

Karolina Borońska-Hryniewiecka\*

## Democratising the European Multi-level Polity? A (re-)Assessment of the Early Warning System

**Abstract:** *One of the main promises of the Treaty of Lisbon was to increase the democratic legitimacy of the European Union through strengthening the role of national parliaments in EU policy-making under the so-called 'Early Warning System' (EWS) for subsidiarity control. However, introduction of the EWS has met with some criticism in the academic literature. Scholars claim that the mechanism not only fails to alleviate the democratic deficit, but it also obfuscates the existing channels of delegation and accountability in the EU. Moreover, it has been predicted that the EWS will remain a mere 'window dressing', largely unexploited by national assemblies, let alone the subnational parliaments. This article addresses the above-mentioned criticisms four years after the entry into force of the Lisbon provisions. On the basis of an empirically grounded analysis, this article identifies and evaluates positive effects of the EWS with respect to both the input and output legitimacy of the EU. The article posits that the unintended (spill-over) effects of the EWS allow for its broader conceptualisation as (1) a disciplining tool for a better regulatory environment; (2) a representation and accountability enhancing mechanism; (3) an opportunity structure for increasing parliamentary control of the executive and (4) a Europeanization mechanism.*

### Introduction

Among those who perceive the European Union (hereafter EU) as a particular type of political system<sup>1</sup> it is widely acknowledged that the EU

---

\* **Karolina Borońska-Hryniewiecka**, Ph.D. – Assistant Professor at the Institute of Political Science of the University of Wrocław and a Post-Doctoral Lecturer at the Department of International Relations and European Studies of Masaryk University.

<sup>1</sup> The question of EU's democratic deficit is mainly addressed within the conceptual framework of representative democracy, under which the EU is viewed as a particular type of political system, comparable to that of a nation state with a federal structure. In this sense, scholars conceptualise the EU as a quasi-parliamentary system where the rules of democratic accountability

governance structure suffers from a deficit of representative democracy.<sup>2</sup> One of the main reasons behind this assertion has been the gradual increase in executive power and decrease in parliamentary control characterising the process of European integration. EU level decision-making is dominated by executive actors: national ministers in the Council and government appointees in the Commission. The European Parliament (hereafter EP), although institutionally empowered after the Lisbon Treaty, is still weak in terms of its democratic representativeness and political leverage. It does not have a direct party link with the Commission. EU citizens do not identify with European parties and EP elections are thought to be 'second-order'.<sup>3</sup> Such a state of affairs is often referred to as the '(de-) parliamentarisation of the EU decision-making structure and, consequently, of its policy-making'.<sup>4</sup>

To remedy this democratic deficit, the Treaty of Lisbon introduced provisions aimed at strengthening the role of national parliaments in EU governance. In this context, one of the main institutional innovations is the so-called Early Warning System (hereafter EWS), under which national parliaments can scrutinise EU legislation with respect to its compliance with the principle of subsidiarity. The much-expected enforcement of the EWS, however, was met with mixed feelings and criticism in the academic literature. It was predicted that the mechanism would remain a mere 'window

---

and representation apply (Fritz Scharpf, Simon Hix, Andreas Follesdal). Such a view opens the road to assess the democratic legitimacy of the EU.

This vision is in opposition to the one which views the EU as either a form of international/intergovernmental organization (Andrew Moravcsik) or a regulatory state (Giandomenico Majone), the main function of which is to address market failures *via* efficiently negotiated intergovernmental agreements. Supporters of this vision claim that EU policy-making *should not* be considered as either 'democratic' or 'non-democratic' in the usual meaning of the terms, as the EU presents a specific form of 'post-democratic' governance, not analogous to the functioning of a nation state. In this sense, introducing democratic procedures at the European level would render the EU less effective as the output of its actions would have to be based on a compromise between political actors, and not on optimal calculations.

<sup>2</sup> The analytical framework of this article builds on the premise included in the Lisbon Treaty's provisions on democratic principles, according to which '*The functioning of the Union shall be founded on representative democracy*' (Art. 10.1 TEU). See also: J.H. Weiler, U.R. Haltern and F. Mayer, *European Democracy and its Critique*, "West European Politics" Vol. 18(3)/1995, pp. 4–39; A. Follesdal and S. Hix, *Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik*, "Journal of Common Market Studies" Vol. 44(3)/2006, pp. 533–562.

<sup>3</sup> T.Kousser, *Retrospective Voting and Strategic Behavior in European Parliament Elections*, "Electoral Studies" Vol. 23(1)/2004, pp. 1–21; S. Hix and M. Marsh, *Punishment or Protest? Understanding European Parliament Elections*, Paper presented at the biennial conference of the European Union Studies Association, Austin, Texas, April 2005.

<sup>4</sup> J. O'Brennan and T. Raunio, *Deparliamentarization and European Integration*, in: *National Parliaments within the Enlarged European Union*, eds. J. O'Brennan, T. Raunio, Abingdon 2007, pp. 1–26.

dressing' largely unexploited by national, let alone subnational parliaments.<sup>5</sup> Moreover, scholars claimed that the mechanism would not only fail to alleviate the democratic deficit, but it would also obfuscate the existing channels of delegation and accountability in the EU.<sup>6</sup>

This article addresses these arguments four years after the entry into force of the Lisbon provisions. It puts the EWS under a magnifying glass in order to answer the question: *What is the actual relevance of this complex system of parliamentary control?* On the basis of an empirically grounded analysis, this paper identifies and evaluates the positive effects of the EWS with respect to both the *input* and *output* legitimacy of the EU. It takes into consideration not only national but also subnational parliamentary activity and shows how, under the EWS, different levels of governance relate to each other through communication and mutual control.

The paper is structured as follows: The first section explains the logic of the EWS under the Lisbon provisions. Section two presents the main points of criticism directed at the system. Finally, on the basis of an empirical analysis and collected data, section three addresses these arguments and explains why they are not fully grounded in reality. The article concludes that the unintended (spill-over) effects of the EWS allow for its broader conceptualisation than just as a veto mechanism, and that it is: (1) a disciplining tool for a better regulatory environment; (2) a representation and accountability enhancing mechanism; (3) an opportunity structure for increasing parliamentary control of the executive, and (4) a Europeanization mechanism.

## 1. The Early Warning System under the Lisbon Treaty

According to Article 12 of the Treaty of Lisbon (Treaty on European Union, hereafter TEU), the main task of national parliaments is to '*contribute actively to the good functioning of the Union*'. To this end, the Treaty grants them a broader catalogue of rights regarding access to EU information; participation in the evaluation and control mechanisms in the area of freedom, security and justice and Treaty revision procedures; as well as strengthening the inter-parliamentary cooperation between national parliaments and the EP.<sup>7</sup>

---

<sup>5</sup> T. Raunio, *Destined for Irrelevance? Subsidiarity Control by National Parliaments*, Elcano Royal Institut Working Paper, No. 36/2010.

<sup>6</sup> P. De Wilde, *Why the Early Warning Mechanism does not alleviate the democratic deficit*, OPAL Online Paper, No. 6/2012.

<sup>7</sup> Art. 12 paras. a-f TEU.

However, the most important institutional provision – in terms of its political and legal leverage – related to parliamentary control over EU affairs is undoubtedly the mechanism of subsidiarity control known as the Early Warning System. Within its framework, national parliaments have eight weeks from the date of transmission of an EU draft legislative act to scrutinise it and issue a reasoned opinion if they consider that the draft in question does not comply with the principle of subsidiarity which in the EU context determines the level of governance at which (policy) action should be taken.<sup>8</sup> Two procedures can emerge from this process:

A) ‘Yellow card’: when at least one third of national parliaments (one vote per chamber in bicameral systems) oppose the draft legislative act on the basis of its non-compliance with the subsidiarity principle, the initiator of the contested draft must review the proposal. He may then decide to maintain, amend or withdraw the draft, however reasons must be given for each decision in form of a Communication.<sup>9</sup>

B) ‘Orange card’, which applies only to EU draft legislative acts under the ordinary legislative procedure: when more than half of the national parliaments oppose such an act on grounds of a breach of subsidiarity, the act must be reviewed. The European Commission may then decide whether to maintain, amend or withdraw the proposal. If the Commission decides to maintain it, it has to provide a reasoned opinion justifying why it considers the proposal to be in compliance with the subsidiarity principle. On the basis of this reasoned opinion and that of the national parliaments, the European legislator (by a majority of 55 per cent of the members of the Council or a majority of the votes cast in the European Parliament) shall decide whether or not to block the Commission's proposal. If either of them shares the opinion of the national parliaments with respect to the breach of subsidiarity, the legislative proposal will not proceed.<sup>10</sup>

---

<sup>8</sup> It is originally enshrined in Article 5(3) of the Treaty on European Union, which states that ‘*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*’. And so, according to Article 5(3) TEU, two conditions should be fulfilled for the EU action to be justified: 1) insufficiency of Member States in performing the action at the national level (insufficiency test) and 2) added value of the same action performed at EU level (added value test). For more on the concept of subsidiarity and its application, see: K.Borońska-Hryniewiecka, *Regions and subsidiarity after Lisbon: overcoming the regional blindness?*, LUISS School of Government Working Paper Series, available online at: <http://sog.luiss.it/2013/02/06/workingpapers/> (last visited 15.11.2013).

<sup>9</sup> Art. 7 para. 2 of Protocol no. 2 on the application of the principle of subsidiarity and proportionality, attached to the Treaty of Lisbon.

<sup>10</sup> *Ibidem*.

Although national parliaments have not obtained the possibility to use a ‘red card’ (i.e. to veto an EU legislative project), Article 8 of Protocol no. 2 on the application of the principle of subsidiarity and proportionality attached to the Treaty of Lisbon (hereafter Protocol no.2) grants them the right to bring legal action before the Court of Justice of the EU (hereafter CJEU) on the basis of a subsidiarity breach, provided that they had previously issued a reasoned opinion within the EWS.<sup>11</sup> Moreover, in a major institutional innovation Article 6 of Protocol no. 2 also recognises regional (subnational) parliaments as a separate category of institutions with the right to participate in the EWS, stating that: ‘*it will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers*’.

Even though the Treaty drafters presented the EWS as a democratic breakthrough in EU’s governance structure, its design and implementation has met with some criticism in scholarly circles. In the following section, the main arguments against the EWS in the literature are presented and discussed.

## 2. The critique

One of the main criticisms directed at the EWS was that it would become a mere ‘window dressing’ in the EU policy-making cycle, since breach of the subsidiarity principle by EU legislators is not a real problem in EU life. Raunio noted that the ‘*image of the Commission and other EU institutions constantly stretching and overstepping the limits of their powers is (...) outdated*’.<sup>12</sup> The Commission has solid procedures and good expertise to ensure the compliance of its legislative proposals with the principles of subsidiarity and proportionality. In the same vein, Benz wondered whether the new rules of the EWS would be of anything more than a symbolic significance.<sup>13</sup>

Moreover, it was predicted that the EWS would remain largely unexploited by national assemblies, let alone subnational parliaments, due to the difficulties in raising ‘yellow’ or ‘orange’ cards. Scholars and practitioners pointed to unattainable thresholds and prohibitively short scrutiny periods as

---

<sup>11</sup> For a comprehensive view of the role of national parliaments in the EWS, see: P. Kiiver, *The Early Warning System for the Principle of Subsidiarity: Constitutional Theory and Empirical Reality*, London 2012.

<sup>12</sup> T. Raunio, *Destined for Irrelevance? Subsidiarity Control by National Parliaments*, Real Instituto Elcano Working Paper, No. 36/2010, p. 6.

<sup>13</sup> A. Benz, *Linking multiple demoi. Inter-parliamentary relations in the EU*, Institut für Europäische Verfassungswissenschaften, IEV-Online, No. 1/2011.

the main obstacles to effective parliamentary action.<sup>14</sup> As regards the former, the Protocol no. 2 requires one-third of total subsidiarity votes (one-fourth regarding the areas of freedom, security and justice) to trigger the ‘yellow card’, imposing the obligation to review the proposal by the EU legislator. In a Union of 28 Member States this means, respectively 18 and 14 out of 54 votes. With respect to the time frame, national chambers have eight weeks from the moment when the legislative act is made available in the official languages of the EU to scrutinise it and issue an opinion. This time frame, especially in periods of increased parliamentary activity (e.g. budgetary preparations), is viewed as insufficient to deploy the necessary legal and political expertise, analyse attached impact assessment files, establish sectoral points of views on specific EU dossiers and, at the same time, coordinate positions with other national parliaments – a condition essential to attain the necessary thresholds.

The EWS is also criticised for its narrow scope, limited to a formal assessment of subsidiarity. In this regard, it is pointed out that the reach of the parliamentary scrutiny does not include yet another important principle, enshrined in Protocol no. 2, which must be observed by the EU legislator while drafting the proposals – namely the principle of proportionality, according to which ‘*the content and form of EU action shall not exceed what is necessary to achieve the objectives of the Treaties*’.<sup>15</sup> This exclusion of proportionality assessments from the EWS has met with criticism from lawyers and policy practitioners, as the two principles (subsidiarity and proportionality) are very much interlinked and it is difficult to separate them when assessing the efficacy of EU legislation.<sup>16</sup>

Supporters of multilevel governance and increasing the involvement of regions and subnational authorities in EU policy-making criticise the EWS for its failure to impose a legal obligation to consult regional parliaments and to take their opinions into account. Although Protocol no. 2 recognises such a possibility, the provision leaves much significant scope for interpretation of the actual role that regional parliaments *might* or *should* play in the control of EU legislation. First of all, Protocol no. 2 does not make consultation with regional parliaments obligatory, but leaves it to the discretion of national parliaments. Its statement: ‘*it will be for each national parliament (...) to consult, where appropriate, regional parliaments*’ neither imposes an obligation to consult nor entails any sanctions for failure to do so. Proto-

---

<sup>14</sup> P.Kiiver, op.cit.

<sup>15</sup> Art. 5, para. 4 TEU.

<sup>16</sup> Cf. P.Kiiver, op.cit; R.Schütze, *Subsidiarity after Lisbon: reinforcing the safeguards of federalism?*, “Cambridge Law Journal” Vol.68(3)/2012, pp. 525–536.

col no. 2 also leaves it to the judgment of national chambers to select the conditions and mechanisms for including regional points of views into the national reasoned opinion. Regional parliaments are also not equipped with the possibility to raise ‘yellow’ or ‘orange’ cards in matters belonging to the sphere of their competences, nor have they been granted the right to bring legal action before the CJEU in case of a breach of the subsidiarity principle.

Some criticisms of the EWS go further and claim that the mechanism does more harm than good in the current institutional setup of the EU. De Wilde holds that the EWS not only fails to alleviate the EU democratic deficit, but it also ‘*obfuscates the existing channels of delegation and accountability*’.<sup>17</sup> In his opinion, creation of the EWS – which directly connects national parliaments to the Commission – poses a challenge to the ‘*simplicity of the model of representative democracy in the EU*’.<sup>18</sup> According to De Wilde, EU citizens are already well represented at EU level via the three existing channels of delegation, i.e. a directly elected European Parliament, interest groups’ lobbying at the Commission, and national governments in the Council of Ministers. In this sense the EWS, on one hand, duplicates the oversight function of the EP in the legislative process, while on the other it provides national chambers with the opportunity to *bypass* or *divert from* the positions of their national governments in the Council of Ministers, which might have negative consequences for the policy-making process.

Finally, there are voices that the EWS administratively overburdens parliaments and distracts their attention and draws resources away from the two core parliamentary functions, i.e. controlling governments and connecting to citizens.<sup>19</sup> The scrutiny system in place is perceived as a costly institutional adjustment, entailing incomparably more effort in terms of time, expertise and personnel than the potential benefits it might yield in influencing the EU policy process.

While these are all substantial and important arguments, they need to be carefully analysed and studied empirically, not only in order to confirm or refute them, but for the sake of further research into the issue of the parliamentary democracy of the EU. To this end, the following section of this paper will address all the points in the order in which they were raised.

---

<sup>17</sup> P. De Wilde, *op.cit.*, pp. 8–9.

<sup>18</sup> *Ibidem*, pp. 8–9.

<sup>19</sup> *Ibidem*, p. 9.

### 3. The actual state of affairs

#### 3.1. 'Subsidiarity breach is not a real problem'

As much as the formal breach of the subsidiarity principle might not pose an actual problem in the daily performance of the Commission's duties, the justification of EU actions in terms of subsidiarity arguments does. According to the provisions of the Lisbon Treaty, during the pre-legislative phase the Commission is expected to prepare a complete analysis of subsidiarity as part of its so-called Impact Assessment (IA), a process in which the potential economic, social and environmental consequences of proposed legislation are taken into account. Such an assessment is prepared in form of an explanatory memorandum, including an evaluation of the proposal, its implications for the rules to be put in place by Member States and, where necessary, at the regional level. The reasons for concluding that a Union objective can be '*better achieved at the EU level*' (the second subsidiarity condition) should be substantiated by qualitative and, when necessary, quantitative indicators. The proposal should also take into account any financial or administrative burdens for public or private sectors in relation to implementation of a proposed policy.<sup>20</sup>

The analysis of the Commission Impact Assessment Board reports from the years 2009–2011, as well as the reasoned opinions sent by national parliaments through the IPEX website,<sup>21</sup> indicates that, at times, the subsidiarity sections in EU draft legislative proposals lack a robust and evidence-based justification for EU action and its value added. In 2010, the Board made recommendations for improvements in almost half of the analysed cases. In the following year, in spite of some progress, still 43 per cent of the Board's opinions stated that the Commission's consideration of the principles of subsidiarity and proportionality in its IA are unsatisfactory.<sup>22</sup> Examples of such findings of deficiencies include the Proposal for a Directive on criminal sanctions for insider dealing and market manipulation<sup>23</sup> or, more recently, the Proposal for a Regulation on European statistics.<sup>24</sup> The Commission's Impact Assessment Board found that both proposals lacked substantiation of the essential

---

<sup>20</sup> Arts. 2 and 5 of Protocol no. 2 on the application of the principle of subsidiarity and proportionality, attached to the Treaty of Lisbon.

<sup>21</sup> Inter-parliamentary Electronic Information Exchange Platform, <http://www.ipex.eu/IPEXL-WEB/home/home.do> (last visited 17.11.2013).

<sup>22</sup> European Commission, Document de travail des services de la Commission, *Rapport 2010 du comité d'analyses d'impact*, Brussels, 24.1.2011, SEC(2011) 126 final.

<sup>23</sup> Proposal for a Directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation, COM (2011) 0654final, Brussels, 20.10.2011.

<sup>24</sup> Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 223/2009 on European statistics, COM (2012) 167final, Brussels, 17.02.2012.



nature of the proposed legislative measures as well as adequate explanations of their ‘added value’ as compared with the current state of affairs. From this point of view, the exercise of additional parliamentary control of EU policy-making process under the EWS can be deemed relevant, as it allows for public discussion of the validity of the proposals and for making the arguments on subsidiarity transparent among the Member States.

### **3.2. Difficult-to-reach EWS thresholds and the rarity of ‘yellow/orange cards’**

In this regard, the first counterargument should address the question whether the rarity of the raising such cards proves the ineffectiveness of the EWS, or whether in fact in the majority of cases national parliaments approve of the EU legislative measures. In this sense, the mistaken view of the EWS as solely a veto mechanism plays an important role, as it limits the possibility to evaluate it more broadly as a legislative transmission belt between the Commission and national chambers.

As regards the procedural requirements of the EWS, the parliamentary experience so far reveals that the eight week deadline for conducting the scrutiny is indeed very challenging. The first year of use of the EWS demonstrated that parliaments are poorly equipped to conduct effective analyses of EU legislation in such a short time, while at the same time cooperating among themselves. In 2010, only around 60 per cent of initiated scrutiny processes were completed on time.<sup>25</sup> However, the two following years (2011–2012) witnessed an increase in the number of reasoned opinions sent to the Commission. In 2011, the Commission received 64 opinions from national parliaments, which marked an increase of almost 75 per cent in comparison with 2010.<sup>26</sup> In 2012, the Commission received 88 reasoned opinions.<sup>27</sup> In a few instances, national parliaments came close to raising a ‘yellow card’, for example in the case of the seasonal workers directive, which prompted ten votes under the EWS;<sup>28</sup> or of the Proposal for a Council Directive on the common consolidated corporate tax base, which provoked 13 subsidiarity challenges.<sup>29</sup>

The latest developments prove that the thresholds can in fact be achieved and an effective EWS procedure can be activated. In 2012, the first successful

---

<sup>25</sup> P. Kaczyński, *Paper tigers or sleeping beauties? National Parliaments in the post-Lisbon European Political System*, CEPS Special Report, 2011.

<sup>26</sup> Report from the Commission on subsidiarity and proportionality. *19th report on Better Law-making covering the year 2011*, COM (2012) 373 final, Brussels, 10.7.2012.

<sup>27</sup> IPEX database: <http://www.ipex.eu/IPEXL-WEB/home/home.do> (last visited 17.06.2013).

<sup>28</sup> COM (2010) 379 final.

<sup>29</sup> COM (2011) 121 final.

‘yellow card’ was raised with respect to the Commission proposal for a Council 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’, also known as the ‘Monti II regulation’.<sup>30</sup> The aim of the proposal was to develop a legislative framework for regulation of transnational industrial action (the right to strike) in the context of the EU internal market. It met however with a strong opposition among both trade unions and employers. Reasoned opinions were delivered by 12 national chambers representing 19 votes altogether under the EWS.<sup>31</sup> The main arguments against the proposed regulation were: the lack of clarity as to its purpose; lack of EU competence over industrial relations; and its potential incompatibility with well-functioning national arrangements in the area of labour law.<sup>32</sup> As a result of the ‘yellow card’, in September 2012, the Commission communicated its withdrawal of the proposal.<sup>33</sup>

The second ‘yellow card’ was raised in October 2013 by parliaments from eleven Member States in relation to a Commission proposal to create a European Public Prosecutor Office (EPPO).<sup>34</sup> It is now being considered by the Commission, which will decide how to proceed with this project.

Contrary to the views of numerous scholars, these two ‘yellow cards’ have proved that it is possible for a sufficient number of national parliaments to reach consensus and agree that a particular legislative proposal violates the subsidiarity principle. This surely makes the EWS more credible. It also

---

<sup>30</sup> COM (2012) 130 final.

<sup>31</sup> Reasoned opinions were issued by seven unicameral parliaments (Danish, Swedish, Lithuanian, Portuguese, Luxemburgish and Maltese) as well as the Polish *Sejm*, French Senate, Belgian House of Representatives, UK House of Commons and the States General of Netherlands.

<sup>32</sup> Cf. N. Bruun and A. Bücke, *European Economic, Employment and Social Policy, Critical assessment of the proposed Monti II regulation – more courage and strength needed to remedy the social imbalances*, European Trade Union Institute Policy Brief, No. 4/2012; F. Fabbrini and K. Granat, “Yellow card, but no foul”: *The role of the national parliaments under the subsidiarity protocol and the Commission proposal for an EU regulation on the right to strike*, “Common Market Law Review” Vol. 50(1)/2013, pp. 115–143.

<sup>33</sup> See, e.g. <http://euobserver.com/social/116405>; <http://www.europolitics.info/social/monti-ii-proposal-threatened-with-yellow-card-art335244-25.html>; and <http://www.euractiv.com/social/europe/ec-drops-regulation-right-strike-news-514793> (last visited 13.11.2013).

<sup>34</sup> By the deadline of 28.10.2013 national Parliaments of fourteen Member States expressed critical concerns regarding the Commission’s EPPO proposal but only eleven of them formally submitted a reasoned opinion (UK, Czech Republic, Cyprus, France, Hungary, Ireland, Malta, Netherlands, Sweden, Romania and Slovenia). The German Bundesrat did not issue a reasoned opinion, but its report clearly shares some concerns with respect to subsidiarity. Similarly, the Polish Senate criticised the EPPO’s exclusive competence for not being in compliance with the principle of proportionality. Lastly, the Austrian National Council did not reject the EPPO proposal, but nonetheless identified several points of concern.

increases the visibility of national parliaments in EU affairs. On the occasion of the withdrawal of ‘Monti II-regulation’, European news agencies referred to national parliaments as institutions able to pressure the Commission and influence EU legislation.

### 3.3. Too narrow a scope of scrutiny

The formal scope of parliamentary scrutiny under the EWS is indeed very narrow as it covers only the question of subsidiarity, excluding proportionality and legally-based considerations. Yet, the *modus operandi* of the procedure reveals that this ‘limitation’ has been mitigated in practice. In this regard, two spill-over effects of the EWS can be observed. Firstly, the empirical findings show that those parliaments who engage in the EWS take a broader perspective in their analyses, debating and forwarding their opinions on the substance of EU draft legislation and its potential impact, including their comments on proportionality. According to Capuano, almost all national chambers consider the principle of proportionality when scrutinising draft legislative acts and a majority of them state that they do not believe that subsidiarity checks would be effective otherwise.<sup>35</sup>

More importantly, the Commission has shown its willingness to consider such broader evaluations. The best illustration of this is the above-mentioned first activation of a ‘yellow card’ for ‘Monti II regulation’. According to the Commission, the reasoned opinions delivered by the national chambers did not address the material and procedural aspects of the principle of subsidiarity<sup>36</sup> (as foreseen by the EWS), but expressed their reservations as to the content of the EU proposal, its proportionality, and legal basis. Despite this procedural deficiency, the Commission took notice of their position and decided

---

<sup>35</sup> D. Capuano, *The role of national parliaments in the legislative process of the EU. A view from inside the Italian Parliament in: Democracy and Subsidiarity in the EU. National Parliaments, Regions and Civil Society in the Decision-Making Process*, eds. M. Cartabia, N. Lupo and A. Simoncini, Bologna 2013, p. 246.

<sup>36</sup> With respect to the material aspect of subsidiarity, the already discussed two conditions of insufficiency and added value should be satisfied in the view of the legislators. In other words, the EU action must be necessary, should bring added value over and above what could be achieved by Member States action alone, and – the former two being satisfied – the decisions should be taken as closely as possible to the citizen.

As regards the legal aspect of subsidiarity, we refer to certain procedural requirements which EU legislators need to fulfil before presenting legislative drafts, which later can become subject to judicial control of the Court of Justice of the EU. Here the object of control can be threefold. Firstly, the correct exercise of competences has to be observed. It is clear that subsidiarity applies in the sphere of non-exclusive powers, i.e. competences shared between the EU and member states. Secondly, the legislator needs to include in the draft legislative proposal not only a justification of the planned action with regard to the subsidiarity principle, but also in the form of a comprehensive impact assessment of the proposed legislative measures.

to withdraw the proposal. It justified this by pointing to the insufficient support for the measure on the part of national governments (in the EU Council). This decision can be viewed as a precedent, an example of a spill-over effect of the EWS beyond the framework of subsidiarity alone. The limitations on the scope of the scrutiny has thus been overcome by the Commission itself, which demonstrates the relevance of Article 2 of Protocol no. 2 and indicates it might have further (positive) consequences for parliamentary involvement in the control of EU policy.

Secondly, the entry into operation of the EWS has positively influenced the activity of national parliaments in the so-called 'Political Dialogue'.<sup>37</sup> Within its scope parliaments can assess not only the compliance with the subsidiarity principle, but also the legal basis of the proposals, their proportionality, and political accountability. Although the character of the Political Dialogue is informal and non-binding on the Commission, it usually takes notice of parliamentary comments. During just the first year of the EWS's operation (2010), the number of opinions received by the Commission increased by 65 per cent. To compare, during the three years from 2006 to 2009 the total increase was 67 per cent.<sup>38</sup> It can thus be said that the EWS constitutes the 'hard core' of the broader framework of Political Dialogue with the Commission.

Summing up, although the *de jure* scope of the EWS is narrow, recent developments in parliamentary activity reveal a *de facto* softening of this condition. In reality, both national and regional parliaments take a broader view of their scrutiny of EU legislation under the EWS, analysing the content of the proposal, its merits, and the issue of proportionality. The actual parliamentary scrutiny becomes more meaningful *in actum* than the limited scope of the legal framework which shapes it. This broader interpretation of subsidiarity is explained by the fact that its application depends in great part on a political evaluation. As Fasone points out, such a state of affairs is also inherent in the nature of the institutions performing scrutiny under the EWS. Parliaments as political actors are created to foster public deliberation on policy proposals, not to assess them in strictly legal terms as if they were courts.<sup>39</sup>

---

<sup>37</sup> Also known as the 'Barroso Initiative'. Under the 'Political Dialogue' the Commission transmits all new legislative and non-legislative proposals and consultation papers directly to national parliaments and invites them to give comments, criticism and positive feedback regarding their contents.

<sup>38</sup> D. Jancic, *The Barroso Initiative: Window Dressing or Democracy Boost?*, "Utrecht Law Review" Vol. 8(1)/2012.

<sup>39</sup> C. Fasone, *Competing concepts of subsidiarity in the Early Warning System* in: *Democracy and Subsidiarity in the EU...*, op.cit., pp. 157–196.

### 3.4. Lack of obligation to consult regional parliaments

The inclusion of regional parliaments<sup>40</sup> into the EWS in the Lisbon Treaty seems not only justified, but also desirable – above all for legitimacy-related reasons. From the *output* legitimacy point of view,<sup>41</sup> it has to be kept in mind that regional and local authorities implement over 70 per cent of EU legislation.<sup>42</sup> In this respect, their legislative, administrative and fiscal capacities in dealing with specific policies are crucial in carrying out subsidiarity and policy impact analyses to estimate the territorial effects of European legislation. Next to efficiency-related arguments, the inclusion of the regional level into the EWS should also be considered as an enhancement of *input-oriented* legitimacy<sup>43</sup>. Regional parliaments with legislative powers are legitimate and directly-elected institutions representing the ‘multiple demoi’ of the EU.<sup>44</sup> In this sense, their inclusion into the scrutiny of EU legislation affecting subnational competences links political decisions at the supranational level with citizens’ preferences on the ground.

Protocol no. 2 of the Lisbon Treaty leaves to the discretion of national parliaments the decision to consult regional assemblies, as well as to determine the criteria for the selection and inclusion of regional contributions into the national reasoned opinion. This is due to the fact that the EU does not wish to interfere in the domestic institutional set ups of the Member States. In this sense, the importance of regional assemblies in operationalisation of the

---

<sup>40</sup> There are currently 74 subnational parliaments in the EU which exercise constitutionally attributed law-making competences in various fields of policy. They can be found in eight EU member states: three federal (Austria, Belgium and Germany), two regionalised (Spain, Italy), one devolved (the UK) and two unitary states (Portugal – Madeira and Azores; and Finland – Åland Islands). Their legislative capacity varies from one Member State to another.

<sup>41</sup> Output legitimacy refers to the effectiveness of policy outcomes understood as satisfying the social and economic needs of the society (effective governance). According to Fritz Scharpf, *output oriented* legitimacy demands that democratic government should advance the common good by dealing effectively with those problems that are beyond the reach of individual actions, market exchanges and voluntary cooperation among individuals and groups in civil society — which emphasises the dimension of ‘government for the people’, See: F.Scharpf, *Governing Europe: effective and democratic?* New York 1999, p. 11.

<sup>42</sup> T. Christiansen and P. Lintner, *The Committee of Regions after 10 Years. Lessons from the Past and Challenges for the Future*, EIPA Scope, No. 1/2005, pp. 7–13.

<sup>43</sup> *Input oriented legitimacy* refers to the character of the policy-making process, as ensuring adequate representation and participation of the interested parties in the process of decision-making (inclusive governance). According to Scharpf, input legitimacy presupposes that in a democratic polity, the powers of government must be exercised in response to the articulated preferences of the governed – which, in the language of Abraham Lincoln refers to ‘government by the people’. In modern political systems, this function is usually exercised by parliaments as the legitimate and directly elected representatives of the people. See: F. Scharpf, *op.cit.*, p. 6.

<sup>44</sup> A. Benz, *Linking the multiple demoi...*, *op.cit.*

effective scrutiny is inextricably related to the willingness of national level institutions to channel and consider regional opinions.

The empirical evidence shows that in highly decentralised systems regional authorities receive all the EU legislative acts, from which they can select those affecting their competences to be scrutinised under the EWS. In the majority of countries possessing legislative regions, appropriate regulations at the national level have been established to ensure subnational participation in the EWS. For example, in Spain the relations between the national and regional parliaments under the EWS are formally regulated by Law 24/2009. At the regional level, the majority of autonomous parliaments have incorporated the new provisions for subsidiarity into their legal order, either by amending their statutes of autonomy or changing the parliamentary rules of procedure.<sup>45</sup> In Germany, the participation of the regional level in subsidiarity control is guaranteed through the Bundesrat, as the second chamber of the federal parliament. Even in Italy the long-standing absence of national level provisions for regional engagement in the EWS was compensated for by the newly approved law on domestic participation in EU affairs (*Legge 24 dicembre 2012, n. 234*). This law strengthens the role of the regions in the creation of EU law by giving regional parliaments the possibility to send their observations regarding the principle of subsidiarity to the Senate and the Chamber of Deputies. In Belgium, regional parliaments function on an equal footing with the national parliament and can cast one (out of the two) subsidiarity votes normally reserved to the second chamber.

With respect to the inclusion of regional voices into the nationally issued reasoned opinion, some positive trends can be observed in Spain and the UK. For example, all reasoned opinions issued by the *Cortes Generales* in the period 2011–2012 acknowledged the reports of regional parliaments.<sup>46</sup> In the UK, so far all of the reasoned opinions issued by the devolved assemblies were taken into account at Westminster in the UK's final national opinions.<sup>47</sup>

Without a doubt the introduction of the EWS has generated transformative dynamics in the parliamentary *modus operandi* in the EU's decentralised states. Although the empirical findings reveal considerable variations in the

---

<sup>45</sup> K. Borońska-Hryniewiecka, *Subnational parliaments in EU policy-control. Explaining variations across Europe*, EUI RSCAS Working Paper Series, No. 38/2013, available online at: <http://cadmus.eui.eu/handle/1814/27156> (last visited 12.11.2013).

<sup>46</sup> List of opinions issued by *Cortes Generales*: COM (2011) 215 and 216 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements; COM (2011) 0169 final restructuring the Community framework for the taxation of energy products and electricity; COM (2011) 896 and 897 final on public procurement; COM (2012) 167 final concerning European Statistics.

<sup>47</sup> See: IPEX database.

pace and scope of regional parliamentary activity in the *ex-ante* control of EU policy,<sup>48</sup> the EWS has increased the awareness at the national level of the necessity to consult EU policies with subnational authorities for the sake of policy complementarity, effective implementation, and compliance. At the EU level, policy pragmatism causes the Commission to encourage national parliaments to constructively consult with their regional counterparts under the EWS. From a political and functional point of view, it makes limited sense for the Commission to consider a reasoned opinion including only a national stance on a subject matter for which implementation is entirely foreseen at the regional level. Moreover, in its latest resolution on the 18th report on Better Legislation, the European Parliament also underlined the role of subnational parliaments with legislative powers in the area of subsidiarity control, and called on the national parliaments to cooperate with them under the EWS.<sup>49</sup>

In the same vein, the Treaty of Lisbon extended the obligatory consultation procedure in the EU legislative process, as a result of which not only the Commission, but also the Council and the European Parliament are obliged to consult regional stakeholders through the Committee of the Regions in a wide number of policy areas affecting regional and local competences.<sup>50</sup> From the point of view of institutional empowerment, the most important development is surely the fact that the Committee has been granted the right to bring legal actions before the CJEU to request the annulment of EU legislative acts which it considers in breach of the principle of subsidiarity.<sup>51</sup>

### **3.5. Blurring the existing channels of delegation and accountability**

The first counterargument against this claim might be simply that additional mechanisms of representation and accountability in a system so complex as the EU is always a good thing, as it provides more checks and balances in an over-bureaucratized process of policy-making. But the reasoning goes further.

The creation of a supranational policy framework of the EU, where the preconditions for direct democratic accountability are not fully realised, has

---

<sup>48</sup> K. Borońska-Hryniewiecka, *Subnational parliaments in EU policy-control...*, op.cit.; K. Borońska-Hryniewiecka, *Regions and subsidiarity after Lisbon...*, op.cit.

<sup>49</sup> European Parliament Draft opinion of the Committee on Constitutional Affairs for the Committee on Legal Affairs on the 18<sup>th</sup> report on Better legislation – Application of the principles of subsidiarity and proportionality (2010), doc. ref. 2011/2276(INI), Brussels, 1.03.2012.

<sup>50</sup> The scope of obligatory consultation includes: economic, social and territorial cohesion; trans-European networks; transport, telecommunications and energy; public health; education and youth; culture; employment; social policy; environment; vocational training; and climate change.

<sup>51</sup> Art. 8 of Protocol no.2.

challenged the *input* dimension of legitimacy (see above). Delegation of power and policy tasks from member states to a supranational agency (the European Commission), where a multitude of specialised agendas and departments decide what is best for European citizens, has resulted in the blurring of political responsibility for policy outcomes. While at the national level governments are held accountable for their decisions and can be ‘punished’ by voters in subsequent elections, at the EU level citizens find it hard to locate the main decision-makers, let alone sanction them for their actions. The supranational (European) Parliament, although institutionally empowered, is still weak in terms of its democratic representativeness and political leverage. EU citizens do not identify with European parties and EP elections are thought to be ‘second-order’, which questions the direct accountability and representativeness of the EP towards citizens. At the same time, it can be observed that EU technocratic decisions based on market calculations produce a ‘*policy drift away from voters’ policy preferences*’.<sup>52</sup> In this context, the EWS constitutes an additional (along with the EP and the Council) channel of citizens’ representation in the EU legislative process. At the end of the day, the European *demos* is nothing else than a sum of multiple national *demoi*.<sup>53</sup> Despite the efforts to increase the political salience of the EP, it is still the national assemblies with whom citizens identify more and refer to in terms of policy postulates. In this context, the inclusion of national parliaments in a direct dialogue with the European Commission allows the latter to follow citizens’ preferences more closely. In this sense, the EWS constitutes a legislative transmission belt between the Commission and the Member States’ parliaments, whose scrutinising of EU draft legislation justifies EU action and, ideally, translates into co-responsibility for governance, awareness of its costs, and increase in its effectiveness (in the later implementation phase). The Commission, horizontally accountable to the European Parliament and the Council, becomes in addition vertically accountable to the collective of national parliaments under the threat of consequences (i.e. a ‘yellow’ or ‘orange’ card).

More importantly, and contrary to what De Wilde suggests, there is no collision between the EP’s and national parliaments’ roles in exercising control over EU legislation. First of all, the European Parliament opened itself to the feedback of national chambers by updating its Rules of Procedure to adjust to the requirements of the EWS. Currently, it receives all reasoned opinions coming from national parliaments, which in turn become part of the official

---

<sup>52</sup> A. Follesdal and S. Hix, *Why is there...*, op.cit., p. 537.

<sup>53</sup> K. Nicolaïdis, *Our European Demoï-cracy: Is this Constitution a Third Way for Europe?* in: *Whose Europe? National Models and the Constitution of the European Union*, eds. K. Nicolaïdis and S. Weatherill, European Studies at Oxford Series 2003.



documents related to the legislative procedure.<sup>54</sup> Within this framework, EP committees may directly engage in cooperation with national chambers, either at the pre-legislative or post-legislative stage of EU policy-making. Moreover, the European Parliament supports national parliaments (NPs) in their scrutinising task and calls for its facilitation under the EWS. In September 2012, the EP issued a resolution in which it called for a revision of the EWS time frame, as well as for a more efficient cooperation and coordination among the Commission, national chambers, and itself to alleviate the existing impediments.<sup>55</sup> It can be thus argued that the EP and NPs individually and collectively complement each other, and by doing so enhance the democratic legitimacy of the EU.<sup>56</sup> Crum and Fossum refer to this relation as a ‘multi-level parliamentary field’, in which vertical inter-parliamentary cooperation is being institutionalised.<sup>57</sup>

However, in their conceptualisation Crum and Fossum *de facto* limit their analysis to the two-level relations between the European Parliament and the national chambers, overlooking the fact that through the EWS the EU parliamentary field has extended to the subnational level. As explained in the previous section, the institutional phenomenon of the EWS establishes the first, albeit mediated, interface between the regional parliaments and the Commission. Increasing the subnational parliamentary control over EU policy-making not only stands in contrast to De Wilde’s argument that the EWS obfuscates the existing channels of delegation and accountability, but also adds strength to Hurrelmann’s concept of ‘positive-sum legitimacy’, which implies that the different levels of governance reinforce each other’s lawfulness through a relationship of mutual support.<sup>58</sup> The EWS has the potential for institutionalising this relationship.

### 3.6. The EWS as an administrative burden

It’s true that participation in a complex scrutiny of EU legislative projects under the EWS entails building new technical and legal capacities at the

---

<sup>54</sup> Art. 38a of the EP Rules of Procedure.

<sup>55</sup> Resolution of the European Parliament of 13 September, 2012 on the 18<sup>th</sup> Report on Better Legislation – Application of the principles of subsidiarity and proportionality, doc. ref. 2011/2276(INI).

<sup>56</sup> I. Cooper, *A “Virtual Third Chamber” for the European Union? National Parliaments after the Treaty of Lisbon*, “West European Politics” Vol. 35(3)/2012, pp. 441–465.

<sup>57</sup> B. Crum and J.E. Fossum, *The Multilevel Parliamentary Field: a framework for theorizing representative democracy in the EU*, “European Political Science Review” Vol. 1(2)/July 2009, pp. 249–271.

<sup>58</sup> J. De Bardeleben and A. Hurrelmann, *Democratic dilemmas of multilevel governance. Legitimacy, representation and accountability in the European Union*, Houndmills, Basingstoke–New York 2007, p. 21.

parliamentary level. In this context, the lack of human resources and expertise seems to be the main obstacle signalled by the national and regional chambers.<sup>59</sup> Yet it has to be kept in mind that participation in the EWS is voluntary and depends on the autonomous decision of a parliamentary chamber. National parliaments become involved in the scrutiny as a result of their own purposeful behaviour, not by coercion. They deploy resources, comply with the newly established rules, and engage in interactions with other institutional actors in the framework of the EWS because it presents an attractive opportunity and structure to exert influence on EU policy and to restore its controlling function *vis-à-vis* governments. Contrary to what De Wilde claims, the EWS does not drive parliamentary resources away from scrutinising governments, but rather precisely directs parliamentarians' attention to the work of executives, and gives them a legal leverage of control in the form of 'yellow' or 'orange cards'. As one of the representatives of the Italian Senate noted, the EWS allows parliamentary chambers to gain visibility at the national level, where the hitherto practice in European affairs was dominated by executive decisions, effectively insulated from parliamentary scrutiny.<sup>60</sup>

As regards administrative burdens, in every innovative institutional reform a certain period of time is necessary to adjust the internal procedures and capacities to the new challenges and to foster inter-institutional cooperation. In this context, parliaments can rely on some well-designed facilitating infrastructures, such as COSAC<sup>61</sup> and IPEX at the national level or REGPEX<sup>62</sup> at the regional level. Currently, almost all national parliaments have their permanent representatives in Brussels, who hold regular meetings to discuss issues of common concern, including subsidiarity review. Parliaments are also developing new mechanisms for horizontal coordination as well as for inter-level communication with their regional chambers. For example, in Spain joint technical sessions and trainings are organised between the lawyers responsible for subsidiarity scrutiny at the regional level and in the national parliament. Additionally, in 2011 the Conference of Presidents of the Spanish Autonomous Parliaments (COPREPA) prepared a hand-

---

<sup>59</sup> See: K. Borońska-Hryniewiecka, *Regions and subsidiarity...*, op.cit.; P. Kaczyński, *Paper tigers...*, op.cit.

<sup>60</sup> Interview with Davide Capuano, Counsellor of the Italian Senate, June 2012.

<sup>61</sup> The Conference of Community and European Affairs Committees of Parliaments of the European Union is a conference of Members of the European Parliament (MEPs) and national Members of Parliament (MPs), drawn from parliamentary committees responsible for European Union affairs.

<sup>62</sup> Electronic database coordinated by the Committee of the Regions serving as information exchange platform for regional assemblies in the process of subsidiarity monitoring and impact assessment procedures. See: <http://extranet.cor.europa.eu/subsidiarity/regpex/Pages/default.aspx> (last visited 11.10.2013).

book facilitating the elaboration of regional opinions within the EWS. It can be expected that over time and more adjustments will be in place and there will be more sharing of expertise and opinions among national chambers, which will help them overcome the logistic difficulties. Exposure to ‘good practices’ circulating in the EU can only render national chambers further empowered administratively.

Another argument against perceiving the EWS as an unnecessary institutional burden lies in the general necessity for a stronger Europeanization of parliamentary actors. In this sense, ‘Europeanization’ is understood as the institutionalisation of formal and informal procedures, rules, norms and ways of doing things which are first defined and consolidated in the EU policy process and then incorporated into the logic of domestic discourses and political structures.<sup>63</sup> The EWS, which requires a collective exchange of views and opinions among various national chambers, is a useful way to accelerate the Europeanization process of political elites and bridge the gap between domestic politics and EU policies. As more policy fields become subject to EU legislation, the work of parliamentarians becomes less and less law-making *sensu stricto*, and concentrates more on 1) controlling their government’s activity in EU affairs and 2) implementing policies. Nowadays, when ever more deals and laws are made outside parliaments, parliamentarians should learn how, through an EU-oriented involvement, they can remain active players in the scene and avoid becoming suspended in an institutional limbo. In this sense, the EWS, as a catalyst for the exercise of already attributed law-making competences, increases the knowledge of national and subnational parliamentary elites about EU legislation and enhances their responsiveness to EU affairs.

## Conclusions

Research into parliamentary scrutiny is important in order to better understand functioning of the new instruments that are being created as institutions adjust to the multi-tiered governance pattern emerging in the EU. This article has attempted to evaluate the *actual* relevance of the Early Warning System introduced by the Treaty of Lisbon. This was done by addressing a number of the most critical arguments directed at the system and circulated in the academic literature.

---

<sup>63</sup> C. Radaelli, *The Europeanization of Public policy* in: *The Politics of Europeanization*, eds. K. Featherstone and C.M. Radaelli, Oxford 2003, p. 30.

Firstly, it has been shown that although breaches of subsidiarity by the EU are not a problem *per se*, the Commission needs to invest more effort in justifying its future actions as well as in preparing Impact Assessment sections in draft legislative proposals. In this sense, the potential use of ‘yellow/orange cards’ under the EWS might result in more careful elaborations of EU policies before they are put on the negotiating table. Secondly, the latest developments, for example with respect to the ‘Monti II regulation’, prove that the high and challenging thresholds for raising ‘yellow cards’ can indeed be attained and an effective EWS procedure can be activated. This makes the EWS more credible and increases the visibility of national parliaments as active players in EU policy-making. Moreover, the entry into operation of the EWS has also spurred the activity of regional parliaments with legislative powers which, through engaging in subsidiarity scrutiny, can gain more influence in EU affairs. Thirdly, the EWS has offered national parliaments a viable pretext for a more comprehensive engagement in the assessment of EU policies. The empirical analysis reveals that the formally limited scope of parliamentary scrutiny under the EWS has been significantly broadened in practice. Both national and regional parliaments take a wider perspective in their analyses, issuing opinions on the substance of EU proposals, their proportionality, and potential impact. What’s more, the Commission has clearly shown its willingness to consider these evaluations. Fourthly, by taking the vertical division of competences in the Member States into account, the EWS recognises those regions with legislative power as legally and functionally qualified input-givers in the process of *ex-ante* control of EU policy. In the majority of decentralised (but not only) states, regulations have been established to ensure subnational participation in the scrutiny process under the EWS and, in several cases, regional opinions are promptly included into the national reasoned opinion. Fifthly, by linking the multiple dimensions of democratic representation across all the levels of governance (i.e. national, supranational and subnational), the EWS enhances their mutual legitimisation. The involvement of national and subnational parliaments in the EU policy-making process, hitherto reserved primarily to executive bodies, undoubtedly helps in democratising the entire multi-level governance system of the EU. The EWS becomes an accountability enhancing (not blurring) mechanism, as it adds additional check points at the domestic parliamentary level. Finally, the EWS provides a Europeanization engine for national and regional legislatures. It bridges the gap between domestic politics and EU policies and increases the knowledge of parliamentary elites about EU legislation, and hence their responsiveness to EU affairs.

For the abovementioned reasons, it can be stated that the EWS generates positive (even if unintended) spill-over effects with respect to both the *input*

and *output* legitimacy of the EU. With respect to *inputs*, it strengthens the representative dimension of the EU political system by including both national and regional parliaments into EU policy control. With respect to *outputs*, it creates better awareness of policy contents (and their flaws) in EU Member States. The feedback it produces allows for better tailoring of policies and better regulation, which in the long term improves policy implementation and compliance. The analysed spill-over effects of the EWS augur well for further development of the role of national and regional parliaments in the EU legislative process, not only as veto blockers but also as constructive input-givers.

The arguments presented in this paper show how and why the EWS can be used as an analytical framework for studying parliamentary mobilisation in European affairs. It has been shown that the EWS does not have to be treated solely as a veto mechanism to block EU initiatives in instances where the EU is overstepping its competences, but can be conceptualised more broadly, depending on the purpose it might serve in the EU multilevel polity, as 1) a disciplining tool for a better regulatory environment; 2) a representation and accountability-inducing mechanism; 3) an opportunity structure for increasing parliamentary control over the executive; and 4) a Europeanization mechanism. In other words, although flawed by design, the *modus operandi* of the EWS makes it a meaningful legitimacy reinforcing mechanism.