EU	x	x	x	x
	SC	x			x
CZ Up	EU		x	x	x
DK	EU	x	x	x	x
	SC	x	x		x
EST	EU	x	x	x	x
	SC			x	x
FIN	EU		x	x	x
	SC		x	x	x
F UP	EU	x	x	x	x
	SC			x	
D Lo	EU	x	x	x	
	SC	x with group staff		x	x with group staff
D Up	EU	x		x	
	SC			x	
GR	EU	x	x	x	x
H	EU	x	x	x	x
	SC		x		x
IRL	EU	x	x	x	x
	SC		x		x
I Up	EU	x	x	x	x
	SC	x		x	(x) only Pol. Dialogue
LV	EU		x	x	x
LT	EU	x	x	x	x
	SC	x	x	x	x
L	EU	x	x		x
	SC	x	x		x
M	EU		x	x	x
NL Lo	EU	x	x	x	x
	SC	x	x	x	x
NL Up	EU			x	x
	SC			x	x
PL Lo	EU	x	x	x	x
PL Up	EU		x	x	x
P	EU			x	(x) on request
	SC	x	x	x	
RO Up	EU	x	x	x	x
	SC	x	x	x	x
SK	EU	x	x	x	x
SL Lo	EU	x	x	x	x
SL Up	EU	x	x	x	x
E	EU	x	x	x	x
S	EU			x	x (not EWS)
	SC		x		x

Note: EU refers to the EAC staff or the main EU staff unit; SC to the staff of sectoral committees. Lo=Lower House; Up=Upper House.

Source: Högenauer (2021: 14).

In addition, concerning changes caused by the EWS within each national parliament, it was hypothesised that “working parliaments can adapt much more easily to the challenge of scrutinizing large numbers of documents under the EWS than speaking parliaments” and that “the increased workload is likely to give rise to a greater involvement of sectoral

committees, replacing the past ‘monopoly’ of European Affairs Committees (EACs) over EU affairs” (Christiansen, Högenauer and Neuhold, 2014: 127). As far as the support of EU experts is concerned, at present, most national chambers have a “central EU unit” in charge of assisting all committees with regard to EU affairs (Högenauer, 2021: 11). See also Table 4.

**Table 4.** Staff support for sectoral committees

	Only EAC	Mainly EAC	Regularly sectoral	Fully mainstreamed
No access to EU experts		Austria* (Occasionally support from EAC); Latvia;	Poland Upper;	Dutch Upper
EAC staff and/or research/legal support sectoral	Slovenia Upper	Malta Slovenia Lower	Bulgaria (some); Estonia; France Upper; German Upper; Italy Portugal; Slovakia	Belgium Senate; (Normal sectoral receive training); Luxembourg
A joint central EU unit		Croatia; Czech Lower; Hungary; Romanian Senate; Spain	Cyprus; Czech Denmark; Greece;	Belgium Lower; Lower;
Sectoral have own EU experts			Bulgaria (some); Finland, Lithuania	Dutch Lower; Sweden

\*Both Houses scrutinize jointly.

Source: Högenauer (2021: 9).

Christiansen, Högenauer and Neuhold (2014) proposed the following variables, among others, that might be associated with greater activity under the EWS: not having strong mandating powers (NPs that can mandate their ministers would probably see the EWS as superfluous); being a second chamber (weaker chambers are more in need of new roles); being a NP of a small country (with fewer resources); or being a NP with a minority government or with parties with weak discipline (“Parliaments in countries with majority governments and strong party discipline are expected to be less likely to adapt, as the majority party avoids open conflicts with its government”) (Christiansen, Högenauer and Neuhold, 2014: 128). The evidence gathered by the OPAL research project verified these

expectations in some cases, but not in others. There is statistically significant support for the following two associations; both upper chambers and national parliaments with minority governments are more likely to submit ROs (Huysmans, 2019: 444).

Regarding capacities, as it has been previously noted, “what matters is not so much the *individual* capacity of national parliaments to act on EU legislative proposals, but their ability to *collectively* respond through the EWS mechanism” (Christiansen, Högenauer, Neuhold, 2014: 126). This mainly occurs through the NPRs, IPEX and COSAC.

Besides, as previously indicated in this study too, the activation of national parliaments/chambers on the supranational level is not dependent on capacities, rather on the political will of MPs. This applies to both the EWS and any other channel of participation at the disposal of the EU NPs’ both on the national and the Union level.

“The issuance of reasoned opinions is not simply a matter of chamber capacity or bureaucratic development, but that it is a political decision made by the members of national parliamentary chambers” (Williams, 2016: 561). “It is MPs’ incentives and awareness which encourage proactive scrutiny in the EWS”, and “the more the EU is contested inside parliamentary chambers, the greater the incentives of their members to raise their voices against legislative proposals of the European Commission (...) the EWS is politicised with respect to the pro-/anti-EU cleavage (Gatterman and Hefftlar, 2015: 323 and 320).

The EWS is instrumental for the European Commission and for national parliaments; “NPs are using it for political reasons, claiming subsidiarity breach even if there isn’t one, in order to express their opposition to the proposed EU policy solutions” (Borońska-Hryniewiecka, 2021: 4). Regarding NPs, this might be done in coordination with their respective national governments to reinforce their negotiation strategy on the

supranational level. Surely, “it seems unlikely that parliament will send a reasoned opinion to the Commission without the consent of its government” (De Wilde, 2012: 9).

In light of all this, some experts have still seen the EWS’s glass as being half full.

Cooper (2019) is one of the most enthusiastic about this institutional innovation: “With their new powers under the EWM national parliaments have in effect become a collective actor within the EU. Arguably, alongside the Council of Ministers (Council) and the European Parliament (EP), national parliaments collectively form a ‘virtual third chamber’” (Cooper, 2012: 441).

Borońska-Hryniewiecka (2017b: 146) views the EWS as an “opportunity structure” and she affirms that “although advisory in function, the EWS can be qualified as a mechanism of multilevel governance which allows parliamentary actors to keep track of EU legislative processes and to channel their policy-related concerns upstream to the European Commission”.

Cooper (2019) defends that “the democratic legitimacy of the EU has been enhanced if the EWM has increased the influence of national parliaments within the EU’s legislative process” through “political bargaining” to stop a new EU law, or alternatively through “policy arguing” to influence its contents (Cooper, 2019: 920-921).

It is true that, even if the opinions that can be authored by NPs within the framework of the EWS should be confined to new legislative proposals and the principle of subsidiarity, national parliaments receive more information from the early stages of the EU decision-making processes under the EWS and they have the chance to work more closely with the supranational institutions, and conjointly with other national parliaments. They tend to work more cooperatively on EU issues with their national governments nowadays too.

Also, Article 5 of Protocol No. 2 obliges the European Commission to use qualitative and, if possible, quantitative data to elaborate on the reasons why a draft legislative act is respectful with the principle of subsidiarity. Thus, “the EWS can be perceived as a multilevel accountability-enhancing mechanism through which the Commission justifies its proposed policy solutions before the forum of national and regional parliaments under the threat of consequences (i.e. ‘yellow’ or ‘orange card’)” (Borońska-Hryniewiecka, 2017b: 146)

**Textbox 5.** Article 5 of Protocol No. 2 on the application of the principles of subsidiarity and proportionality

Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

Summing-up, the main positive effects of the EWS are (See also Annex IV):

- Improved access to information. “Active scrutiny by individual NPs of their governments is important in ensuring democratic input into the EU policy process, as the principal actors in the EU are still national governments that take decisions in the European Council and the Council. The main problem facing legislatures is how to reduce informational asymmetry in order to facilitate effective parliamentary accountability. This is where the constitutional rules adopted at the European level are potentially of great significance, particularly so for those member states where the legislative branch has traditionally been weak in relation to the executive even independent of European integration” (Raunio, 2005: 2).
- The EWS also delivers valuable information from the side of the NPs. “In this regard, it may provide an important signal to a variety of actors about bargaining difficulties that will arise later during negotiations in the Council, the EU’s most important legislative institution, but also infamous for its lack of transparency”. Furthermore, “the Commission is not unaware of this signal nor ignorant of its meaning”; “it benefits from extra information if this may lead to the conservation of scarce resources and precious negotiating time. This, in turn, may lead to an increase in decision-making efficiency and can partly explain why the Commission has been willing to grant more powers to NPs” (van Gruisen and Huysmans, 2020: 452 and 453). Hence, “As such, ROs can be considered as an expanded form of pre-consultations. The Commission can then anticipate bargaining difficulties in the Council and therefore save precious time and resources” (van Gruisen and Huysmans, 2020: 469).
- The EWS could improve the justification of EU proposals by the European Commission and the conversation pertaining to them with national parliaments.

“The main added value of this system is not to veto Brussels, but to make it justify and explain new legislation” (Borońska-Hryniewiecka, 2021: 5). Also, Raunio (2005: 6) and Raunio (2010: 13), among others.

- Likewise, “if subsidiarity checks are not followed by a RO, they often result in a submission of an opinion within the broader framework of “political dialogue” (PD), where the chamber is able to communicate its political views more generally, raising issues of the proposed policies’ potential policy impact, aspects of proportionality and legal basis” (Borońska-Hryniewiecka, 2021, 6).
- The comments provided by NPs through the reasoned opinions and the contributions they submit under Protocol No. 2 might be considered by the European Commission and/or the EU legislator (Council and Parliament) and enrich EU laws (Borońska-Hryniewiecka, 2017b; Cooper, 2019).
- The EWS has opened a process of Europeanisation of national parliaments that is more noticeable concerning certain parliamentary officials (Cooper, 2012). The Europeanisation of parliaments may have reached the regional assemblies involved in the EWS (Borońska-Hryniewiecka, 2017a).
- National parliaments have gained the capacity to supervise EU issues. “Many parliaments have reported a reinforcement of their administrative capacity for EU affairs scrutiny since the mid-2000s, and no parliament has reported a decrease. These investments take different forms, from the hiring of NPRs, via a reinforcement of the EAC staff to the hiring of policy experts for sectoral committees or a strengthening of the research and legal units” (Högenauer, 2021: 17).
- The EWS is an opportunity for learning. “It is precisely thanks to the functioning of the EWS that the then “expert knowledge” has become widely shared by NPs

and their MPs as representatives of the people. In other words, the parliamentary capacity to keep track of EU policy-making through the involvement in the EWS resulting in only three yellow cards, has created a democratic transformative effect which –ideally– should translate into improving the perception of EU regulations (i.e. output legitimacy) as desirable, necessary and reasonable” (Borońska-Hryniewiecka, 2021: 8).

- With regard to the relationship between NPs and national governments on EU law-making, “the EWS has strengthened the domestic accountability link between NPs and national governments by obliging the executives, who hitherto dominated the EU legislative process, to pay greater attention to their parliamentary principals, the logical motivation of parliamentary majorities remains to support their governments in EU affairs” (Borońska-Hryniewiecka, 2021: 8). For instance, the interviews conducted within the French and Polish national parliaments show that “in case of the Polish and French lower chambers the EWM should not be regarded as an arena where the parliament *de facto* acts independently of its government” (Borońska-Hryniewiecka, 2020: 9-10). “Three out of the four ROs issued by Sejm explicitly supported the government’s position thus confirming the informal, inter-institutional arrangement whereas subsidiarity scrutiny is done in compatibility with the executive where the positions are usually accorded (interview, May 14, 2019)” (Borońska-Hryniewiecka, 2020: 9). “National parliaments did not turn against their governments, they expressed their support by adopting reasoned opinions” (Fromage and Kreilinger, 2017: 144).
- The EWS has encouraged cooperation between national parliaments and collaboration between NPs and the European Parliament (e.g., Fromage and Kreilinger, 2017: 144). “The implementation of the right of national parliaments

to scrutinize compliance with the principle of subsidiarity, on the basis of the so-called early warning system (EWS), has partially improved relations between the EU institutions and national parliaments” (European Parliament, 2021: 23).

Besides, some of the most frequent critiques of the EWS are the following:

- The EWS is unnecessary, because EU laws do not breach subsidiarity. “The image of Commission and other EU institutions, constantly stretching and overstepping the limits of their powers, is also somewhat outdated” (Raunio, 2010: 6).
- The EWS is too restricted. It even excludes the discussion about the legal basis and proportionality with regards to EU draft legislative acts (Jančić, 2015).
- The EWS is ineffective. National parliaments only prompted three “yellow cards” from 2010 to 2021, and in response to them, the European Commission withdrew only one legislative proposal, but not on subsidiarity grounds (Fromage and Kreilinger, 2017; Rozenberg, 2017).
- The EWS is also ineffective or redundant in terms of the influence of NPs over the content of EU laws. “It should also be conceded that the changes to the legislative outcomes could have happened even in the absence of the EWS” (Cooper, 2019: 937).
- The EWS might also “be viewed as largely ineffective because the national parliaments exhibit diffusion pathways that are largely congruent with existing institutional cleavage lines” (Malang and Leifeld, 2021: 887).
- NPs have lost interest in the EWS. “Because NPs have since Lisbon more tools to monitor and potentially influence the agenda-setting phase of the EU legislative process, and learned over the last decade how ineffective these tools can be, the

NPs we researched increasingly focus on other phases in the decision-making process than the agenda-setting phase” (De Ruiter, Neuhold, 2021: 108).

- The EWS is a burden for national parliamentarians that might “distract their attention and resources away from the two core parliamentary functions, i.e., controlling governments and connecting to citizens” (Borońska-Hryniewiecka, 2021: 2). In fact, “national parliaments should not be relegated to subsidiarity watchdogs since this does not strengthen either one of the two core functions parliaments are supposed to perform” (De Wilde, 2012: 13). Also, Raunio (2010: 10), among others.
- The EWS echoes Eurosceptic national parliamentarians. “Contrary to the findings of Williams (2016), public attitudinal euroscepticism is found to have no statistically significant effect on the issuance of ROs. Rather, electoral euroscepticism as measured by the election of eurosceptic Parliaments is found to lead to significantly more ROs” (Huysmans, 2019: 432). In connection with this, the general working expectation is straightforward: “the only parties that probably would like to have debates about Europe are those that are more in tune with their electorate over Europe and internally cohesive about integration. These parties are normally either populist parties or parties located at the extremes of the left-right dimension that can for example use such debates to criticize the government for not defending the national interests well enough” (Raunio, 2011: 315).
- The EWS has largely negative effects for democracy within the EU; it impairs the channels of delegation from EU citizens to both national and supranational institutions as well as accountability from the EU level. “One argument against the EWM is that the European Parliament has the task of parliamentary oversight at EU level, not national parliaments”, and “in the discussion about the EWM,

there have so far been no convincing arguments why it would be a good thing for national parliaments to bypass their own governments in EU decision-making” (De Wilde, 2012: 8). “NPs could steer away from their duties of democratic control over the national government and this could dilute the principal-agent link as envisaged under the national constitutional rules. This link, however, is the key vehicle for ensuring a measure of accountability of the Council” (Jančić, 2015: 972).

- The EWS does not reach citizens. “It seems likely that the EWM and subsidiarity will receive very little media coverage and that the majority of citizens will not be aware of its contribution to democratic governance in the EU” (De Wilde, 2012: 16). Moreover, “the Europeanization of NPs could also weaken the link between NPs and the national electorates (...) The closer NPs are implicated in the EU institutional architecture, the looser their contact with the constituency might become. After all, the problem of absenteeism among national parliamentarians during the period when they held double mandates in the EP and in NPs, is partly what caused the fundamental structural reform of the EP” (Jančić, 2015: 973).
- Its opportunity costs are high. “By steering parliamentary activity towards the EWM, attention and resources are drawn away from parliaments’ two core functions: controlling governments and connecting to citizens (...) national parliaments should prioritize either major issues in European integration or those EU matters that are otherwise domestically more salient. In practice, this means focusing more on the European Council where major questions about Treaty revision, enlargement, foreign policy and macro-economic governance are effectively decided. In light of the euro crisis, the main efforts of national parliaments in EU affairs should be directed at the European Semester in which

the macro-economic topics at the heart of democratic governance and citizens' concerns are dealt with: economic growth, employment, inflation, taxation and redistribution. With such a focus, parliaments would be much more effective in controlling their national governments and in communicating with citizens in both national and EU affairs" (De Wilde, Raunio, 2016: 311-312). Likewise, much the same conclusion has been reached by Raunio (2010: 14), among others.

- Majoritarian preferences and perceptions of national parliamentarians might be consistent with this. Kinski (2020), following Raunio (2011), examines the following five national parliamentary roles in EU politics: scrutinisers (national level), watchdogs of subsidiarity, networkers (interparliamentary cooperation), transposers (of EU legislation) and communicators of EU issue by analysing parliamentary debates and interviewing NPs. This expert found that NPs clearly give priority to their roles of scrutinisers and communicators in EU politics, especially in the 66 interviews conducted, rather than in public. "First, in both speech behavior and attitudes, surveyed MPs clearly prioritize their role as national scrutinizer. First and foremost, they see themselves as controlling their government's EU negotiations and scrutinizing EU documents" (Kinski, 2020: 19).
- Finally, the EWS is a faulty playground on which to trigger the "solidarity card".

In short, it must be stated that the EWS is a mechanism at the disposal of just NPs to deliver opinions about EU legislative proposals only on subsidiarity grounds. It might have helped to further elaborate from the side of the European Commission the justification to act on the EU level when the EU competence is not exclusive, rather shared or supporting (or when the principle of subsidiarity applies within the political

system of the EU), but the Commission and the Court of Justice of the EU have always acted in a satisfactory manner to protect subsidiarity.

Moreover, representative democracy has been enhanced on the supranational level from the 2014 European election onwards. If “the need to involve NPs in the European integration process stems from the idea that parliamentarization at the EU level –through the establishment of the EP – does not suffice to legitimize European integration” (De Ruiter and Neuhold, 2021: 94), it is time to reconsider it.

Furthermore, “rather than engaging in the activities made possible by the EWM, it makes more sense for national parliaments to strengthen the oversight of their own government’s actions in EU decision-making and then let the government represent the parliamentary majority in Brussels” (De Wilde, 2012: 9).

In addition, the European Commission appears to have already thought about all of this. Under Article 9 of Protocol No. 2 on the application of the principles of subsidiarity and proportionality: “the Commission shall submit each year to the European Council, the European Parliament, the Council and national Parliaments a report on the application of Article 5 of the Treaty on European Union”. The Commission delivered these *Annual reports on subsidiary and proportionality* from 2010 to 2017. But, meaningfully, in 2018, it started to author just one single integrated *Annual report on the application of the principles of subsidiarity and proportionality and on relations with national parliaments*.

Likewise, as is already known, the contents of the opinions issued by national parliaments in the framework of the EWS are varied and not restricted to the scrutiny of subsidiarity. The European Commission only counts as a “reasoned opinion” those statements by a national parliament/chamber submitted under Protocol No. 2 in which it is argued that the EU draft law is not respectful of the principle of subsidiarity. This means that the

Commission does not discriminate between the rest of the inputs delivered by NPs within the framework of the EWS and those outside it.<sup>9</sup> On the contrary, *Connect, the European Parliament's database of national Parliaments' documents* uses the extra category “contributions”, as opposed to “reasoned opinions”, under Protocol No. 2.

Let's move on now to the next section of the study for further clarifications on this.

#### **4. National parliaments and Better Regulation**

Better Regulation is a longstanding EU initiative that aims to improve both the contents and the processes through which EU laws are developed and implemented.

The three following major changes are crucial concerning this emblematic programme from the 2014 European election onwards:

1. the Juncker Commission positioned this initiative at the core of its political agenda and the von der Leyen Commission rephrased it, placing greater emphasis on the added value of the EU legislation, among other improvements, but maintaining its centrality;
2. the greater democratic legitimacy of the President of the Commission (elected for the first time by the European Parliament in 2014);

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<sup>9</sup> All opinions delivered by national parliaments and the replies given to them by the European Commission can be retrieved from: Secretariat-General\_National Parliament opinions and Commission replies [https://ec.europa.eu/dgs/secretariat\\_general/rerelations/rerelations\\_other/npo/index\\_en.htm](https://ec.europa.eu/dgs/secretariat_general/rerelations/rerelations_other/npo/index_en.htm).

3. the enhanced coordination among the three supranational institutions that are key to EU law-making: the European Parliament, the Council and the Commission.<sup>10</sup>

The Juncker Commission took office supporting the idea of working hand in hand with NPs. In fact, among other aspects, the mission letter to First Vice-President Frans Timmermans considered a policy priority: “coordinating and strengthening the interaction of all Commissioners with national Parliaments as a way of bringing the European Union closer to citizens and forging a new partnership with national Parliaments” (Juncker, 2014: 4). But things have changed dramatically in EU politics since that point, arguably for the better, with regards to EU democratic credentials. To offer the comparison with the von der Leyen Commission at the starting point of both mandates, the mission letter to Maroš Šefčovič, Vice-President for Interinstitutional Relations and Foresight since 2019, clearly downgrades NPs, which are referred to on the list of priorities as follows: “You will be in charge of relations with national Parliaments, advisory bodies and the European Ombudsman”. Also meaningful are the first three priorities for Vice-President for Interinstitutional Relations (von der Leyen, 2019: 4-5):

1. *You will support me in strengthening the special partnership with the European Parliament. You will ensure that the Framework Agreement between the two institutions is respected, and you will be responsible for relations with the Conference of Committee Chairs;*
2. *In light of my support for a right of initiative for Parliament, and my commitment that, when Parliament, acting by a majority of its members, adopts resolutions requesting that the Commission submit legislative proposals, the College will*

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<sup>10</sup> See also the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (13 April 2016).

*respond with a legislative act, in full respect of the proportionality, subsidiarity and better law making principles. I want you to work closely with all other Commissioners on Parliament resolutions requesting that the Commission submit legislative proposals;*

- 3. You will be responsible for the overall implementation of the Interinstitutional Agreement on Better Law-Making, and will lead the interinstitutional discussions on annual programming.*

Better Regulation or Better Law-Making is a combination of principles and processes that apply to legislative proposals and EU legislation in force. The main objectives of this agenda are making the implementation of EU laws easier, eliminating unnecessary “administrative burdens” associated with EU legislation, improving EU laws in terms of clarity and coherence, and enhancing the transparency of the EU legislative procedures.

One paramount motto is doing less, but more efficiently. This obliges the European Commission to act under the policy priorities agreed at the beginning of each five-year institutional cycle and updated annually in its annual working plan, which is not only a document of programming, but also of accountability on the part of this EU institution as far as the commitments expected to be executed the previous year are concerned.

This is not the place to examine the Better Regulation Agenda, rather the intent is to understand how obsolete the EWS looks under its light. Accordingly, three aspects of this programme must be considered. Firstly, Better Regulation fosters participation at any stage of the EU legislative procedures, comprising the EU legislation in force, as has been pointed out, from any national institutions, including regional and local authorities, social partners, any other interest group, firms or individual citizens, including non-EU nationals. The only requisite to contribute is to have something to say to help to improve the content and/or the implementation of EU laws.

Secondly, the European Commission is indeed working harder to show how subsidiarity is respected. Focusing on ex-ante impact assessments, the 2016 Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making states in point 12: “impact assessments should cover the existence, scale and consequences of a problem and the question whether or not Union action is needed. They should map out alternative solutions and, where possible, potential short and long-term costs and benefits, assessing the economic, environmental and social impacts in an integrated and balanced way and using both qualitative and quantitative analyses. The principles of subsidiarity and proportionality should be fully respected, as should fundamental rights. Impact assessments should also address, whenever possible, the "cost of non-Europe" and the impact on competitiveness and the administrative burdens of the different options, having particular regard to SMEs ("Think Small First"), digital aspects and territorial impact. Impact assessments should be based on accurate, objective and complete information and should be proportionate as regards their scope and focus”.

Thirdly, “National Parliaments occupy a fairly peripheral place” (Listorti *et al.*, 2019). This is evident in both the European Commission’s Communication “Better regulation for better results - An EU agenda” (2015) and its Better Regulation Guidelines published in 2017, where it is noticeable that NPs are sidelined in favour of stakeholders.

In the most recent Communication on “Better regulation: Joining forces to make better laws” (2021) there is an entire section on better communication with stakeholders and the general public. One of the commitments assumed by the European Commission is to “provide feedback to consultations swiftly and offer follow-up updates; more accurately reflect the input of local, regional and national authorities” (European Commission,

2021a: 20). However, there is no single specific mention of national parliaments. This omission speaks loudly and clearly.

In contrast, more attention was paid to NPs during the Juncker mandate with regard to subsidiarity. A milestone can indeed be identified. It was the publication in 2018 of the report prepared by the Task Force on Subsidiarity, Proportionality and “Doing Less more Efficiently”, which was a team coordinated by the first Vice-President Frans Timmermans. This group of people worked to develop one of the five scenarios (the so-called “Doing less more efficiently”) presented for debate by the Juncker Commission in the *White paper on the future of Europe* published in March 2017 as a response to the result of the Brexit referendum of 23 June 2016.

The report by the Task Force, which apart from Timmermans also included three members from the national parliaments of Austria (Reinhold Lopatka), Bulgaria (Kristian Vigenin) and Estonia (Toomas Vitsut), along with three members from the Committee of the Regions, did mention NPs (67 times in 22 pages). Included in this report is a subsection entitled “National Parliaments & more effective subsidiarity control”. Among other recommendations to improve the EWS, the following three were presented:

- “A common method (“assessment grid”) should be used by the Union’s institutions and bodies and by national and regional Parliaments to assess issues linked to the principles of subsidiarity (including EU added value), proportionality and the legal basis of new and existing legislation” (p. 11)
- “The Commission should apply flexibly the Treaty-based 8 weeks deadline for national Parliaments to submit their reasoned opinions. This flexibility should take account of common holiday periods and recess periods, while allowing the Commission to respond as far as possible, within 8 weeks of receiving each opinion. The Commission should reflect in an appropriate way the reasoned

opinions it receives from national Parliaments and feed-back it receives from regional Parliaments with legislative powers in its annual report on subsidiarity and proportionality. It should also make available to the co-legislators, in a comprehensive and timely manner, information about proposals where significant concerns have been raised in respect of subsidiarity” (p. 13)

- “Protocol No. 2 TEU/TFEU should be revised when the opportunity arises to allow national Parliaments 12 weeks to prepare and submit their reasoned opinions and to express fully their views about subsidiarity, proportionality and the legal basis (conferral) of the proposed legislation. National Parliaments should consult regional Parliaments with legislative powers where their competences under national law are concerned by the proposal for EU legislation” (p. 13)

More generally, beyond the EWS, the Task Force Report referred to “active subsidiarity” as “a new way of working” (pp. 8-9); according to the Juncker Commission, “to denote an improved engagement with all stakeholders and local and regional authorities throughout the entire policy cycle” (European Commission, 2018: 6).

The contents of the Task Force Report, including the above recommendations on the EWS, are interesting to evaluate the state-of-the-art common demands of NPs regarding subsidiary and which improvements the Juncker Commission considered acceptable at that point. See also the 2018 Communication “The principles of subsidiarity and proportionality: Strengthening their role in the EU's policymaking”; especially, page number 8.

However, as has been previously emphasized in this section, current trends on EU better law-making are not focused on national parliaments; this encompasses the EWS, which at present is not a main concern from the point of view of the European Commission, among other supranational bodies.

This notwithstanding, the European Parliament continues to be an ally of the national parliaments with regard to their demands for a larger involvement in the EU policy processes. In its *Resolution on European Union regulatory fitness and subsidiarity and proportionality - report on Better Law Making covering the years 2017, 2018 and 2019*, the Parliament requests for necessary improvements within the EWS not only to circumvent its weaknesses as an instrument for the subsidiarity scrutiny, which force national parliaments' committees to dedicate "excessive amounts of time to technical and legal assessments with short deadlines", but also to truly achieve "the goal of holding a deeper political discussion on European politics" (European Parliament, 2021: no. 4).

Furthermore, the Parliament emphasizes that "the trend in the number opinions and reasoned opinions in the period 2007-2019 demonstrates that national parliaments are increasingly asking for more political dialogue and a greater involvement in the debate on EU policies, and are therefore dedicating less time to the normative analysis of EU legislative proposals" (European Parliament, 2021: no. 15).

To end with, a similar position has been recently underlined by the COSAC's Working group on the role of the national parliaments in the EU, which states that the "control of the principle of subsidiarity was not operating satisfactorily" and "it was carried out less and less by the national parliaments"; moreover, "this prerogative only allows them to impose a veto" and "this is no longer enough for them" (COSAC, 2022).

## **5. Conclusion: playing the EWS game after the 2014 European election:**

### **Does it pay off?**

The Laeken Declaration on the future of the European Union, Annex I of the Presidency Conclusions of the European Council meeting in Laeken on 14 and 15 December 2001,

which decided to convene the Convention of the Future of Europe, recognised that “the national parliaments also contribute towards the legitimacy of the European project”, and it posed the following questions about the role of NPs within the EU: “Should they be represented in a new institution, alongside the Council and the European Parliament? Should they have a role in areas of European action in which the European Parliament has no competence? Should they focus on the division of competence between Union and Member States, for example through preliminary checking of compliance with the principle of subsidiarity?” (European Council, 2001: 23).

First the Convention on the future of Europe, followed by the Treaty of Lisbon as the result of the last process of treaty reform, decided to formally enhance NPs, mainly as collective subsidiarity watchdogs through the EWS, which was introduced under Protocol No. 2.

The EWS is a window of opportunity for national chambers to elaborate, within an eight-week period following the submission by the European Commission of a new legislative proposal, an opinion on said EU draft legislative act, on subsidiarity grounds. If there is enough coordination among NPs to reach the threshold set to trigger a so-called yellow card [“one third of all the votes allocated to the national Parliaments” or “a quarter in the case of a draft legislative act submitted on the basis of Article 76 of the Treaty on the Functioning of the European Union on the area of freedom, security and justice”, Article 7(2) of the abovementioned Protocol], the Commission is obliged to reconsider the proposal, although not necessarily to modify or withdraw it.

This mechanism might be considered a failure, bearing in mind that only 498 reasoned opinions (ROs) or opinions arguing that an EU legislative proposal failed to abide by the principle of subsidiarity were issued by the 41 national chambers entitled to interact with the supranational institutions within the framework of the EWS from the entry into force

of the Treaty of Lisbon in December 2009 until 3 September 2021. The threshold to trigger a yellow card was achieved on just three occasions, and the Commission only decided to remove the proposal once, and for reasons other than for a subsidiarity infringement.

However, this would not be the entire truth. There is plenty of evidence of the positive effects of the EWS, both in terms of the efficiency of the EU legislative procedures (the EWS is above all an informative mechanism for the European Commission that advances eventual blockage of proposals later on in the Council) and with regard to the Europeanisation of NPs. These institutions gained information and expertise that are necessary to scrutinise the activities of the national governments within the EU Council.

Notwithstanding, the net impact of the EWS on the democratic credentials of the EU as a multilevel representative democracy is dubious. This is because the cost of opportunity for NPs of following up and examining the EU draft legislation, which may imply paying less attention to their main functions in EU affairs, namely controlling the national executive branch and communicating with citizens.

The first assessments of the EWS were focused on both its redundancy (basically, the Commission is good at applying subsidiarity from the early stages of EU law-making), and the burden it poses for national parliamentarians. The latter tend to be more interested in giving advice and positioning on the content of the proposal rather than playing the nasty and technical role of watchdogs of subsidiarity, as might have been expected.

In fact, in 2006, the European Commission had already informally launched the Political Dialogue (PD) to accept all kind of inputs on EU initiatives from NPs, beyond subsidiarity. Not surprisingly, the activities of most NPs within the framework of the PD also increased from 2010 on, arguably benefitted by their adaptations to the new EWS

game, in terms of internal procedures and resources, and enhanced interparliamentary cooperation.

On one hand, recent analyses emphasise the centrality of the parliamentary administrations to explain the general performance of NPs on EU affairs. This applies to both EU experts working within national chambers and civil servants involved in interparliamentary cooperation. The NP's representatives at the European Parliament (or liaison officers), who engage in continuing exchanges with one another, with officers of the European Parliament, and the secretariat of the Conference of Parliamentary Committees for Union Affairs (COSAC) are particularly relevant. It can easily be said that there would have been no actual EWS without the contribution of the liaison officers.

On the other hand, the point is that the EWS became obsolete, because of the developments in the representative dimension of democracy on the Union level achieved since 2014. Among other improvements, the 2014 and 2019 European elections upgrade the connection between citizens and the European Commission. Consequently, while both the Barroso Commission and the Juncker Commission, for different reasons, wished for a special partnership with NPs, the von der Leyen Commission is more focused on the partnership with the European Parliament, and it does not recognise a special place for NPs under the refreshed Better Regulation initiative.

Furthermore, these concluding remarks do not put the focus on the different pitfalls of the EWS and the comprehensible ambition of MPs to have a greater say on the EU agenda. Since 2010, valuable adaptations have been introduced within the NPs to improve their involvement in EU affairs through the array of channels of participation at their disposal, both on the national and the Union level. Nevertheless, the EWS not only consumes an excessive amount of time and other resources of the NPs, but it is also perilous from the point of view of the Member States, political and social actors and citizens that are in

favor of a more social Europe. The only three yellow cards that have been triggered refer to EU draft laws on workers' rights or the EU budget, and data on all the ROs issued say that the EWS divides the EU Member States into the following groups: net contributors and recipients of the EU budget.

Besides, many MPs want to do more on EU affairs, and they have the legitimacy to do so effectively. During its early stages, this study sought to propose some ideas to help surmount the difficulties that MPs face in order to be heard throughout the EU policy-making processes, also beyond the subsidiarity scrutiny of the EWS. After examining the state of the art, both in the academic literature and the debates within the NPs and different supranational bodies, one line of work would have necessarily been focused on inter-parliamentary cooperation, which is indispensable for NPs to carry out all their functions on EU issues, on the national, transnational and supranational levels, indistinctively.

Article 10 of Protocol No. 2 on the Role of national parliaments in the EU determines that COSAC shall “promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy”.

Since the entry into force of the Lisbon Treaty, interparliamentary cooperation gained momentum through new conferences and institutionalised forums, such as the Interparliamentary Conference on Common Foreign and Security Policy and Common Security and Defence Policy (CFSP Conference, 2012), the Conference on Economic Stability, Coordination and Governance (SECG Conference, 2013) and the Joint Parliamentary Scrutiny Group for Europol (JPSG, 2016) (Fromage, 2018: 4).

“Forums for interparliamentary cooperation all function on a permanent basis, on the basis of rules of procedure, meet occasionally in a large assembly setting. They operate on the basis of consensus, and the EP has a predominant role within them. On the other hand, they also entail important differences, as each of them has a different composition” (Fromage, 2018: 22).

Interparliamentary cooperation is important for NPs, but it should be rationalised at this point. For instance, the establishment of a “stronger, common, permanent secretariat in charge of managing the schedule of all initiatives for interparliamentary cooperation” has been proposed as a reasonable solution to reduce complexity, institutional discontinuity and overlaps, as well as to increase efficiency and transparency (Fromage, 2018: 22-23).

As interparliamentary cooperation is a fundamental source of information on EU policies at all levels, this continues to apply. This notwithstanding, in a nutshell, with regard to the EWS as a mechanism for NPs in order to play the role of subsidiarity watchdogs in the transnational and the supranational arenas of the EU, this study: first, recognises its contribution to the Europeanisation of NPs and the qualification of parliamentary officials and MPs as EU actors. Next, it quite simply recommends its demise, in the writing of the Treaties or by inaction, for the sake of coherence in terms of the ongoing politicisation of the European Commission and the prospects for greater solidarity in the EU.

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- Annual reports on the application of the principles of subsidiarity and proportionality and relations with national Parliaments (2018-2020)

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- Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC)

<http://www.cosac.eu/en>

- EUR-Lex\_Commission proposals

<https://eur-lex.europa.eu/statistics/legal-acts/2020/commission-proposals-statistics-by-type-of-act.html>

- European Commission\_Secretariat-General\_National Parliament opinions and Commission replies

[https://ec.europa.eu/dgs/secretariat\\_general/relations/relations\\_other/npo/index\\_en.htm](https://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm)

- European Parliament\_Connect-European Parliament's database of national Parliament documents

<https://www.europarl.europa.eu/relnatparl/en/subsidiarity-and-ipd/welcome>

- Inter-parliamentary Information Exchange System (IPEX)

<https://secure.ipex.eu/IPEXL-WEB/document>

# Annexes

- **Annex I. Protocol on the role of national parliaments in the European Union**
- **Annex II. Protocol on the application of the principles of subsidiarity and proportionality**
- **Annex III. Reasoned opinions on EU legislative proposals issued by national chambers (1 December 2009 – 3 September 2021)**
- **Annex IV. Chorus of expert voices**

## PROTOCOL (No 1)

### ON THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

RECALLING that the way in which national Parliaments scrutinise their governments in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State,

DESIRING to encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on draft legislative acts of the Union as well as on other matters which may be of particular interest to them,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community:

#### TITLE I

#### INFORMATION FOR NATIONAL PARLIAMENTS

##### *Article 1*

Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to national Parliaments upon publication. The Commission shall also forward the annual legislative programme as well as any other instrument of legislative planning or policy to national Parliaments, at the same time as to the European Parliament and the Council.

##### *Article 2*

Draft legislative acts sent to the European Parliament and to the Council shall be forwarded to national Parliaments. For the purposes of this Protocol, 'draft legislative acts' shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act. Draft legislative acts originating from the Commission shall be forwarded to national Parliaments directly by the

Commission, at the same time as to the European Parliament and the Council. Draft legislative acts originating from the European Parliament shall be forwarded to national Parliaments directly by the European Parliament. Draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank shall be forwarded to national Parliaments by the Council.

### *Article 3*

National Parliaments may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity, in accordance with the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality. If the draft legislative act originates from a group of Member States, the President of the Council shall forward the reasoned opinion or opinions to the governments of those Member States. If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the reasoned opinion or opinions to the institution or body concerned.

### *Article 4*

An eight-week period shall elapse between a draft legislative act being made available to national Parliaments in the official languages of the Union and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure. Exceptions shall be possible in cases of urgency, the reasons for which shall be stated in the act or position of the Council. Save in urgent cases for which due reasons have been given, no agreement may be reached on a draft legislative act during those eight weeks. Save in urgent cases for which due reasons have been given, a ten-day period shall elapse between the placing of a draft legislative act on the provisional agenda for the Council and the adoption of a position.

### *Article 5*

The agendas for and the outcome of meetings of the Council, including the minutes of meetings where the Council is deliberating on draft legislative acts, shall be forwarded directly to national Parliaments, at the same time as to Member States' governments.

### *Article 6*

When the European Council intends to make use of the first or second subparagraphs of Article 48(7) of the Treaty on European Union, national Parliaments shall be informed of the initiative of the European Council at least six months before any decision is adopted.

### *Article 7*

The Court of Auditors shall forward its annual report to national Parliaments, for information, at the same time as to the European Parliament and to the Council.

### *Article 8*

Where the national Parliamentary system is not unicameral, Articles 1 to 7 shall apply to the component chambers.

## TITLE II

### INTERPARLIAMENTARY COOPERATION

### *Article 9*

The European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union.

### *Article 10*

A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. Contributions from the conference shall not bind national Parliaments and shall not prejudice their positions.

PROTOCOL (No 2)

**ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND  
PROPORTIONALITY**

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union,

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty on European Union, and to establish a system for monitoring the application of those principles,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

*Article 1*

Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty on European Union.

*Article 2*

Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.

*Article 3*

For the purposes of this Protocol, ‘draft legislative acts’ shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act.

#### *Article 4*

The Commission shall forward its draft legislative acts and its amended drafts to national Parliaments at the same time as to the Union legislator. The European Parliament shall forward its draft legislative acts and its amended drafts to national Parliaments. The Council shall forward draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank and amended drafts to national Parliaments. Upon adoption, legislative resolutions of the European Parliament and positions of the Council shall be forwarded by them to national Parliaments.

#### *Article 5*

Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

#### *Article 6*

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers. If the draft legislative act originates from a group of Member States, the President of the Council shall forward the opinion to the governments of those Member States. If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the opinion to the institution or body concerned.

## *Article 7*

1. The European Parliament, the Council and the Commission, and, where appropriate, the group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, shall take account of the reasoned opinions issued by national Parliaments or by a chamber of a national Parliament. Each national Parliament shall have two votes, shared out on the basis of the national Parliamentary system. In the case of a bicameral Parliamentary system, each of the two chambers shall have one vote.

2. Where reasoned opinions on a draft legislative act's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the draft must be reviewed. This threshold shall be a quarter in the case of a draft legislative act submitted on the basis of Article 76 of the Treaty on the Functioning of the European Union on the area of freedom, security and justice. After such review, the Commission or, where appropriate, the group of Member States, the European Parliament, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, may decide to maintain, amend or withdraw the draft. Reasons must be given for this decision.

3. Furthermore, under the ordinary legislative procedure, where reasoned opinions on the noncompliance of a proposal for a legislative act with the principle of subsidiarity represent at least a simple majority of the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the proposal must be reviewed. After such review, the Commission may decide to maintain, amend or withdraw the proposal. If it chooses to maintain the proposal, the Commission will have, in a reasoned opinion, to justify why it considers that the proposal complies with the principle of subsidiarity. This reasoned opinion, as well as the reasoned opinions of the national Parliaments, will have to be submitted to the Union legislator, for consideration in the procedure: (a) before concluding the first reading, the legislator (the European Parliament and the Council) shall consider whether the legislative proposal is compatible with the principle of subsidiarity, taking particular account of the reasons expressed and shared by the majority of national Parliaments as well as the reasoned opinion of the Commission; (b) if, by a majority of 55 % of the members of the Council or a majority of the votes cast in the European Parliament, the legislator is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal shall not be given further consideration.

## *Article 8*

The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article 263 of the Treaty on the Functioning of the European Union by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber thereof. In accordance with the rules laid down in the said Article, the Committee of the Regions may also bring such actions against legislative acts for the adoption of which the Treaty on the Functioning of the European Union provides that it be consulted.

### *Article 9*

The Commission shall submit each year to the European Council, the European Parliament, the Council and national Parliaments a report on the application of Article 5 of the Treaty on European Union. This annual report shall also be forwarded to the Economic and Social Committee and the Committee of the Regions.

**Table AIII.** Reasoned opinions on EU legislative proposals issued by national chambers (1 December 2009 – 3 September 2021)

Member State	Chamber	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Frequency
<b>Austria</b>	Bundesrat	2	1	3	6	3	0	6	6	3	0	1	31
<b>Austria</b>	Nationalrat	1	0	1	0	1	0	0	0	0	0	0	3
<b>Belgium</b>	Sénat de Belgique / Belgische Senaat	0	1	0	0	0	0	0	0	0	0	0	1
<b>Belgium</b>	Chambre des Représentants de Belgique / Belgische Kamer van volksvertegenwoordigers	0	2	4	2	0	0	0	0	0	0	0	8
<b>Bulgaria</b>	Narodno Sabranie	0	2	0	0	0	0	3	0	0	0	0	5
<b>Croatia</b>	Hrvatski Sabor	0	0	0	0	1	0	1	0	0	0	0	2
<b>Cyprus</b>	Vouli ton Antiprosopon	0	1	3	1	0	0	0	0	0	0	0	5
<b>Czech Republic</b>	Senát	1	0	0	2	1	1	3	0	1	0	0	9
<b>Czech Republic</b>	Poslanecká sněmovna	1	0	0	3	0	1	4	1	4	0	1	15
<b>Denmark</b>	Folketing	2	2	3	1	1	0	4	0	2	0	1	16
<b>Estonia</b>	Riigikogu	0	0	0	1	0	0	1	0	0	0	0	2
<b>Finland</b>	Eduskunta	0	1	1	1	0	0	0	0	0	0	0	3
<b>France</b>	Sénat	3	1	7	4	2	0	9	7	2	0	1	36
<b>France</b>	Assemblée nationale	0	1	0	1	1	0	0	2	1	0	0	6
<b>Germany</b>	Bundesrat	1	2	5	3	0	0	0	3	0	0	0	14
<b>Germany</b>	Bundestag	1	1	1	0	0	0	0	6	2	0	0	11
<b>Greece</b>	Vouli ton Ellinon	0	0	0	3	0	0	0	0	0	0	0	3
<b>Hungary</b>	Országgyűlés	0	0	0	1	0	1	2	2	0	0	1	7
<b>Ireland</b>	Houses of the Oireachtas: Dáil and Seanad Éireann	0	1	0	3	0	0	7	3	4	0	0	18
<b>Italy</b>	Camera dei Deputati	0	1	0	0	0	0	0	0	0	0	0	1
<b>Italy</b>	Senato della Repubblica	1	3	1	2	2	0	3	1	1	0	0	14
<b>Latvia</b>	Saeima	0	0	1	1	0	0	1	0	0	0	0	3
<b>Lithuania</b>	Seimas	2	0	1	6	1	0	1	0	0	0	0	11
<b>Luxembourg</b>	Chambre des Députés	3	6	3	3	1	0	2	0	0	0	0	18
<b>Malta</b>	Kamratad-Deputati	0	1	1	5	0	0	5	0	1	0	1	14

<b>Netherlands</b>	Eerste Kamer	2	4	7	4	0	0	6	2	0	0	1	26
<b>Netherlands</b>	Tweede Kamer	2	4	5	6	2	1	3	2	1	0	0	26
<b>Poland</b>	Sejm Rzeczypospolitej Polskiej	2	5	3	2	0	0	2	2	0	0	0	16
<b>Poland</b>	Senat Rzeczypospolitej Polskiej	4	4	2	2	0	0	2	4	0	0	0	18
<b>Portugal</b>	Assembleia da República	0	1	1	1	0	0	1	0	0	0	0	4
<b>Romania</b>	Senatul	0	1	0	3	0	0	1	2	0	0	0	7
<b>Romania</b>	Camera Deputaților	0	3	0	2	0	1	2	1	0	0	0	9
<b>Slovakia</b>	Národná rada	0	3	2	0	0	1	2	0	0	0	0	8
<b>Slovenia</b>	Državni svet	0	0	0	0	0	0	0	0	0	0	0	0
<b>Slovenia</b>	Državni zbor	0	0	0	1	0	0	0	0	0	0	0	1
<b>Spain</b>	Las Cortes Generales: Senado de España and Congreso de los Diputados	0	2	2	5	1	1	0	2	0	0	0	13
<b>Sweden</b>	Riksdag	3	10	21	13	2	1	12	4	12	0	2	80
<b>United Kingdom</b>	House of Lords	2	1	1	5	0	0	0	1	1	0	0	11
<b>United Kingdom</b>	House of Commons	3	3	4	6	3	0	1	1	2	0	0	23
	<b>Total</b>	36	68	83	99	22	8	84	52	37	0	9	498

Source: Author's own creation, with data gathered from the *Annual reports on subsidiarity and proportionality* (2010-2017), and the *Annual reports on the application of the principles of subsidiarity and proportionality and on relations with national parliaments* (2018-2020), authored by the European Commission.

**Table AIV. Chorus of expert voices**

Year	Complete reference	Voices
2021	Christiansen, Thomas, Elena Griglio and Nicola Lupo, “Making representative democracy work: the role of parliamentary administrations in the European Union”, <i>The Journal of Legislative Studies</i> , 10.1080/13572334.2021.1976948	<ul style="list-style-type: none"> <li>➤ In the post-Lisbon era, the debate on the Europeanisation of national parliaments has highlighted the important role played by parliamentary staff. The ‘bureaucratisation thesis’, in particular, has highlighted the correlation between the growing relevance of national parliaments in the EU and the empowerment of legislative bureaucrats rather than elected politicians (Winzen, 2014). The Lisbon Treaty seems to have favoured technical expertise and administrative advice in multiple ways (p. 10)</li> <li>➤ Whereas the basic roles deal with forwarding and/or summarising information (administrative assistant), more advance functions involve the legal or procedural advice and opinion drafts following debates (analyst), the coordination between Houses in bicameral parliaments or at the transnational level (coordinator), the provision of content-related advice and ex-ante opinion drafts (advisor) (Högenauer and Neuhold 2015, p. 345). The ‘new’ administrative tasks gained after Lisbon have further enriched the list of bureaucratic roles, including elements of agenda-setting consisting in the preselection of documents for parliamentary debates (agenda shaper, Högenauer et al., 2016, p. 94 f.) and instances of research, linked to the use of scientific methods, the adoption of codes of conduct and the publication of documentation (Fitsilis, 2018, p. 47 ff). Based on these observations, it has been argued that the levels of bureaucratization and transnationalisation of national parliaments may be assumed as an indicator of their degree of Europeanisation in the EU (Christiansen et al., 2014) (p. 11)</li> <li>➤ Different political and administrative cultures, distinctions between unicameral and bicameral legislatures, or between unitary and federal systems, distinct traditions with regard to transparency, interaction with organised interests and civil society and the degree of politicisation of the public administrations all matter when it comes to assessing the tensions that administrations have to confront. Due to these developments, parliamentary administrations in Europe today are completely transformed from the rather ‘basic’ structures that were originally created in earlier waves of constitutionalisation (p. 15)</li> </ul>
2021	Högenauer, Anna-Lena, “The mainstreaming of EU affairs: a challenge for parliamentary administrations”, <i>The Journal of Legislative Studies</i> , 10.1080/13572334.2021.1965364	<ul style="list-style-type: none"> <li>➤ The first studies on the role of parliamentary administrations in EU affairs largely focused on the extent of delegation to administrations and the mechanisms of political control over bureaucrats (Christiansen et al., 2014; Högenauer &amp; Christiansen, 2015; Strelkov, 2015; Winzen, 2014). These studies show – for a larger number of cases – that delegation to administrators is quite extensive in most parliaments, where staff plays a role in pre-identifying relevant EU issues, provide substantive, subsidiarity and procedural advice and often assist with the drafting of (reasoned) opinions, mandates and resolutions. However, while the studies attest administrators the potential to play a positive agenda-setting role, they also agree that this does not lead to a ‘runaway bureaucracy’ or tensions between the political principals and the administrative agents. The reason for this is that political control over bureaucrats is quasi-automatic in the case of parliaments, where most steps ultimately require a decision by a committee or the plenary. In other words, the final decision rests with politicians, and how closely they follow administrative guidance depends on how well the staff anticipates the preferences of the committee (p. 6)</li> <li>➤ However, these studies de facto focus primarily on EACs and EAC staff, which were a logical starting point (...) the main goal of this article is to provide a better ‘map’ of the units involved and their tasks (p.6). The 2021 survey of</li> </ul>

		<p>national parliaments shows that the trend towards the involvement of sectoral committees in EU affairs scrutiny continues. In many cases, sectoral committees play a supporting role and are meant to provide policy area specific substantive expertise to the EAC. In other cases, EU affairs scrutiny follows a mainstreamed model where sectoral committees are responsible for scrutiny (or certain types of scrutiny) in their policy areas (p. 16). In those cases where sectoral committees play a role in EU affairs, their staff usually becomes Europeanised whether there are EU experts or not (pp. 16-17)</p> <ul style="list-style-type: none"> <li>➤ Many parliaments have reported a reinforcement of their administrative capacity for EU affairs scrutiny since the mid-2000s, and no parliament has reported a decrease. These investments take different forms, from the hiring of NPRs, via a reinforcement of the EAC staff to the hiring of policy experts for sectoral committees or a strengthening of the research and legal units (p. 17)</li> <li>➤ While some parliaments report that party group staff take on specific roles, the presence of such staff also varies greatly across countries. There is thus a need for further research, especially into the number and role of personal assistants and party group staff in different parliaments and the division of labour between ‘political’ staff and the general administration (p. 17)</li> </ul>
<b>2021</b>	Brack, Nathalie, <i>The Parliaments of Europe: full part actors or powerless spectators? A state of play 2010–2020 Policy</i> , Document requested by the European Parliament's Committee on Citizens' Rights and Constitutional Affairs, 10.2861/90987	<ul style="list-style-type: none"> <li>➤ As mentioned in the study, the EWS has not been a tremendous success so far for many reasons. All of these reasons cannot be addressed but a few improvements could be envisaged, all leading to more flexibility: <ul style="list-style-type: none"> <li>- The idea of a green card is promising. It would give NPs the opportunity to express positive ideas and suggest legislation to the Commission instead of being only the watchdogs of subsidiarity. NPs could thereby submit constructive proposals to the Commission in order to influence positively the European debate and the Commission's power of initiative</li> <li>- The eight-week deadline is very short for NPs to analyze the draft proposal, send a reasoned opinion and coordinate their actions with other NPs to trigger the procedure. This problem has been acknowledged by the EU institutions, notably the EP. A greater flexibility (either through the way to calculate the 8 weeks, on excluding holidays, or through a more formal extension of the period of time NPs have) in that respect would certainly help NPs</li> <li>- Finally, it has been pointed out that there is big difference of rhythm between EU and national politics. In addition to a slow-down of the EU legislative process, the longer duration of the legislative procedures makes it difficult for NPs to follow up closely what is happening but also calls for an involvement of NPs at other moments in time than at the very beginning of the process. A more flexible approach is needed, be it through a late card or another informal way to allow NPs to give, either individually or collectively, some input at a later stage of the decision-making process (p. 63)</li> </ul> </li> </ul>
<b>2021</b>	Borońska-Hryniewiecka, Karolina, “Beyond Legislative Veto Power: The Transformative Effects of the Early Warning for Subsidiarity Control Ten Years Down the Line”, <i>Política y Sociedad</i> , 58(1), e71934, 10.5209/poso.71934	<ul style="list-style-type: none"> <li>➤ In its response to the Report of the Task Force on Subsidiarity, Proportionality and “Doing Less more Efficiently” published in July 2018 under the chairmanship of the former First Vice-President Frans Timmermans, the Commission obliged to produce aggregate responses where four or more NPs issue ROs on EU legislative proposal but where their number falls short of the threshold required to trigger a “yellow card”. The replies will be made available to the public and the co-legislators (Commission, 2018) (p. 4)</li> <li>➤ As much as the EWS has strengthened the domestic accountability link between NPs and national governments by obliging the executives, who hitherto dominated the EU legislative process, to pay greater attention to their parliamentary principals, the logical motivation of parliamentary majorities remains to support their governments in EU affairs. Empirical studies confirm that the EWS is usually used for the same purpose (p. 5)</li> </ul>

		<ul style="list-style-type: none"> <li>➤ More importantly, as shown in the case of the second and third yellow card, although NPs comments surpassed subsidiarity, and referred both to conferral and proportionality, the Commission replied to them. In this sense, subsidiarity scrutiny becomes a starting point which –although itself does not bring tangible legislative effects– stimulates a broader communication between NPs and the Commission (p. 7)</li> </ul>
2021	Malang, Thomas and Philip Leifeld, “The Latent Diffusion Network among National Parliaments in the Early Warning System of the European Union”, <i>Journal of Common Market Studies</i> , 59(4), 873–890, 10.1111/jcms.13135	<ul style="list-style-type: none"> <li>➤ Overall, we not only find qualitative evidence that there were influential parliaments in the process of the three yellow cards that put their opinions forth early in the process, but we also find statistical associations that help to explain tie formation in the diffusion network (...) The separation on the economic dimension between net recipients and contributing states seems to be the most consistent explanation. Generally, the relative compartmentalisation of the diffusion network into distinct communities with distinct identities and without much cross-cluster influence might explain the small number of yellow cards that have materialised up to now (pp. 886-887)</li> <li>➤ Regarding the fundamental question if the EWS decreased the democratic deficit of the EU, the fact that we found meaningful patterns of opinion diffusion could be interpreted as a slight increase of the representative function of the EU (via national parliaments). However, the normative added value of this new institution may be questioned if the Early Warning System basically exhibits the same interest constellations as the Council voting of the respective national governments. Combined with previous insights that the party channel is one premium way of influence among national parliaments (Malang et al., 2019), the Early Warning System could be viewed as largely ineffective because the national parliaments exhibit diffusion pathways that are largely congruent with existing institutional cleavage lines (p. 887)</li> </ul>
2021	De Ruiter, Rik and Christine Neuhold, “Subsidiarity watchdogs and the kennel of trilogues: when do they bark? The role of National Parliaments in trilogue negotiations”, <i>Journal of European Public Policy</i> , 28(1), 93–111, 10.1080/13501763.2020.1859593	<ul style="list-style-type: none"> <li>➤ In some cases, the government is under a legal obligation to follow the position of their parliaments in EU negotiations (p. 96). The Austrian and Dutch parliaments were selected because they are, respectively, examples of parliaments with and without a mandating system (...) both parliaments also differ when it comes to their scrutiny practices of EU affair (p. 98). Contacts between MEPs and MPs from the same party or member state are hardly used to share information on trilogue negotiations (p. 99). NPs do not have structural access to the four column documents, which provides an insight in the (evolving) positions of each EU institution involved in the trilogue negotiations. However, the German Bundesrat has privileged access to this information because its members need to be represented in Council Working groups when Laender competences are affected by the proposed EU legislation. The Bundesrat also has extensive information rights vis-à-vis the German federal government. This information is often shared in the network of liaison officer (p. 102)</li> <li>➤ Interviewees stress that it is much easier to have access to information on trilogue negotiations if the EP rapporteur is from the same member state as the liaison office (pp. 102-3). EU liaison officers again play a vital role because also have a network of contacts within the other EU institutions (p. 103). Interviewees reported on a lack of parliamentary attention for trilogue negotiations by NPs with a mandating system (p. 103). The Italian Senate organizes hearings with the EP rapporteur and/or shadow rapporteurs present in trilogues. These hearings take place via video conferencing or through visits to Brussels of Italian senators (p. 104). The Romanian parliament sends all its opinions on specific legislative dossiers to the respective EP rapporteurs and also actively put forward their position to their own permanent representation. In Portugal, Portuguese MEPs can be invited to parliament (p. 104). Eurosceptic parties are rarely present in committee meetings, and do not submit written questions and, hence, do not ask for information on what is discussed in trilogues in order to signal to the electorate – as part of a vote-seeking strategy – that they are critical on what is decided at the EU level (p. 106)</li> </ul>

		<ul style="list-style-type: none"> <li>➤ It seems that some MPs are interested in monitoring decision-making in trilogues and act upon information on these decision-making processes when their goal is to affect policy. In other words, MPs seem to be policy seeking actors (Strøm, 1990) who aim to steer the negotiation position of the government during trilogue meetings in the direction of their own convictions (pp. 105-6)</li> <li>➤ Through the institutionalization of the Lisbon tools, both mandating as well as non-mandating NPs have increasingly become networkers, forging more closer links with other NPs through the EU liaison network (p. 108). Because NPs have since Lisbon more tools to monitor and potentially influence the agenda-setting phase of the EU legislative process, and learned over the last decade how ineffective these tools can be, the NPs we researched increasingly focus on other phases in the decision-making process than the agenda-setting phase (p. 108). MPs are often just not aware when they should ‘bark’ to their own government (p. 109)</li> </ul>
2020	<p>Borońska-Hryniewiecka, Karolina, “National parliaments as ‘multi-arena players’ in the European Union? Insights into Poland and France”, <i>Journal of European Integration</i>, 10.1080/07036337.2020.1800672</p>	<ul style="list-style-type: none"> <li>➤ Three out of the four ROs issued by Sejm explicitly supported the government’s position thus confirming the informal, inter-institutional arrangement whereas subsidiarity scrutiny is done in compatibility with the executive where the positions are usually accorded (interview, May 14, 2019). In a similar way, clerks at the Assemblée nationale admitted that ROs are rather used as a support for the government’s position and hardly ever constitute a ‘political problem’ for the executive (interview March 10, 2019). These findings indicate that in case of the Polish and French lower chambers the EWM should not be regarded as an arena where the parliament de facto acts independently of its government ‘who no longer holds a hierarchical gate-keeper position’ (cf. Auel and Neuhold 2017, 1550) (pp. 9-10)</li> <li>➤ The most general finding is that the French chambers have a greater aspiration to act as ‘European players’ and ‘policy shapers’ (Rozenberg and Heffler 2015) by exerting certain influence over the course of the European game than their Polish counterparts. While there are differences between the chambers, Sénat and Assemblée nationale are on average more active in issuing ex-ante scrutiny opinions and tend to be more assertive and autonomous in their formulation than the Sejm and Senat. French parliament also acts more independently vis-à-vis the executive at the EU-level – in the arena of political dialogue – and undertakes pro-active steps with regard to EU policy-shaping within the framework of the GC. Cross country similarities have been detected only with regard to lower chambers’ activity in the EWM. In both cases, participation is rather low and the positions are accorded with the executive which still holds the gate-keeper position (pp. 11-12)</li> <li>➤ Interestingly, parliamentary resources as a factor conditioning the actual level of activities do not explain the findings either as the French and Polish lower chamber’s EACs have a similar number of MPs (48 and 43 accordingly) and exactly the same number of administrative staff (12 people). Moreover, none of the interviewed heads of EAC secretariats admitted that administrative resources pose any constraint to their chamber’s EU-oriented activity (p. 12)</li> <li>➤ Although this study considered only four chambers and the presented data do not lend themselves to easy generalization, one is certain: what matters in conditioning the NPs to become ‘multi-arena players’ in the EU is not so much their institutional strength but whether their MPs are willing to make use of their rights, prerogatives and emerging opportunities (cf. Auel and Christiansen 2015). For this reason, we need more qualitative studies (pp. 13-14)</li> </ul>

2020	Kinski, Lucy, “What role for national parliaments in EU governance? A view by members of parliament”, <i>Journal of European Integration</i> , 10.1080/07036337.2020.1817000	<ul style="list-style-type: none"> <li>➤ It draws on plenary debates on crucial decision cases of European integration in the lower houses of Austria, Germany, Ireland and the United Kingdom (UK): the Constitutional Treaty (TCE), the Lisbon Treaty (LT) and the European Financial Stability Facility (EFSF) as the first Eurozone rescue measure. Further, it relies on data from 66 interviews with MPs from these parliaments. Interviewees come from the European Affairs and Budget Committees (p. 2). In the debates, MPs signal clear priorities: To scrutinize and to communicate come before all other roles (p. 9). The interviewed MPs (...) are much more pessimistic regarding the effectiveness of their roles as Networkers and Watchdogs at the time of interview around 6 years after the introduction of the EWM. MPs describe the process as a rather sobering experience and show themselves disillusioned with the initial hopes for national parliaments to have a direct role at the EU level (p.9)</li> <li>➤ Three findings stand out: First, in both speech behavior and attitudes, surveyed MPs clearly prioritize their role as national Scrutinizer. First and foremost, they see themselves as controlling their government’s EU negotiations and scrutinizing EU documents. While they are generally rather content with the oversight institutions they have put in place in recent years, they perceived the intergovernmental emergency reaction to the Eurozone crisis as a threat to their routine scrutiny procedures. Second, not only scholars see a pivotal role for national parliaments in communicating EU affairs. Parliamentarians think so, too. They want to demonstrate that they ‘own’ the EU governance process and relay it back to their voters. This is true for both Europhile mainstream and far-left MPs, even though the latter tend to see themselves as more policy-critical. MPs from the Eurosceptic right equate EU communication with EU propaganda and outright refuse such a role. Third, what MPs say and think about their roles is not erratic, but relates to party strategic and institutional factors (pp. 18-19)</li> </ul>
2020	Huysmans, Martijn and Philippe van Gruisen, “Substance and subsidiarity: the economic dimension of conflict in the early warning system”, <i>Journal of European Integration</i> , 10.1080/07036337.2020.1869956	<ul style="list-style-type: none"> <li>➤ First, we confirm with a comprehensive and quantitative test that there are indeed substantive dimensions of conflict in the EWS: it is not just about subsidiarity, but also about substance. Second, we find that having similar levels of economic development is the most important factor in explaining co-issuance of ROs. Finally, we find an upward trend in co-issuance over the period 2010–2018, suggesting that coordination among national Parliaments is getting more effective as a process of transnationalization takes place (p. 2). Economic development can affect preferences across proposals because it correlates with being a net receiver or contributor of EU funds (Zimmer, Schneider, and Dobbins 2005), and with regulatory adjustment costs (p. 14)</li> <li>➤ Taken together, our results paint a picture of the EWS as a deeply political mechanism. Rather than a technical tool to monitor subsidiarity, it is being used by national Parliaments to signal substantive opposition to policies they dislike. Considering several likely dimensions of conflict together, this opposition seems to run most strongly along lines of economic development. This is an important finding for the Commission to anticipate when drafting new legislation (pp. 2-3). Parliaments are indeed learning to coordinate and (...) the EWS may become more effective in the future. If the trend continues, one can expect more yellow cards to be issued over time (p. 14)</li> </ul>
2020	Van Gruisen, Philippe and Martijn Huysmans, “The Early Warning System and policymaking in the European Union”, <i>European Union Politics</i> , 21(3), 451–473, 10.1177/1465116520923752	<ul style="list-style-type: none"> <li>➤ The Commission is not unaware of this signal nor ignorant of its meaning. Proposals that receive ROs have a higher probability of being withdrawn, even in the absence of a yellow card. Furthermore, we show that the Commission makes a rational cost-benefit calculation: given its belief, the Commission is more likely to withdraw if the proposal is not very salient (low benefits) and the costs of policy adoption are high (p. 453). The Commission is clearly not the only actor that benefits from the signalling value of ROs. Given that the Council is by far the most nontransparent</li> </ul>

		<p>institution, the EP, but also policy-makers and other interest groups, may use ROs from parliaments to improve their information on the likelihood of policy success (p. 468)</p> <ul style="list-style-type: none"> <li>➤ Moreover, our results have important implications that are less intuitive. A more binding EWS, such as under the proposal for a red card, could upgrade parliaments to a collective veto player in EU policymaking. However, adding veto players may result in more legislative gridlock (Tsebelis, 2002) and hence decrease the EU’s ability to legislate efficiently. Contrary to this logic, our results suggest that the EWS in its current form may actually increase the efficiency of the legislative process. While the Commission already holds pre-negotiations with governments and, as such, selectively proposes policy that is supported widely, NPs may in the end instruct their governments to oppose, even though the government has shown support in pre-consultations. As such, ROs can be considered as an expanded form of pre-consultations (p. 469)</li> </ul>
<p><b>2019</b></p>	<p>Cooper, Ian, “National parliaments in the democratic politics of the EU: the subsidiarity early warning mechanism, 2009–2017”, <i>Comparative European Politics</i>, 17, 919–939, 10.1057/s41295-018-0137-y</p>	<ul style="list-style-type: none"> <li>➤ Sceptics argued on democratic grounds that national parliaments should not become EU-level actors because this would blur the traditional lines of representation and accountability wherein it is only national governments that represent the Member States at the EU level (p. 925). Some have argued that the EWM is a distraction for national parliaments, whose attention should be focused on their more important role of scrutinizing their governments’ conduct of EU affairs (...) others have claimed that no such trade-off exists, because national parliaments’ early engagement in the EWM prompts them to devote greater attention and resources to EU issues, making them more effective in overseeing EU affairs beyond subsidiarity questions (...) but the question at issue in this article is whether the EWM, such as it is, has had a positive impact on democracy at the EU level rather than at the national level (p. 925)</li> <li>➤ The objecting national parliaments may be said to have succeeded if they have exerted some influence over the legislative process either by persuading the Commission to amend the proposal, or by influencing the position of the Council or the EP in a way that affects the final version of the completed legislation (...) The Commission is the most responsive procedurally, in that it replies in writing to every RO (and political dialogue contribution), but the least responsive substantively, in that it generally refuses to give any credence to their subsidiarity arguments. The Council is the reverse: it is the most responsive substantively, in that the concerns of national parliaments will often be reflected in Council debates and the final Council position, but the least responsive procedurally, in that the Council as a body does not communicate with national parliaments and its internal deliberations are largely opaque. Finally, the EP is fairly responsive in procedural terms to national parliaments, engaging with them in the form of inter-parliamentary dialogue, but in substantive terms is generally unreceptive to their subsidiarity arguments as it is often more favourable to EU action. Therefore, the most likely conduit for the influence of national parliaments on EU legislation (and where the researcher should look for it) is to influence their respective governments’ positions in the Council, which may be subsequently reflected in Council debates, the final Council position in inter-institutional negotiations, and ultimately, the final legislation (p. 932)</li> </ul>

<p><b>2019</b></p>	<p>Huysmans, Martijn, “Euroscepticism and the Early Warning System”, <i>Journal of Common Market Studies</i>, 57 (3), 431–447, 10.1111/jcms.12809</p>	<ul style="list-style-type: none"> <li>➤ Parliaments do not respond in a statistically significant way to fluctuation in public euroscepticism. Stated differently, only where eurosceptic voters actually elect eurosceptic parliamentarians does one see robustly more Reasoned Opinions (p. 432). When comparing different Parliaments and controlling for all the other variables in the regression, those in countries with higher levels of public euroscepticism would actually be less likely to issue ROs (p. 441). The distinction between attitudinal euroscepticism and electoral euroscepticism is indeed relevant for political outcomes. The finding that eurosceptic Parliaments issue more ROs has an implication for the alleged democratic deficit in the EU (Crombez, 2003; Follesdal and Hix, 2006). Indeed, one of the key desiderata of a democratic system is responsiveness of legislative output to voters’ preferences (Crombez, 2003) (p. 442). ROs issued under the EWS are found to constitute a new channel of responsiveness, provided voters are willing to express their eurosceptic attitudes by electing eurosceptic national Parliaments (p. 443)</li> <li>➤ Contrary to the findings of Williams (2016), public attitudinal euroscepticism is found to have no statistically significant effect on the issuance of ROs. Rather, electoral euroscepticism as measured by the election of eurosceptic Parliaments is found to lead to significantly more ROs (p. 443). Chambers of Parliaments with minority governments are significantly more likely to issue ROs (...) while it seems plausible that institutionally strong chambers of Parliament would send more ROs, there is no statistically significant support for this (...) upper chambers of bicameral Parliaments are found to be significantly more likely to send ROs (p. 444). To the extent that the EU has become salient in national elections, the EWS can be said to have increased responsiveness to voters, and hence decreased the alleged democratic deficit of the EU (p. 444). The EWS may have increased the wisdom of EU decision-making by giving national Parliaments a means to send signals directly to the Commission (p. 444)</li> </ul>
<p><b>2018</b></p>	<p>Auel, Katrin and Christine Neuhold, ‘<i>Europeanisation of National Parliaments in European Union Member States: Experiences and Best-Practices</i>’, Study for the European Parliament’s Greens/EFA Group</p>	<ul style="list-style-type: none"> <li>➤ Unfortunately, comparative studies on how national parliaments make use of their institutional provisions are still rare. The so far only study providing comparative empirical data on parliamentary activities across all, then, 40 Chambers was conducted in the context of the Observatory of Parliaments after Lisbon (OPAL) research project (Auel et al. 2015a) and included parliamentary statements (resolutions and mandates), plenary debates on EU issues, EAC meetings, hearings with the prime minister and opinions issued in the context of the EWS and the Political Dialogue (p. 14)</li> <li>➤ Some parliaments, with the Finnish Eduskunta being the most notable example, do not regard direct control over EU policy making as the responsibility of national parliaments (Mastenbroek et.al. 2014: 3; 24). Other parliaments, such as the Swedish Riksdag, see it as paramount to contribute to the EWS and as such scrutinize every legislative proposal put forward by the European Commission (Hegeland 2015) (pp. 26-27)</li> <li>➤ Any assessment of the involvement of parliaments in the Political Dialogue or the EWS needs to consider whether such an engagement is indeed desirable. As has been argued in the literature (De Wilde and Raunio 2015), focusing on these, so far also fairly ineffective, new instruments can be time consuming, thus binding scarce parliamentary resources and distracting parliaments from functions that some consider far more important, such as controlling the government and communicating EU politics to the citizens. This is also problematic if much of the scrutiny of documents is being delegated to the parliamentary administration, not least because the latter may lead to a bureaucratization rather than to a parliamentarisation or democratisation: ‘there is indeed the threat that an innovative procedure developed in order to respond to democratic legitimacy concerns, could become a purely bureaucratic routine. The “Political Dialogue” is sometimes neither political nor a dialogue’ (Rozenberg 2017: 24, see also Christiansen et al. 2014) (p. 40)</li> </ul>

<p><b>2018</b></p>	<p>Rasmussen, Mette Buskjaer and Maja Kluger Dionigi, “National Parliaments’ Use of the Political Dialogue: Institutional Lobbyists, Traditionalists or Communicators?”, <i>Journal of Common Market Studies</i>, 56(5), 1108–1126, 10.1111/jcms.12711</p>	<ul style="list-style-type: none"> <li>➤ To test the relationship between parliamentary activism in the political dialogue and institutional strength, we use the so-called OPAL-score, developed by the Observatory of Parliaments after the Lisbon Treaty, to assess national parliaments’ institutional strength in EU affairs. This score ranks national parliaments on a scale from 0 (weak parliaments) to 1 (strong parliaments) and is based on 11 indicators for institutional strength on three main dimensions: access to information, processing of information and oversight strength (for more, see Auel et al., 2015, pp. 60–91). We excluded Portugal from the statistical analysis, as it constitutes an outlier with a total of 956 opinions. To test the relationship between institutional strength and the level of activity in the political dialogue between 2006 and 2014 (based on a total of 2,288 opinions submitted in that period), we used Pearson’s correlation coefficient, based on N=37, with a two-tailed significance test. We do not find a statistically significant correlation between institutional strength and number of opinions submitted to the Commission (p. 1111)</li> <li>➤ What do national parliaments hope to get out of submitting opinions to the Commission? Our qualitative content analysis shows that national parliaments submit opinions to the Commission because they want to (1) influence the Commission’s proposal, (2) control their government, and/or (3) simply be seen to be doing something. These three reasons generate three types of strategies for engagement in the political dialogue: government control, influencing and parliamentary branding (p. 1114)</li> <li>➤ We find that submitting opinions to the Commission is an expression of parliamentary activism in the EU and displays a rich repertoire of institutional actions: influencing, parliamentary branding, and government control (listed in the order of importance). Parliaments’ diverging engagement reflects that they come from very different institutional contexts with different motivations for engaging directly in EU decision-making (...) First, the most dominant strategy at the aggregate level is influencing (the strategy is present in 49 per cent of all 217 opinions), closely followed by parliamentary branding (48 per cent), government control (21 per cent). The three logics of parliamentary involvement in the political dialogue are not mutually exclusive, but supplementary as one or more strategies can be followed simultaneously (...) Second, for many parliaments (48 per cent) the political dialogue is about parliamentary branding, closely resembling the concept of ‘organizational survival’ in the interest group literature (...) Third, our study reveals that being directly involved at the EU level during the policy-making process does not render parliaments’ traditional role of controlling their government redundant. Instead, national parliaments use the political dialogue to improve their domestic scrutiny of EU legislation by seeking out extra information and getting involved at an early stage. Rather than performing a ‘blocking role’ (as is the case of reasoned opinions under the EWS), national parliaments use opinions to play a constructive and pro-active role in the EU (pp. 1123-1124)</li> </ul>
<p><b>2017</b></p>	<p>Rozenberg, Olivier, <i>The Role of National Parliaments in the EU after Lisbon: Potentialities and Challenges</i>, Study commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs at the request of the Committee on Constitutional Affairs of the European Parliament, 10.2861/34319</p>	<ul style="list-style-type: none"> <li>➤ (The EWS) calls for several remarks: <ul style="list-style-type: none"> <li>-It places national parliaments in an implicit role as the protector of national sovereignty. They are indeed supposed to act in view of protecting a principle based on the primacy of the most proximate level of government</li> <li>-Rather oddly, the protocols do not allow for an assessment based on other criteria such as the respect for the principle of proportionality, the share of competencies or the legal base of the act</li> <li>-The procedure mixes the individual and collective logic of participation. Formally, the assessment is individually done but is all the more influential if several individual opinions are convergent. This combination introduces the issue of a possible coordination to reach the thresholds</li> </ul> </li> </ul>

		<p>-The procedure is strictly bound by an eight-week period. While it may seem long for this kind of assessment, it is actually a severe constraint, given: a. the fact that legislatures are not always in session; b. the necessity to validate internally the parliamentary opinion; c. the possibility to organize coordination between assemblies</p> <p>-In federal and heavily decentralised Member States a procedure of involvement of regional parliaments is made possible which creates further coordination costs (p. 18)</p> <ul style="list-style-type: none"> <li>➤ (The EWS) A redundant procedure in the age of better regulation? (p. 25). In short, a system aiming at limiting an excess of legislation at the EU level was implemented precisely at a time when the EU system entered into a period of legislative slowdown. This does not mean that the EWM is responsible for this trend but, in fact, that both phenomena are illustrative of the same global evolution: the EU's increasing frigidity towards legislation as a public policy instrument. Be it assumed or imposed, this new spirit is well captured by the better regulation agenda – one of the top priorities of the Juncker administration. If the principle of subsidiarity is not the only credo of the better-regulation agenda, it is still central to it. Therefore, the progressive implementation of this agenda means that the Commission has also developed tougher internal instruments and procedures aiming at avoiding infringement to the principle of subsidiarity. This has presumably contributed to lower the significance of the EWM. As said by a senior clerk from the French Sénat in 2015: “We don't really need to implement subsidiary checks as the Commission already does the job” (p. 26)</li> <li>➤ The main positive outcome of the EWM is certainly the improvement of the justification put by the Commission regarding the principle of subsidiarity. This covers not only the three cases where a yellow card was raised but also other legislative proposals given the anticipatory effects of the procedure and the official instructions given by the Commission leaders (p. 28)</li> <li>➤ The three yellow cards and other case studies related to the parliamentary procedure for adopting a subsidiarity opinion in many parliaments indicate a high degree of proximity between executive and legislative power at national level. This does not come as a surprise given the highly ingrained feature of parliamentary regimes in Europe. Yet, the frequent fusion between the parliamentary majority and the executive power raises the suspicion that the whole EWM process could be, at least in some cases, manipulated by members of the Council of the EU. This evokes at least two problems: the rupture of the institutional balance within the ordinary legislative procedure and the democratic justifications for associating national parliaments (p. 29)</li> </ul>
2017	Fromage, Diane and Valentin Kreilinger, “National Parliaments’ Third Yellow Card and the Struggle over the Revision of the Posted Workers Directive”, <i>European Journal of Legal Studies</i> , 10 (1)	<ul style="list-style-type: none"> <li>➤ The first assessments of the EWS identified the short time period of eight weeks, a lack of resources, and the division between majority and opposition parties in national parliaments as the main challenges, but more recent studies have shown that stronger political contestation over EU integration in national parliaments as well as salient or urgent draft legislative acts increase the likelihood of issuing a reasoned opinion (...) national parliaments did not turn against their governments, they expressed their support by adopting reasoned opinions (p. 144)</li> <li>➤ The Member States that objected to the proposal when their parliaments submitted reasoned opinions will be unable to stop it in the Council. The same applies to MEPs from these countries in the European Parliament where the institutional position is usually determined by the two major political groups EPP and S&amp;D, which support the proposal. It would be even more difficult for the opponents of the revision of the Posted Workers Directive to mobilise enough MEPs to block it (p. 158)</li> <li>➤ (The third yellow card) merely revealed conflicting positions among Member States and made them more visible. The EWS and the possibility for national parliaments to issue reasoned opinions served as the vehicle for Central and Eastern</li> </ul>

		<p>European Member States to express opposition beyond mere subsidiarity concerns (p. 158). What this third yellow card has highlighted, is the deep division when it comes to the objective to create a 'Social Europe'. While this featured prominently in Jean-Claude Juncker's manifesto and is shared by citizens in Western European Member States, many Central and Eastern Europeans do not perceive this as necessary and largely see it as an attempt at protectionism. The struggle about the revision of the Posted Workers Directive has emerged for exactly these reasons and is far from over yet (p. 160)</p> <ul style="list-style-type: none"> <li>➤ What should not be underestimated however, is the indirect effect of the EWS: The Commission has started to adapt incrementally and the Juncker Commission's focus on priority dossiers that 'make a difference' is a sign of this change, as is the improvement in the replies that it provides to national parliaments (p. 159)</li> <li>➤ Taking a broader perspective, EU policy makers must take into account that many national parliaments wish to have policy influence. They used a provision that merely provides for subsidiarity control to try and change the content of the proposed revision of the PWD (p. 159)</li> </ul>
2017	<p>Miklin, Eric, "Beyond subsidiarity: the indirect effect of the Early Warning System on national parliamentary scrutiny in European Union affairs", <i>Journal of European Public Policy</i>, 24 (3), 366–385, 10.1080/13501763.2016.1146323</p>	<ul style="list-style-type: none"> <li>➤ Through a qualitative comparative case study, this article is the first to take a look beyond the EWS to see what effect it has had on NP scrutiny more generally. Applying a most-similar-systems design, it traces post-Lisbon changes in EU scrutiny for two lower chambers –the Austrian Nationalrat and the Dutch Tweede Kamer (...) In both chambers, the EWS's introduction has increased their engagement with EU issues and has had a positive effect on their attempts to actively shape EU decision-making beyond subsidiarity as well. However, changes indeed have been much larger in the Nationalrat, which had engaged much less actively in EU scrutiny than the Tweede Kamer before 2010 (p. 367)</li> <li>➤ Scholarly expectations were much more modest. Several authors argued that, from a vote-seeking perspective, there are few reasons to expect much parliamentary engagement in the EWS in the first place. Parliamentary resources are restricted, the saliency of subsidiarity questions to voters is low, and ex ante review of Commission proposals is very time-consuming. Hence, it is anticipated that parliamentarians seeking re-election spend their scarce time on short-term national issues that attract voters' attention rather than on the EWS (p. 368). Policy advisors and parliamentary clerks uniformly reported that engagement in the EWS has indeed significantly increased the chamber's level of attention to EU issues and the time they spend on them (...) Of course, these changes cannot be attributed to the EWS alone (p. 376)</li> <li>➤ Several interviewees also stressed that from the outset the EWS was perceived as not just an opportunity, but also an obligation that (a) was never called into question, (b) would require significant procedural changes in parliament to fulfil and (c) would force MPs to pay more attention to European issues in future (...) According to the parliamentary administration, additional pressures arose from inter-parliamentary co-operation within the EWS (p. 378). As subsidiarity amongst parliamentary groups is seen as a problem only seldom, discussions then quickly move on to the general idea behind the proposals and to the position the government should take on them (...) In addition, subsidiarity reports (...) while focusing primarily on subsidiarity, they also contain a concise overview about all new proposals and recent developments regarding 'older' proposals. Overall, compared to the pre-Lisbon era, when the screening of EU documents was left almost exclusively to parliamentary groups themselves, it is now much easier for them to keep track of processes on the EU level, which has reduced the risk of missing potential problems (p. 378)</li> </ul>

<p><b>2016</b></p>	<p>Neuhold, Christine and Anna-Lena Högenauer, “An information network of officials? Dissecting the role and nature of the network of parliamentary representatives in the European Parliament”, <i>The Journal of Legislative Studies</i>, 22(2), 237–256, 10.1080/13572334.2016.1163884</p>	<ul style="list-style-type: none"> <li>➤ The network of liaison officers started in the early 1990s but was initially slow to grow from one representative to include representatives from (almost) all national parliaments in 2015 (p. 242). The close ties with the sending institution – and not with the group of national parliaments as a whole – has a threefold effect on the role of liaison officers: <ul style="list-style-type: none"> <li>- Close contacts within the respective legislature as an information broker: representatives set up their ‘own channels’ they can tap into when requiring information on specific, sectoral issues, but also first-hand information on subsidiarity checks. The familiarity of the liaison officers both with staff and members of parliament (MPs) also ensures a high degree of trust and familiarity (Interview, XV; Interview, XVII)</li> <li>- Comprehensive insight into the respective legislative and political system: as systems of parliamentary control are not only rather complex but also have their unique ways of functioning even when they are modelled on other parliamentary systems (O’ Brennan &amp; Raunio, 2007); it is key that the liaison officer is very much aware of how the respective political system works and which players are responsible for which type of issues at which stage of the policy process</li> <li>- (Administrative) spokesperson on behalf of the respective parliament: the fact that liaison officers are rooted within their respective legislature enables them to speak on behalf of their legislature on an administrative level, not only when it comes to national counterparts of parliamentary representatives but also as regards to EU institutions such as the Commission and the EP. One EAC [European Affairs Committee] clerk (Interview, XIX) brings it to the point by characterising the respective liaison officer as ‘our eyes and ears on specific topics that we define as priorities. For example, if we have a debate here in the House we can ask him to talk to MEPs or the Commission and he does that’ (p. 245)</li> </ul> </li> <li>➤ The tasks of liaison officers are manifold and span several levels of EU governance as follows: <ul style="list-style-type: none"> <li>- Liaison officers work as an ‘information relay’ to their respective national legislature and uphold links to the respective national parliament</li> <li>- They function as a contact point to the EU institutions and as such foster information exchange</li> <li>- They assist MPs in exercising their representational function and contribute to ‘best practice exchanges’ across national parliaments (p. 246)</li> </ul> </li> </ul>
<p><b>2016</b></p>	<p>De Wilde, Pieter and Tapio Raunio, “Redirecting national parliaments: Setting priorities for involvement in EU affairs”, <i>Comparative European Politics</i>, 16(2), 310–329</p>	<ul style="list-style-type: none"> <li>➤ By steering parliamentary activity towards the EWM, attention and resources are drawn away from parliaments' two core functions: controlling governments and connecting to citizens. Faced with ever more demands and opportunities for involvement in EU governance, we provide normative arguments based in democratic theory and drawing from empirical developments in European integration why national parliaments should prioritize either major issues in European integration or those EU matters that are otherwise domestically more salient. In practice, this means focusing more on the European Council where major questions about Treaty revision, enlargement, foreign policy and macro-economic governance are effectively decided. In light of the euro crisis, the main efforts of national parliaments in EU affairs should be directed at the European Semester in which the macro-economic topics at the heart of democratic governance and citizens' concerns are dealt with: economic growth, employment, inflation, taxation and redistribution. With such a focus, parliaments would be much more effective in controlling their national governments and in communicating with citizens in both national and EU affairs (pp. 311-312)</li> <li>➤ It must be emphasized from the outset that EWM was not primarily designed either to facilitate government accountability or to link parliaments or the EU with citizens but to inject legitimacy to European governance (pp. 313-314). Given that most of the parliamentary activity in the EWM, both in individual chambers or in interparliamentary</li> </ul>

		<p>cooperation at the EU level, is carried out by parliamentary civil servants (Högenauer and Neuhold, 2015), it is doubtful that the mechanism produces higher 'ownership' of EU affairs among domestic MPs. The EWM is also very demanding for those MPs that want to become involved in the checks, as they need knowledge both of EU law and the actual policy area to determine whether a proposal is in breach of the subsidiarity principle (...) And while there is no data available at the level of individual MPs or party groups, it is doubtful that they interact with their electorates about subsidiarity checks (Peters, 2009, p. 42). Even if there are thus 'spill-over' effects by creating greater awareness among MPs about EU affairs through the EWM, we should ask whether the same effects cannot be reached in more direct and cost-effective ways, such as through strengthening EACs or other scrutiny procedures vis-à-vis the national government or attuning public parliamentary activity to maximize the audience exposed to parliamentary debate (pp. 315-316)</p>
2016	<p>Williams, Christopher J., "Issuing reasoned opinions: The effect of public attitudes towards the European Union on the usage of the 'Early Warning System'", <i>European Union Politics</i>, 17(3), 504–521, 10.1177/1465116516633301</p>	<ul style="list-style-type: none"> <li>➤ Higher levels of aggregate public Euroskepticism in a state result in more reasoned opinions being issued by parliamentary chambers in that state (p. 515). The finding that aggregate public Euroskepticism influences the issuance of reasoned opinions indicates that parliamentary chambers' willingness to use the EWS is influenced by the preferences of the public (p. 516). As governmental responsiveness is a key characteristic of democratic governance (see Dahl, 1971; Pitkin, 1967; Powell, 2000), this indicates that the 'EWS', which was instituted in part to increase democratic legitimacy in European policy processes is, at least somewhat, effective in doing so (p. 516)</li> <li>➤ There has been important research examining representation and policy responsiveness in the European Parliament (see Casado-Asensio and Lefkofridi, 2011; Marsh and Norris, 1997; Marsh and Wessels, 1997; Thomassen and Schmitt, 1997, 1999; Vasilopoulou and Gatterman 2013, among others), yet we still do not have a full understanding of how other institutions of the EU respond to public attitudes concerning the process of European integration, or more specific policy areas. Nor do we understand completely how changes to the institutions of the EU in recent years have influenced democratic responsiveness in the EU. Simply put, there is a great deal of future research concerning the relationship between public attitudes and policy processes in Europe that needs to be conducted (p. 517)</li> </ul>
2015	<p>Högenauer, Anna-Lena and Christine Neuhold, "National Parliaments after Lisbon: Administrations on the Rise?", <i>West European Politics</i>, 38(2), 335–354, 10.1080/01402382.2014.990698</p>	<ul style="list-style-type: none"> <li>➤ As the EWS is limited to objections on grounds of subsidiarity, the reasoned opinions need to include legal justifications. Thus, if parliaments want to use the new opportunities effectively as means to maximise their influence within EU affairs, delegation to administrators may be necessary (see Christiansen et al. 2014) (p. 338). The new rules on information provision led to national parliaments being swamped with information. Thus, national parliaments receive about 1,000 policy documents (e.g. legislative proposals) per year accompanied by about 24,000 supporting documents (e.g. EP opinions) per year (Höing 2015; Belgian House of Representatives, EAC clerk, 25 May 2012). As a result, all parliaments channel this information flow via their administrations. The European Affairs staff do not just act as a 'mailbox', but – in at least 21 cases – pre-select documents based on their relevance for the member state and political salience, based on the Commission Work Programme, the weekly list of proposals or both (p. 344)</li> <li>➤ On NPRs: The Danish parliament is a forerunner in this respect as it has sent a permanent representative to Brussels to cover EU affairs since 1990. The reason behind this was that the Danish parliament was the first to deal with EU issues quite intensively by way of their system of mandating the respective minister in the Council, so this came rather naturally (Danish NPR, 9 November 2010). The Finnish parliament followed in 1996 (Hegeland 2007). A majority of the representatives have worked in their respective parliaments before, so they have a first comprehensive insight into their legislative system (Swedish NPR, 17 November 2010) (...) The informal network of NPRs is beginning to function by way of the regular 'Monday morning meetings'. It is in this setting that national parliamentary representatives</li> </ul>

		<p>exchange information and ‘alert’ other parliaments to proposals that could be problematic from the perspective of the subsidiarity principle or from a more political stance. They can thus perform an informal agenda-setting and advisory role. Moreover, the fact that all representatives work in the same building builds a basis for informal information exchange, where this ‘bridge-building function’ across national parliaments is flagged up as one of the main functions of NPRs (Dutch NPR, 9 December 2010; Slovenian NPR, 16 November 2010) (pp. 346-347)</p> <ul style="list-style-type: none"> <li>➤ Despite the fact that national parliaments are often seen to invest less energy in European issues than in domestic issues, the EU units are comparatively well staffed (e.g. in terms of EAC staff compared to sectoral committee staff) (Högenauer and Christiansen 2015). Moreover, EU staff can have more powers than domestic staff, the pre-selection role being a case in point (Spreitzer 2013). Both of these features are of course in line with delegation theory, which suggests that delegation is more likely on complex issues and on issues that are perceived to be less salient. However, the question is also if this ‘bureaucratisation’ is necessarily problematic from a normative point of view, which would only be the case if officials would in fact evade the instructions of their political principals. So far, this does not appear to be the case as most interviewees agree, for instance, that the pre-selection of documents by administrators is rarely contested (p. 349)</li> <li>➤ The majority of parliamentary administrations do have the opportunity to shape the agenda of their respective legislature, at least to some extent. This can be explained by the very nature of parliamentary scrutiny of EU affairs as these issues are predominantly complex and touch upon issues of low salience (Manley 1968). In addition, EU staff play an important role in coordination between national parliaments. The permanent representatives of the respective national parliaments in the European Parliament are best placed to engage in information exchange on a regular basis and alert other parliaments to important proposals coming out of the EU’s machinery. The extent of delegation does raise the question whether bureaucratic activity is facilitating political control or replacing it. However, while parliamentary administrations play a crucial role in parliamentary scrutiny, this bureaucratisation does not necessarily present a threat to political control. The final decisions are taken by MPs in the (European Affairs or sectoral) committees and plenary, and so far the coordination between MPs and administrations is by and large devoid of conflict (p. 350)</li> </ul>
2015	Gattermann, Katjana and Claudia Heffler, “Beyond Institutional Capacity: Political Motivation and Parliamentary Behaviour in the Early Warning System”, <i>West European Politics</i> , 38 (2), 305–334, 10.1080/01402382.2014.990696	<ul style="list-style-type: none"> <li>➤ The main challenges for national parliaments comprise the short time period of eight weeks (e.g. Knutelská 2011: 335), lack of resources (e.g. Fraga 2005: 499; Paskalev 2009: 6), the central role of the European Affairs Committee (EAC) vis-à-vis sectoral committees (e.g. Hegeland and Neuhold 2002; Winzen 2012: 660) and the indispensable coordination between parliaments in order to meet the threshold of a yellow card (e.g. Cooper 2012; Neuhold 2011) (p. 306)</li> <li>➤ Controlling for institutional capacity, the article finds that higher levels of political contestation over EU integration inside parliamentary chambers increase the probability of them submitting reasoned opinions (pp. 306-7). Greater party dispersion on the left–right dimension, however, has a negative effect once the Swedish Riksdag, an outlier, is omitted from the models. Furthermore, salient and urgent draft legislative acts incentivise parliaments to become active in the EWS. Lastly, there is some evidence in our findings for the circumstance that minority governments and economic recession represent a positive condition for unicameral and lower chambers to submit reasoned opinions (p. 307)</li> <li>➤ Our results imply that reasoned opinions are motivated by the politicisation of European integration inside parliamentary chambers, but constrained by disagreements over the substance of draft legislative acts. Our tentative finding that economic recession seems to represent a positive condition for unicameral and lower chambers to submit reasoned opinions supports this interpretation if we assume that national parliaments have become more sensitive to</li> </ul>

		<p>EU policy-making (see Saurugger 2014). Furthermore, salient and urgent draft legislative acts incentivise national parliaments to submit reasoned opinions: the article found that the probability of submitting a reasoned opinion is higher for new legislation and when it is voted upon by the EP plenary before the end of the scrutiny period. Taken together, it is MPs' incentives and awareness which encourage proactive scrutiny in the EWS (p. 323). Our time period of investigation coincides with the eurozone crisis. Our findings must therefore be interpreted with some caution (p. 323)</p>
<p><b>2015</b></p>	<p>Jančić, Davor, “The Game of Cards: National Parliaments in the EU and the Future of the Early Warning Mechanism and the Political Dialogue”, <i>Common Market Law Review</i>, 52, 939–976</p>	<ul style="list-style-type: none"> <li>➤ Domestically, the key role of NPs is to shape political choices that inform the enactment of policies into law, but at the EU level this role is substituted by an essentially advisory role in the pre-legislative phase of EU decision making (p. 941). The <i>acquis</i> of this game of cards is that in their reasoned opinions NPs protested not only against subsidiarity but against a host of matters that go well beyond it, such as the legal basis, the added value of the proposal, and legislative substance (p. 947)</li> <li>➤ An analysis of the exchange of views between NPs and the Commission within the informal political dialogue shows that the Commission often sends replies in which it solely repeats the objectives of its proposals and further describes its contents without engaging in a genuine discussion on the justification and necessity of its legislative initiatives. That notwithstanding, the political dialogue records much wider and more frequent participation of NPs than the early warning mechanism (p. 948). However, the political dialogue is not only directed at written correspondence but also at meetings and visits between Commission and national parliamentary representatives at political and administrative levels. The aim of these personal contacts is, on the one hand, to build mutual understanding of the specificities of EU initiatives and how they affect the specific legal and political circumstances in a given Member State, and, on the other, to provide an opportunity to a given NP to discuss matters of particular importance for their Member State that might not be relevant for other Member States. The political dialogue therefore offers a greater degree of flexibility of discussions than the early warning mechanism. Precisely this “safety net” dimension of the Barroso Initiative serves to explain the greater involvement of parliaments in the political dialogue than in the early warning mechanism. Practice shows that all parliamentary concerns that do not meet the eight-week deadline as well as those that, for one reason or another, cannot be portrayed as subsidiarity, are submitted within the Barroso Initiative. The experience of the early warning mechanism and the political dialogue reveal two further developments: (a) the blurring of the lines between the two subsidiarity monitoring mechanisms; and (b) the Commission’s unfailing adeptness in separating the two mechanisms when assessing whether any thresholds have been reached (pp. 948-949)</li> <li>➤ There is one important advantage of the early warning mechanism. Involvement in this otherwise narrow procedure has yielded positive results in terms of alerting NPs to the ubiquity of EU law and its legal and constitutional impact. Many domestic parliamentary chambers have become more active in scrutinizing EU affairs thanks to subsidiarity policing. This creates numerous benefits. In Weatherill’s words, it can “enrich the culture of deliberation about the nature and purpose of EU lawmaking”. Indeed, subsidiarity monitoring has its greatest utility if it gives rise to a constructive argument between NPs and the Commission, on condition that these institutions remain open to persuasion. This can furthermore “galvanize a culture of accountability” in systems with strong executive branches. Taken together, Cooper sees subsidiarity as a “new arena for democratic politics in the EU”. It must be recalled nonetheless that the sheer existence of the institutional capacity for dialogue between NPs and the Commission does not suffice automatically to enhance the legitimacy of EU lawmaking. As an empirical study shows, the effectiveness of the early warning mechanism hinges not only on the Commission but also on the political motivation of national parliamentarians</li> </ul>

		<p>themselves, which is in turn contingent on the re-election incentives and the salience and influence of proposed EU policy (pp. 949-950)</p> <ul style="list-style-type: none"> <li>➤ Both NPs and the EP represent the same EU citizens, albeit at different levels of governance and with different territorial scopes. Their representative capacities are nevertheless in a strong mutual relationship. For example, while both the EP and the German Bundestag represent eligible German voters, the EP does so for one set of competences and in a specific European capacity while the Bundestag does so for another set of competences and in a purely domestic capacity. However, there are no clear democratically agreed guidelines as to the grey area of where competences of the Member States stop and where those of the EU begin (pp. 950-951)</li> <li>➤ The question that arises here is how to engage NPs more deeply in EU policy-shaping processes without impinging on the existing powers of EU institutions and without upsetting the balance of competences between the EU and the Member States (p. 951). The conundrum lies in the following <i>circulus vitiosus</i>: where NPs may, with great effort and coordination, exert legally binding outcomes (early warning mechanism) they cannot question the legal basis; yet where they can question the legal basis (Barroso Initiative), they cannot produce legally binding outcomes (p. 952)</li> <li>➤ The early warning mechanism entertains but a fraction of what NPs should be doing within the EU. It is a fairly narrow and rigid procedure for a number of reasons (...) First, their reasoned opinions may only address draft legislative proposals (...) Second, (...) a violation of subsidiarity (...) determining the true target of a reasoned opinion is a complex exercise (...) Third, subsidiarity does not apply to exclusive EU competence and does not encompass the principles of proportionality and conferral, whereas these two principles are arguably more significant for bringing the EU closer to the citizen. These constraints constitute the straightjacket of subsidiarity, which prevents the early warning mechanism from having a fuller effect (...) The question is how the early warning mechanism might be remodeled and whether this would require a Treaty change. I argue that two types of reform are requisite to infuse EU law and governance with greater democratic legitimacy. One is to refocus NPs' scrutiny on the question of the existence of EU competence and the principle of conferral, and the other to endow parliaments with a more positive role as regards the substance of EU legislation (pp. 952-953)</li> <li>➤ The Commission's duties to "consult widely" and justify its draft legislative acts, preferably through detailed statements and qualitative and quantitative indicators of comparative, efficiency should be interpreted as encompassing the Commission's policy development and impact assessment processes. This would position NPs as direct stakeholders in the Commission's better regulation agenda and give them a voice on the substance of legislative initiatives at a very early stage of policy planning and formulation. This is particularly insisted on by the EU Speakers Conference (p. 968). In June 2014, 29 chairpersons of the European Affairs Committees of NPs wrote to the Commission calling for the establishment of a working group composed of national parliamentarians and representatives of EU institutions with a view to discussing ways to enhance the role of NPs and thereby shore up EU democratic legitimacy from the bottom up in the wake of the economic and financial crises. Importantly, they invoked a "growing consensus among national parliaments that their role in European affairs must go beyond monitoring the principle of subsidiarity and scrutinizing national governments". However, this letter did not receive a reply (...) in May 2015, the Polish Sejm organized the first meeting of the informal working group on improving the yellow card procedure and on streamlining the scrutiny of the Commission's Annual Work Programmes (p. 969)</li> <li>➤ Europeanization of national parliaments might weaken parliamentary democracy (...) even in non-parliamentary systems of government, the smooth and stable operation of State functions and the health of the overall relationship between the executive and the legislature depend on their mutual confidence and cooperation. The separation between</li> </ul>
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		<p>governments and parliaments in assessing EU policy making might trigger political crises by emboldening backbenchers and non-governing parties (p. 972). Europeanization of national parliaments might erode their democratic representativeness. The Europeanization of NPs could also weaken the link between NPs and the national electorates. As conveyor belts of public opinion, NPs are vital factors for the politicization of EU policies, for the construction of an EU public sphere, and for enhancing the social legitimacy of European integration (p. 973). The closer NPs are implicated in the EU institutional architecture, the looser their contact with the constituency might become. After all, the problem of absenteeism among national parliamentarians during the period when they held double mandates in the EP and in NPs, is partly what caused the fundamental structural reform of the EP (p. 973)</p> <ul style="list-style-type: none"> <li>➤ The future of the early warning mechanism and the political dialogue lies in their fundamental reform. This is requisite because the meaningfulness of the NPs' involvement in EU decision making is severely reduced by their engagement in subsidiarity monitoring in a way that is disproportionate to the policy impact of the EU legislative outcomes (p. 974)</li> </ul>
<b>2015</b>	Cooper, Ian, "A yellow card for the striker: national parliaments and the defeat of EU legislation on the right to strike", <i>Journal of European Public Policy</i> , 22(10), 1406–1425, 10.1080/13501763.2015.1022569	<ul style="list-style-type: none"> <li>➤ It is argued that NPs – whether on the level of whole chambers, political parties or individual MPs – have little incentive to invest their limited time and resources in participating in the EWM, as it is extremely unlikely to pay off either in terms of electoral advantage at the national level or changed policy outcomes at the EU level (Raunio 2010) there is great variation between NPs in their mode of EU scrutiny and their relations with their respective governments, as well as a number of other attributes (see Kiiver [2006: 19–22, 138], [2012: 48–62]) and their propensity to involve themselves in the EWM is likely to vary accordingly (p. 1409). Each parliament tends to work slowly, according to its own timetable, and according to its own unique set of procedures (p. 1411). Regarding incentives, close process-tracing of the Monti II experience shows that, whatever their reasons, many individual parliamentarians do, as a matter of observable fact, involve themselves in the EWM. In many chambers it was the advocacy of a single member of parliament (MP) – often one who had previously worked in proximity to EU institutions – that succeeded in putting the question on the parliament's agenda and/or pushing through an RO (p. 1418)</li> <li>➤ Considering that only a minority of chambers passed ROs, the yellow card does not prove that NPs are a collective actor at the EU level. However, many NPs did at least act like participants in a 'virtual third chamber' (Cooper 2012) in the following way: they monitored and influenced one another as they decided how to cast their 'votes' within a political procedure oriented towards reaching a voting threshold that, when reached, had legislative consequences. In conclusion, on the evidence of the first yellow card, the EWM is not primarily a legal or technical exercise. Rather, it is new arena for democratic politics in the EU (p. 1421)</li> </ul>
<b>2014</b>	Christiansen, Thomas, Anna-Lena Högenauer and Christine Neuhold, "National Parliaments in the post-Lisbon European Union: Bureaucratization rather than Democratization?", <i>Comparative European Politics</i> , 12(2), 121–140, 10.1057/cep.2012.38	<ul style="list-style-type: none"> <li>➤ In examining the degree of Europeanization of national parliaments after Lisbon, two questions arise: Are all actors equally willing to adapt? And will all actors have the capacity to adapt (in equal measure)? (...) What matters is not so much the individual capacity of national parliaments to act on EU legislative proposals, but their ability to collectively respond through the EWS mechanism (p. 126). However, there are a number of intervening factors, mostly related to the domestic context, that influence the willingness and ability of a national parliament to change. For example, using Hansen and Scholl's useful distinction between constitutional misfit (for example, formal scrutiny systems), functional misfit (for example, for speaking parliaments) and cultural misfit (depending on adversarial or cooperative cultures) (Hansen and Scholl, 2002, pp. 3–6), one could argue that working parliaments can adapt much more easily to the challenge of scrutinizing large numbers of documents under the EWS than speaking parliaments (...) In the case of national parliaments, we do indeed expect that all parliaments experience processes of bureaucratization and</li> </ul>

		<p>transnationalization as a result of European influences. Similarly, the increased workload is likely to give rise to a greater involvement of sectoral committees, replacing the past ‘monopoly’ of European Affairs Committees (EACs) over EU affairs (...) (p. 127)</p> <ul style="list-style-type: none"> <li>➤ Existing qualitative research has identified a host of potential factors, but in the absence of systematic data across a large number of cases – an essential research agenda for the future – it is difficult to identify the factors that are truly significant for the adaptation of national parliaments to the Lisbon provisions (p. 127). Nine types of national parliaments emerge, ranging from national parliaments that have a low score on bureaucratization and transnationalization to national parliaments that have a high score on both dimensions. If bureaucratization and transnationalization are seen as the outcome of Europeanization, then a national parliament’s combined score on the two dimensions can be used as a measure of the degree of that national parliament’s Europeanization (p. 134)</li> <li>➤ The initial impression - yet to be confirmed through more substantive research - here is not encouraging from a democratic theory perspective: whereas the involvement of national parliaments in EU decision making was meant to reduce the 'democratic deficit' by giving national MPs a greater role in European affairs, it may actually lead to the creation of new bureaucratic networks and thereby empower administrative actors rather than elected representatives. If one takes into account the complexity and the reduced transparency stemming from the inclusion of yet another set of institutions in the EU decision-making process, the potential of the treaty changes to provide a significant improvement regarding the 'democratic deficit' appears to be in question (p. 136)</li> </ul>
2014	<p>Winzen, Thomas, “Bureaucracy and Democracy: Intra-Parliamentary Delegation in European Union Affairs”, <i>Journal of European Integration</i>, 36(7), 677–695, 10.1080/07036337.2014.944180</p>	<ul style="list-style-type: none"> <li>➤ This paper makes the case for a delegation approach to the bureaucratisation thesis (...) The main argument in the following, which we may label the ‘delegation thesis’, is that parliamentary political–administrative relations are likely to work effectively instead of creating democratic deficits. Parliamentarians are likely to restrict the domain in which bureaucrats operate, to refrain from delegating exclusive competences and to delegate selectively to party group officials in sensitive areas. The last point in particular, which stresses the possibility that politicians empower trusted and carefully selected officials of their own party groups, reinforces confidence in effective intra-parliamentary delegation. Under the circumstances of delegation that this article expects, bureaucratic opportunities to influence policy-making in EU affairs are limited to positive agenda-shaping (p. 678). Bureaucratic capacity need not be incompatible with national parliaments’ contribution to making the EU more democratic. On the contrary, parliaments and parliamentarians operate under severe time pressure. If they are to engage with EU policy-making effectively, they cannot rely exclusively on a few dedicated deputies in the European Affairs Committee and other standing committees. Since the involvement of the legislative bureaucracy makes additional resources available for the parliament’s engagement with EU affairs, it promises, at first sight, to promote rather than undermine the ability of national parliaments to make the EU more democratic (p. 679). The choice of a delegation approach does not imply the assumption of inevitable conflict between parliamentarians and legislative bureaucrats. It is only necessary to assume that intra-parliamentary delegation creates relations in which conflicts are possible, and that, therefore, it is worthwhile to identify whether conflicts might exist and cause democratic problems (Lupia and McCubbins 2000, 293–5). A delegation approach can lead to the conclusion of harmonious political– administrative relations, or effective political control (p. 680)</li> <li>➤ I illustrate some of the points on the basis of an interview-based exploration in the German Bundestag. This is not a systematic test but a way to find out whether the delegation approach proposed here is worthy of further study. I interviewed nine parliamentarians or their assistants, party group staff responsible for EU affairs and a parliamentary</li> </ul>

		<p>official (p. 688). The interviews focused on how parliamentary committees select the EU-related topics on their agenda. I did not explore in detail in what other activities beyond agenda-setting the legislative bureaucracy engages — although the interviews suggest that this is their main area of engagement. Due to this focus, the interviews do not speak well to the functional delegation expectation. The advantage is that they shed light on what is seen as the most important bureaucratic domain in EU affairs (p. 689)</p> <ul style="list-style-type: none"> <li>➤ I suggest a 'delegation thesis' according to which politicians are likely to limit the domain of bureaucracy to areas with efficiency problems, refuse to delegate exclusive competences and engage in selective, partisan delegation. Under these conditions the legislative bureaucracy is far from unimportant. Yet, its opportunities to exert influence are restricted to positive agenda-shaping. Empirical insights from the German Parliament were used to illustrate some of these arguments. It is nevertheless important to note areas of agreement alongside areas of disagreement between the bureaucratisation and the delegation thesis. Both views recognise that bureaucratic capacity building promises to help parliaments to maintain relevance in EU policy-making. Both views also recognise the democratic risks involved in the expansion of the EU affairs bureaucracy. Yet, whereas the bureaucratisation thesis maintains that the democratic risks materialise as democratic failures, the delegation thesis maintains that parliamentarians successfully delegate to bureaucrats, making bureaucratic growth a successful strategy to strengthen the parliament in the inter-institutional chain of delegation in the EU (pp. 692-693)</li> </ul>
2012	<p>Cooper, Ian, "A 'Virtual Third Chamber' for the European Union? National Parliaments after the Treaty of Lisbon", <i>West European Politics</i>, 35(3), 441–465, 10.1080/01402382.2012.665735</p>	<ul style="list-style-type: none"> <li>➤ Arguably, alongside the Council of Ministers (Council) and the European Parliament (EP), national parliaments collectively form a 'virtual third chamber' (Cooper 2006: 283) in the following sense: even though they do not meet together in the same physical space, they to some extent fulfil the functions of a parliamentary chamber at the EU level. This development represents a new model for the direct involvement of parliaments in the affairs of the EU - and in international relations generally. As such it is an unheralded instance of democratic governance beyond the nation-state (Zürm 2000) (pp. 441-442). The notion of a virtual third chamber (VTC) suggests a multifaceted analysis for assessing the EWM's impact, according to how well it fulfils the various functions of a parliamentary chamber. Here I focus on three functions: legislation, representation, and deliberation. Typically, a parliamentary chamber will: (a) have a role in the production of legislation, (b) provide a channel of representation linking the voter to the centre of decision-making authority, and (c) provide a forum for the discussion of public policy. This threefold 'functional' analysis is similar in spirit to studies of the EP that set out to assess whether it was and is a 'real' parliament (e.g. Judge and Earnshaw 2008), but it is freely adapted for present purposes. It gives us three questions regarding the collective influence of national parliaments (NPs) at the EU level: 1.Legislation. Do the NPs collectively have the power to influence legislative outcomes in the EU, and do they exercise that power? 2.Representation. Does the EWM create a new link between the citizen and the EU that serves to enhance the democratic legitimacy of the EU? 3.Deliberation. Does the EWM create a deliberative forum that enhances the public discussion of EU affairs? (p. 442). The word 'virtual' is used here not in the colloquial sense of 'almost' or 'quasi' but with a specific meaning, referring to a social institution that is not organised around face-to-face interaction. Thus a 'virtual community' is one whose members meet online, for example, rather than face-to-face; it is nonetheless a 'real' community in that it functions as a community even though it takes a form that is not physically based (Blanchard and Horan 1998; Wellman and Gulia 1999). Analogously, the claim that the collectivity of NPs constitute a 'virtual' EU legislative chamber is not a mere heuristic device; indeed, this is a 'real' legislative chamber but one differing from the standard version in that it does not meet in person (p. 445)</li> </ul>

		<ul style="list-style-type: none"> <li>➤ It is questionable whether NPs (or political parties, or individual parliamentarians) have sufficient incentive to fully participate in the EWM. NPs tend to be dominated by parliamentary majorities that support their respective governments, and will be reluctant to challenge their position on EU affairs. Furthermore, political parties and individual parliamentarians have little incentive to get involved as it is unlikely to bring much electoral advantage in domestic politics (Raunio 2009, 2010) (p. 449). The idea of the virtual third chamber exercising a representative function depends on two controversial assumptions: First, that the NP can and should take a position on EU affairs independent of the national government's position in the Council; and second, NPs collectively constitute a representative body at the EU level, a virtual third chamber, in the sense that they can take joint decisions by the equivalent of a majority vote. Objections may be raised to both of these assumptions, leading to two arguments against the EWM on democratic grounds - first, that it undermines parliamentary democracy at the national level or, second, that it produces a distorted form of representative democracy at the EU level (p. 454)</li> <li>➤ The members of the EP evinced a collective ambition to advance their institutional position within the EU, which was in part driven by a sense of common purpose, a self-righteous belief that such an advance was key to the democratic legitimacy of the whole structure. Such notions seem to be lacking among national parliamentarians, most of whom have little appetite for the creation of anything like a 'third chamber' in the EU (p. 461). But even before national parliaments develop a sense of collective ambition or common purpose; they must develop a collective identity, in the minimal sense of an awareness of themselves as constituting a new institution - an actor in its own right - at the EU level (pp. 461-462)</li> </ul>
2012	De Wilde, Pieter, <i>Why the Early Warning Mechanism Does Not Alleviate the Democratic Deficit</i> , Observatory of Parliaments after the Lisbon Treaty (OPAL) Online Paper No. 6/2012	<ul style="list-style-type: none"> <li>➤ The EWM presents a challenge to the simplicity of the model of representative democracy in the EU (...) because it directly connects the national parliaments to the European Commission. This means it not only bypasses the national governments and Council of Ministers in the national channel of representation but also adds in addition to the European Parliament another directly elected parliamentary body to EU decision-making. To justify this change in the situation, the proponents of the EWM need to present good arguments as to why this new mechanism of delegation and accountability adds to the quality of democracy in the EU in relation to the previously existing mechanisms (Morgan 2005). In my opinion, they have so far failed to do so (p. 8). One argument against the EWM is that the European Parliament has the task of parliamentary oversight at EU level, not national parliaments (p. 8). In the discussion about the EWM, there have so far been no convincing arguments why it would be a good thing for national parliaments to bypass their own governments in EU decision-making (Fraga 2005) (p. 8). It seems unlikely that parliament will send a reasoned opinion to the Commission without the consent of its government (p. 9). Rather than engaging in the activities made possible by the EWM, it makes more sense for national parliaments to strengthen the oversight of their own government's actions in EU decision-making and then let the government represent the parliamentary majority in Brussels. While the benefits in terms of representation are dubious, the costs are much clearer. The EWM presents clear opportunity costs in terms of time and manpower that the Commission and the national parliaments now spend on reasoned opinions which cannot be spent on other activities. The EWM distracts from the scarce parliamentary resources that could have been devoted to either controlling the actions of the respective national governments in Brussels, or to accounting to citizens for adopted EU legislation (pp. 9-10). National parliaments should not be relegated to subsidiarity watchdogs since this does not strengthen either one of the two core functions parliaments are supposed to perform (p. 13). It seems likely that the EWM and subsidiarity will receive very little media coverage and that the majority of citizens will not be aware of its contribution to democratic governance in the EU (p. 16)</li> </ul>

		<ul style="list-style-type: none"> <li>➤ This essay has presented three arguments to explain why the Early Warning Mechanism created by the Lisbon Treaty as an attempt to increase the involvement of national parliaments in EU affairs, does not help to alleviate the EU's democratic deficit. Firstly, it obfuscates representative democracy in the EU as it generates uncertainty about the roles and responsibilities of various institutions in the three channels of delegation and accountability that make up representative democracy in the EU. The roles and responsibilities of national governments and the European parliament especially are made less clear. Secondly, it strengthens the wrong kind of involvement of national parliaments. Parliaments should control their national government and they should communicate with citizens. Those are their main tasks. Constitutional checks which come about through the EWM, should be left to the judiciary and not the national parliaments. The communicative function especially requires much more attention and resources than received to date. In the current arrangement, the EWM causes opportunity costs in terms of time, money and manpower spent by national parliaments writing reasoned opinions that could have been spent on communicating with citizens. Thirdly, even assuming one would normatively support the EWM, the preliminary conclusion after two years of Lisbon must be that it does not function effectively (pp. 18-19). Some national parliaments simply do not appear to be interested in becoming involved in EU matters. Since their lack of participation reduces the chances of effectiveness for other national parliaments, there is a clear problem of interdependence (p. 19)</li> </ul>
2011	<p>Raunio, Tapio, "The Gatekeepers of European Integration? The Functions of National Parliaments in the EU Political System", <i>Journal of European Integration</i>, 33(3), 303–32, 10.1080/07036337.2010.546848</p>	<ul style="list-style-type: none"> <li>➤ This article focuses on a theme which has so far escaped scholarly analysis: which functions of national parliaments in EU policy-making are emphasized by domestic MPs? (p. 304). Already Bagehot (1867) compiled a list of five functions: the elective function (choosing the cabinet), expressing the mind of the people, teaching the nation, informing the people, and the legislative function. But the 'classic' text is Packenham (1970), who identified eleven functions that parliaments perform. Packenham divided his functions into three categories: (1) legitimation: latent (meeting regularly), manifest (formally approving public policy), safety valve or tension release (outlet for tensions); (2) recruitment, socialization and training; and (3) decisional or influence functions: law making, 'exit' (resolving an impasse on the system), interest articulation, conflict resolution, and administrative oversight and patronage (including 'errand running' for constituents). As Packenham based his study mainly on the Brazilian congress, he emphasized the potential role that a parliament can perform in the political system and in society at large. Packenham also rank-ordered the functions, with the legitimation function having the most consequence for the political system and the decisional functions having least significance (p. 305)</li> <li>➤ In this institutional configuration, the main function of national legislatures is to control their governments that represent member states in the Council and the European Council (pp. 314-315). Not all parliaments or MPs are keen on debating EU in the plenary. The current system of delegating, or centralizing, European matters to the EU committee is thus advantageous for most parties (p. 315). The only parties that probably would like to have debates about Europe are those that are more in tune with their electorate over Europe and internally cohesive about integration. These parties are normally either populist parties or parties located at the extremes of the left-right dimension that can for example use such debates to criticize the government for not defending the national interests well enough in EU negotiations (de Wilde 2008). Given that they are often relatively small parties in their respective political systems, they may even not have enough influence over the parliamentary agenda to force such debates to be held (p. 315). The main difference between domestic and EU politics seems to concern the role of the plenary. Domestic laws and other nationally salient issues are normally debated in the full chamber while it seems that EU matters are — for reasons explained above — only seldom on the agenda of the plenary (p. 316). Interestingly, political parties may be more prepared to have public</li> </ul>

		<p>debates about EU policies than about integration (more or less EU), particularly if the policies — such as the Services Directive (Miklin 2009) — can be incorporated into the cleavages structuring domestic party contestation (mainly the left-right dimension) (...) Among questions deserving scholarly attention are how MPs defend constituency interests in European affairs, what types of European debates are organised in national parliaments, or whether media reports on the EU-related activities of national parliaments (p. 319)</p>
<p><b>2010</b></p>	<p>Raunio, Tapio, <i>Destined for Irrelevance? Subsidiarity Control by National Parliaments (WP)</i>, Working Paper 36/2010, Elcano Royal Institute Madrid</p>	<ul style="list-style-type: none"> <li>➤ Perhaps the biggest question mark or problem with the early-warning mechanism is that through making national parliaments direct participants in the EU's legislative process, it goes in a way against the very principle of parliamentary democracy. The defining criterion of parliamentary democracy is that the government is accountable to the legislature and can be voted out of office by it. The parliament (the principal) delegates policy-making powers to the executive (its agent), which then rules with the support of the legislature. But now the subsidiarity control mechanism can reverse these roles (p. 10). As for policy influence, the ability of an individual legislator to influence politics at the European level is probably close to zero, including under the early-warning mechanism (p. 10). Regarding which actor has the right to decide the matter, 13 chambers report that each subsidiarity procedure is concluded by the plenary regardless of whether a committee believes there is a breach of the subsidiarity principle. In seven chambers the plenary becomes only involved in cases where the committees think that the proposal violates the subsidiarity principle, while in five chambers the involvement of the plenary is optional. Finally, in five chambers the decision is taken by the EAC (p. 12). In general, national parliaments have not been entirely happy with the Commission's justifications for the laws regarding compliance with the subsidiarity principle. Parliaments have also stressed the need to invest resources in exchange of information, preferably as early as possible so that parliaments could learn about subsidiarity concerns expressed by other chambers. On a more positive note, many chambers have used the opportunity provided by the early-warning system and Lisbon Treaty more generally to revise national laws or parliamentary procedures related to EU scrutiny (see also COSAC, 2007, p. 6-14; COSAC, 2008, p. 15-23; COSAC, 2010, p. 11-16) (p. 13)</li> <li>➤ One can argue that the whole mechanism was introduced in the Convention to win the support of national parliaments for the Constitutional Treaty, while those parliaments and governments that were not so interested in the system or even against it agreed to its introduction because they saw it as bringing little if any change to the EU's policy process (p. 13). At the same time, we must acknowledge the more positive aspects of the mechanism. It has already forced the Commission to pay more attention to its justifications of legislative texts, and, more importantly, several parliaments have introduced reforms which facilitate a more effective scrutiny of EU matters (p. 13). When thus the core functions of national parliaments in EU politics –scrutiny of governments, monitoring subsidiarity and approving Treaty amendments– are examined together it becomes evident that domestic MPs get involved in EU governance in a rather one-sided fashion (see also Kiiver, 2006; Auel, 2007). National parliaments control Brussels-bound Ministers and safeguard sovereignty, perhaps at the expense of activities that would connect the electorate more strongly to EU politics (p. 14)</li> </ul>