National and Regional Parliaments in the EU-Legislative Procedure Post-Lisbon

The Impact of the Early Warning Mechanism

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• HART •
PUBLISHING
OXFORD AND PORTLAND, OREGON
2017

Hart Publishing
An imprint of Bloomsbury Publishing Plc

Hart Publishing Ltd
Kemp House
Chawley Park
Cumnor Hill
Oxford OX2 9PH
UK

Bloomsbury Publishing Plc
50 Bedford Square
London
WC1B 3DP
UK

www.hartpub.co.uk
www.bloomsbury.com

Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786
USA

www.isbs.com

First published 2017

British Library Cataloguing-in-Publication Data
A catalogue record for this book is available from the British Library.

ISBN: HBK: 978-1-78225-917-6
ePDF: 978-1-78225-919-0
ePub: 978-1-78225-918-3

Library of Congress Cataloging-in-Publication Data

Names: Jonsson Cornell, Anna, 1973– editor. | Goldoni, Marco, editor.

Title: National and regional parliaments in the EU-legislative procedure post-Lisbon : the impact of the early warning mechanism / edited by Anna Jonsson Cornell and Marco Goldoni.

Description: Oxford [UK] ; Portland, Oregon : Hart Publishing, 2017. | Includes bibliographical references and index.

Identifiers: LCCN 2016037924 (print) | LCCN 2016038129 (ebook) | ISBN 9781782259176 (hardback : alk. paper) | ISBN 9781782259183 (Epub)

Subjects: LCSH: Legislative bodies—European Union countries. | Parliamentary practice—European Union countries. | Constitutional law—European Union countries. | International and municipal law—European Union countries. | Subsidiarity—European Union countries. | Central-local government relations—European Union countries. | Treaty on European Union (1992 February 7). Protocols, etc. (2007 December 13)

Classification: LCC KJE5390 .N35 2017 (print) | LCC KJE5390 (ebook) | DDC 328.4—dc23

LC record available at https://lccn.loc.gov/2016037924

Typeset by Compuscript Ltd, Shannon
Printed and bound in Great Britain by CPI Group (UK) Ltd, Croydon CR0 4YY

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Introduction

ANNA JONSSON CORNELL AND MARCO GOLDONI

Having been stifled for a long time, the attention of scholars to the role of national parliaments in EU constitutional law seems to be, by now, at its peak. The historical context has possibly played an instrumental role in changing the tide. It has to be borne in mind that parliamentary politics has long been subject to discredit as a 'talking shop' and Europeanisation considered a factor in the further deterioration of parliamentary relevance.[1] In particular, two events occurring over the final years of the past decade have contributed to the resurgence of interest around national parliaments. The first is the Euro crisis, which has weakened dramatically the foundations of EU law-making because it has triggered the adoption of a mix of measures of different legal natures. Moreover, the adoption of them without proper and robust deliberation by national parliaments has made things even worse.[2] The measures adopted to cope with the Euro crisis might have been effective in the short term, but they conveyed the message that it was a matter of *necessity* to ratify them. National parliamentary politics was directly threatened by this arrangement, even though this was clearly the case more for certain Member States than others. If parliamentary politics is above all representative politics and representative law-making,[3] then the necessity of ratifying new legislation in a condition of emergency is a denial of this point. In other words, the political deficit intrinsic to the process of EU law-making (actually, not only EU law-making, but the so-called Union Method too) was exposed beyond any reasonable doubt. Such a deficit does not only shake the legitimacy of EU ordinary law-making, but would also put further pressure on the domestic role of national parliaments by hollowing out their effective capacity of political representation. The second factor is the ratification and the entry into force of the Lisbon Treaty, which included

[1] This criticism is actually quite dated (for a classic statement see C Schmitt, *The Crisis of Parliamentary Democracy*, E Kennedy (trans) (Cambridge MA, MIT Press, 1985 [1923]).

[2] For a quantitative analysis and an assessment of parliaments' performance during the Euro crisis see K Auel and O Höing, 'Parliaments in the Euro Crisis: Can the Losers of Integration Still Fight Back?' (2014) 52 *Journal of Common Market Studies* 1184.

[3] Among many, see J Waldron, 'Representative Lawmaking' in (2009) 89 *Boston University Law Review* 335.

some intriguing and promising measures concerning national parliaments and EU citizens (namely, the European Citizens Initiative).[4]

The Lisbon Treaty empowers the national parliaments by stating their right to be directly informed on EU affairs without the mediation of their own governments and it has turned them into guardians of the principle of subsidiarity. The conjunction of these two events gave new input to the research on national parliaments as testified to by a number of volumes and special issues of scientific journals.[5] In particular, empowering the national parliaments as the watchdogs of subsidiarity was perceived as facilitating a new engagement of parliaments in EU integration in a field—subsidiarity policing—in which the record was not really successful. As already remarked by Gráinne de Búrca, the Commission viewed subsidiarity as a tool to justify the EU's exercise of power rather than to constrain it.[6] There were ingrained factors behind the failure of the application of subsidiarity review:

1) the political nature of the principle of subsidiarity made it ill fitted for judicial review;[7]
2) the European Union's decoupling of the economic constitution (ie, the regulation and implementation of the single market) from the national political level[8] created a bias in favour of an expansion of competences in the EU and according priority to the four freedoms over other principles.[9]

Following an increased Europeanisation, and then even the participation in the draft constitutional treaty by national parliamentarians, a new space for national parliaments to intervene in subsidiarity review was carved out with the introduction of the Early Warning Mechanism (EWM). The EWM is a device for signalling to the European Commission and to the other European institutions that a

[4] See Protocols no 1 and 2 for the role of national parliaments; see Art 11.4 TEU for the European Citizens Initiative.

[5] The *Palgrave Handbook on National Parliaments in the EU* (n 16 below), published in 2015, is the last instantiation of this interest, but it can also be seen as the building block for any future research on the topic in light of its depth and breadth. See the 2015 special issue of *West European Politics* edited by K Auel and T Christensen and titled: 'After Lisbon: National Parliaments in the European Union'; cf the 2013 special issue of *Journal of European Public Policy* on 'The Representative Turn in EU Studies', edited by S Kröger.

[6] G De Búrca, 'The Quest for Legitimacy in the European Union' in (1996) 59 *Modern Law Review* 366 at 366.

[7] See A Estrella, *The Principle of Subsidiarity and Its Critique* (Oxford, Oxford University Press, 2002) 32–34. Cf A van den Brink, 'The Substance of Subsidiarity: The Interpretation and Meaning of the Principle after Lisbon' in Trybus and Rubini (eds), *The Treaty of Lisbon and the Future of European Law and Policy* (Cheltenham, Edward Elgar, 2013) 163; a nuanced evaluation of the subsidiarity principle has been offered by R Schütze, 'Subsidiarity after Lisbon: Reinforcing the Safeguards of Federalism' in (2009) 68 *Cambridge Law Journal* 531.

[8] This is one of the themes prominent in Karlo Tuori's idea of Europe's many constitutions. For a recent application see K Tuori and K Tuori, *The Eurozone Crisis: A Constitutional Analysis* (Cambridge, Cambridge University Press, 2014).

[9] G Davies, 'Democracy and Legitimacy in the Shadow of Purposive Competence' in (2015) 21 *European Law Journal* 2, 10–11.

draft legislative act is potentially in violation of Article 5.3 TEU. The device works according to a distribution of one vote to each parliamentary chamber and two to each monocameral parliament.[10] If a positive indication by at least one third of the available votes is expressed by the national parliaments, then a yellow card is issued (in which case the Commission, or where appropriate, other European institutions, have to review the proposal and decide whether to amend it, withdraw it or maintain it), while if more than half of the available votes are cast, then an orange card—applicable only to the ordinary legislative procedure—is issued. In the latter case, if the Commission decides to maintain the proposal, the other European legislators have to judge whether it complies with subsidiarity.[11]

One can detect two reasons undergirding the design of this new instrument for national parliaments. The first reason is based on the assumption that by virtue of their democratic credentials, national parliaments are 'truly plausible guardians of subsidiarity'.[12] According to the second reason, since national parliaments were deemed to be the natural victims of the relative lack of subsidiarity enforcement, they would have a direct interest in reviewing the principle of subsidiarity in order to avoid further loss of power.[13] Hence, at the moment of the entry into force of the Lisbon Treaty the hope was that through the EWM, two constitutional goods would be achieved: a democratisation of EU ordinary law-making and a new European activism of the national parliaments through the policing of subsidiarity. In light of some structural features concerning the application of subsidiarity, however, these expectations might be seen as unrealistic or excessive. In fact, as remarked recently by Marjia Bartl, subsidiarity policing might actually be used in a more practical and effective way to unveil two limitations embedded in EU ordinary law-making, like the functionalist design of EU institutions and the progressive accumulation of technical expertise in law-making.[14] In both cases, the type of parliamentary politics promoted by the reform of the Lisbon Treaty (deliberative and representative) remains marginal at best and does not seem capable of making a difference at the European level.

It is in this context, marked by uncertainty and future new expectations, that the project of inquiring into the use of the EWM in its first five years from a comparative constitutional perspective took shape.[15] This volume is the outcome of two

[10] Such a counting device has an immediate impact on the national constitutional dynamics of bicameral countries, where the two parliamentary chambers have less incentive to cooperate or establish a common position.

[11] The procedure is regulated by Arts 7.2 and 7.3 of Protocol no 2.

[12] G Bermann, 'The Lisbon Treaty: National Parliaments and Subsidiarity: An Outsider's View' in (2008) 4 *European Constitutional Law Review* 455, 459.

[13] For an assessment pre-Lisbon Treaty see J O'Brennan and T Raunio (eds), *National Parliaments within an Enlarged European Union: From Victims of Integration to Competitive Actors?* (London, Routledge, 2007).

[14] M Bartl, 'The Way We Do Europe: Subsidiarity and the Substantial Democratic Deficit' (2015) 21 *European Law Journal* 23.

[15] A first encompassing evaluation was P Kiiver, *The Early Warning System for the Principle of Subsidiarity* (Routledge, London, 2012).

workshops held in Uppsala in September 2014 and in Stockholm in January 2015, organised out of the necessity of analysing and possibly assessing the recently introduced EWM for subsidiarity review. The original problem was that the available numbers did not seem to settle the question of its value in an unequivocal way. In 2012 and 2013 two yellow cards were finally issued after a period of diffuse scepticism; yet, the numbers of reasoned opinions issued by national parliaments, after having grown steadily between 2010 and 2013, fell drastically in 2014. Once again it is not easy to assess properly this latter bit of information: the diminution might be due to the European Parliament elections in May 2014 or, on the contrary, it could have been determined by a diminished interest in the principle of subsidiarity due to frustration at the ineffective two yellow cards or the more general sense of parliamentary impotency.

The aim of the workshops and then of the volume is to review, compare and when possible assess the performance of the EWM, reflecting upon its impact not only on EU law-making but also within the domestic constitutional and political context. Contributors were invited to analyse the use of the EWM under a theoretical and normative point of view or from the vantage point of the experience of a particular Member State or a group of them. Therefore, the aim of the contributions was not to produce a judgment on the success or failure of the EWM. As has been noted, it is not easy to assess the impact of the EWM just through a quantitative study.[16] Rather, contributors were asked to analyse:

1) how the EWM had been implemented into national constitutional orders and how reasoned opinions were shaped,
2) its effect on the national constitutional dynamic,
3) its impact on the relation between national parliaments and the Commission, and
4) in specific case studies of national and regional parliaments, what was peculiar in their experiences.

Two points need to be highlighted before describing the content of the volume. In light of the ambiguous nature of the EWM and the unsettled definition of the content of subsidiarity, it was necessary to involve both legal scholars and political scientists to take part in the two workshops. In fact, the point of the review of subsidiarity is still disputed, in particular whether it is possible to combine a political with a legal scrutiny of the principle. This issue requires a plurality of perspectives on the analysis of the EWM. Such an interdisciplinary approach is captured in the following chapters by the diversity of the contributors' backgrounds and their approaches. Moreover, in light of the research questions submitted to the participants, it is clear that this collection of essays is grounded upon a solid comparative

[16] K Auel et al, 'Fighting Back? And if so How? Measuring Parliamentary Strength and Activity in EU Affairs' in Hefftler et al (eds), *The Palgrave Handbook of National Parliaments and the European Union* (Basingstoke/New York, Palgrave Macmillan, 2015), 74.

position, one that makes room both for comparative political studies and comparative constitutional law. The privileged point of view of the analysis is usually (but not exclusively) at the national level. The comparative approach yields important dividends for constitutional analysis and policy-reform likewise. Constitutionally, contrasting the practices of subsidiarity review of different national parliaments makes it possible to draw lines of continuity and discontinuity between different experiences. Such an analysis paves the way for a reconstruction of different understandings of subsidiarity review sensitive to national constitutional features, which constitute factors in explaining the practice of the EWM. Some of these factors include: the distribution of the competences of subsidiarity review, which can vary between more or less centralised forms of review and between a light or heavy involvement of the plenary; the institutional and administrative capacities of each parliamentary chamber; the specific sensitivity of each parliamentary chamber toward different subjects of policy-making, so that certain issues trigger a heightened level of scrutiny and others a lessened level (motivational factor).[17] This is functional to an accurate assessment of potential policy-making reforms and the possibility of a uniform and unique European solution to issues affecting the EWM like the possibility of a common understanding of subsidiarity, the drafting of reasoned opinions, and the involvement of subnational legislatures. Hence, the volume reflects the necessity both of inquiring into the actual practices of application of the EWM and, at the same time, looking at possible reforms of this instrument. A key question, which needs to be properly mentioned at this stage, concerns the relation between subsidiarity review and the so-called Political Dialogue.[18] The latter is an informal practice launched by the Barroso Commission in 2006[19] in order to enhance the dialogue between the Commission and national parliaments. It gives the opportunity to each parliamentary chamber to address its concerns over or make suggestions on a draft legislative act or a consultation paper.[20] The considerations sent through the Political Dialogue might overlap with those contained in national parliaments' reasoned opinions. An analysis of the practice of the EWM cannot ignore the use of the Political Dialogue and any proposal for the reform of subsidiarity review has to consider also the role of the Barroso Initiative.

This volume is organised in three parts, each one contributing to separate but related aspects of the use of the EWM. The first part of the volume is devoted to a theoretical reconstruction of how the EWM *ought* to be understood and what *ought*

[17] For a recent survey of the factors explaining whether national parliaments decide to scrutinise EU legislative proposals see K Auel, O Rozenberg and A Tacea, 'To Scrutinise or not to Scrutinise? Explaining Variation in EU-Related Activities in National Parliaments' (2015) 38 *West European Politics* 282.

[18] For a recent impressive reflection on this point see D Jančić, 'The Game of Cards: National Parliaments in the EU and the Future of the Early Warning Mechanism and the Political Dialogue' (2005) 52 *Common Market Law Review* 939.

[19] COM(2006) 211 final.

[20] For an evaluation of the impact of the Political Dialogue see D Jančić, 'The Barroso Initiative: Political Boost or Window Dressing?' (2012) 8 *Utrecht Law Review* 78.

to be the role of national and regional parliaments. A common theme behind all chapters of this part is the link between the idea of subsidiarity and the use of the EWM. It is open to different interpretations whether subsidiarity ought to be conceived according to political or legal rationality (or both, if possible).[21] The opening chapter, by one of the major experts of subsidiarity review, Ian Cooper identifies three approaches to the understanding of the EWM: 1) subsidiarity review seen as a rule-following practice (exemplified by the practice of the Finnish *Eduskunta*); 2) subsidiarity review as political bargaining (exemplified by the Danish *Folketing*); and 3) subsidiarity review as policy arguing (exemplified by the Swedish *Riksdag*). Each approach entails a different conception of subsidiarity[22] and normative consequences in the relation with the Commission. The chapter shows how the content of subsidiarity review is shaped by the interaction between the Commission and the relevant national constitutional culture, but Cooper also puts forward an argument in favour of the model of argumentation. The latter vindicates the political role of national parliaments in checking subsidiarity but at the same time does not unleash centrifugal or anti-integration forces because the engagement with the Commission would be driven by the dialogue on how to legislate on the basis of the best argument and not of self-interest. However, while some parliamentary chambers have adopted this approach, he recognises that the Commission has not been willing to cooperate in this way with national parliaments because it has favoured an understanding of the EWM based on a strictly formal and legal conception of subsidiarity.

Jörgen Hettne provides an overview of the functioning of the EWM and its link with both political and legal conceptions of subsidiarity. His aim is to find a solution to the potential conflict between the political and legal understandings of subsidiarity and to articulate an encompassing proposal of rationalisation of the subsidiarity review, compatible with the current constitutional balance in the EU. His proposal, termed a constitutional dialogue, comprises several aspects: the facilitating of constitutional issues through reasoned opinions which would serve as a mechanism for signalling potential dangers in a Commission proposal; the ex ante involvement of the Court of Justice of the European Union to settle constitutional issues; the modification of the threshold for the yellow card according to the rules of decision-making in the Treaties; the inclusion of proportionality reasoning in reasoned opinions together with issues relating to the principle of conferred powers and issues of national/constitutional identity. Overall, Hettne's chapter offers a challenging blueprint for a reform of the EWM which would hold

[21] See, for an example of a legal interpretation of the EWM, F Fabbrini and K Granat, 'Yellow Card, but no Foul: The Role of National Parliaments under the Subsidiarity Protocol and the Commission Proposal for an EU Regulation on the Right to Strike' (2013) 50 *Common Market Law Review* 116.

[22] Cf C Fasone, 'Competing Concepts of Subsidiarity and the Early Warning Mechanism' in N Lupo, M Cartabia and A Simoncini (eds), *Democracy and Subsidiarity in the EU* (Bologna, Il Mulino, 2013) 157–96.

together two potentially contrasting objectives: maintaining the current balance of powers in the EU and resolving the conflict over subsidiarity review.

Anne Wetter adds a further dimension to this debate on how to improve the application of the EWM by introducing an argument in favour of procedural indicators in performing subsidiarity review. While aware that procedures are not absolute guarantees of involvement, Wetter's reasoning is that they constitute the very starting point of national parliaments' participation in EU law-making. Following the *Isoglucose* case and Maduro's opinion in *Vodafone*, she elaborates what the role of the Court of Justice could be in enforcing the respect of procedural requirements in order to protect the rights of national parliaments within the EWM. She argues that a contextual and purpose-oriented method of interpretation in the future would allow for the ECJ to annul legislation adopted in violation of procedural requirements, aiming for the implementation of the principle of subsidiarity.

The trajectory of inter-parliamentary cooperation among national parliaments is the core issue treated by Bruno Dias Pinheiro in his chapter. It is uncontested that the EWM cannot fly without some form of cooperation among national parliaments. The question, therefore, is not *if* but *how* cooperation should take place in order to make the EWM effective.[23] Hence, subsidiarity review might be a catalyst practice for strengthening the exchange of information and networking among national parliamentarians even beyond the EWM. By adopting an institutionalist approach, and on the basis of his professional experience, Dias Pinheiro reconstructs in a systematic way all the possible forms of inter-parliamentary cooperation (vertical and horizontal) and then assesses the influence of national parliaments in each of them. He also underlines the material and institutional factors which make national parliaments' participation in those forums more or less influential. With the recognition that there are two practical drivers of cooperation—that is, a possibility to generate some electoral reward or the chance of having a policy impact—Dias Pinheiro proposes to use forms of inter-parliamentary cooperation for gearing subsidiarity review toward a more proactive and affirmative role of the national parliaments. Inter-parliamentary cooperation can play a positive role in re-interpreting subsidiarity scrutiny from a veto mechanism to an input-based practice (for example, the green card) which would transform the national parliaments into active shapers of EU law-making.

Part II of the book is devoted to regional parliaments and the impact that the EWM has had on them. Given that the protocol on subsidiarity gives the national parliaments the right to consult the regional parliaments and include their comments in reasoned opinions, the inclusion of regional parliaments is necessary for a more accurate account of the dynamics of the EWM. Diane Fromage addresses

[23] Ian Cooper has famously suggested that the EWM ought to nudge the national parliaments to operate as if they were a collective institution, a 'third chamber' of the European Union: I Cooper, 'A "Virtual Third Chamber" for the European Union? National Parliaments after the Lisbon Treaty' (2013) 35 *West European Politics* 441.

the function and role that are (and could be) played by regional parliaments. Her analysis offers a general reconstruction of the current impact by regional parliaments upon the EWM, and her normative view is organised around the binary distinction between regional parliaments with legislative powers and those without. The former have a higher stake (and more power) in being involved in subsidiarity review because their legislative competences might be directly affected by a Commission proposal. In light of these considerations and of practical constraints (ie, the limited amount of time available to parliaments in order to perform their review, and the different relations, in each Member State, between the national legislature and the regional parliaments), she suggests involving regional parliaments in the process of subsidiarity review in a consistent but limited way. She concludes that

> there is a need for reflection as to the effectiveness and, in the end, the sense it makes for regional parliaments to participate systematically in the EWM as it currently stands in the light of all the existing difficulties highlighted here …
>
> Regional parliaments with legislative competences should hence only participate in the EWM in limited cases of particular political importance whereas all regional assemblies should be given the possibility to express their opinion, through their national parliament, in the framework of the Political Dialogue.[24]

The importance of cooperation and communication for an effective use of subsidiarity review at the regional level is further explored by Karolina Borońska-Hryniewiecka. Her chapter includes a theoretical contribution expanding the notion of the multilevel parliamentary field[25] to the subnational level. There are at least two solid reasons for this operation: the inclusion of subnational institutions captures the new dynamics generated by the EWM in a more accurate way[26] and, as a matter of fact, it is stated that over 70 per cent of EU legislation and programmes have to be implemented by, and are of concern to, regional parliaments. Empirically, the comparative analysis of the chapter is based on document review and interviews conducted among regional parliaments in five Member States (Spain, Belgium, the United Kingdom, Italy, and Germany). The reconstruction of horizontal (within the subnational entities of the same Member State or of different Member States) and vertical (with other legislative entities) cooperation is conducted under a strict definition of cooperation, understood as 'an active engagement and exchange of resources (ie information, expertise, support) between the actors'. The findings are of a dual nature: there has been clear mobilisation from certain subnational institutional actors because networking and exchange

[24] See Chapter 6, Section IV of this volume at 136.

[25] The classic reference here is B Crum and J Fossum, 'The Multilevel Parliamentary Field: a Framework for Theorizing Representative Democracy in the EU' (2009) *European Political Science Review* 249.

[26] For a comparative assessment of the new mobilization see K Borońska-Hryniewiecka, 'Differential Europeanization? Explaining the Impact of the Early Warning System on Subnational Parliaments in Europe' in (2016) 8 *European Political Science Review* (forthcoming).

of knowledge are considered strategic assets for what are on average relatively under-empowered institutions; and yet inter-parliamentary cooperation still takes place in a fragmented and incoherent way. Borónska-Hryniewiecka concludes that inter-parliamentary cooperation in all the analysed cases leaves much scope for improvement. Regional parliaments are mostly guardians and controllers of their executives, while remaining weak networkers and policy entrepreneurs. One of the main explanations for this is a weakness in the necessary EU expertise, as well as insufficient political engagement on the side of members of regional parliaments. Thus, there is still a large amount of leeway regarding the tools for making their engagement more efficient, faster and meaningful under the constraints of the European decision-making process.

Another case concerning regions with legislative powers is represented by Italy, here tackled by Cristina Fasone.[27] Her chapter is particularly illuminating because it contrasts the Italian experience with the Spanish. The Spanish territorial organisation is deemed to have inspired the reform of Italian regionalism. Yet, compared to the Spanish context, Italian regions come across as weaker, both in political and legislative terms. Nonetheless, Fasone shows that the implementation of EWM in Italy has benefitted Italian regions more than Spanish ones by generating three unexpected positive externalities. The first one is that it has strengthened the previously tenuous relation between the Italian Parliament and the regional councils. This has been possible due to the inception of a national political dialogue in which, in an uneven but active way, several regions have taken part. This outcome has also been made possible by the adoption of a wide interpretation of the EWM mechanism which has allowed the regions to voice their concerns not only on matters completely devolved to them, but also on issues which would have in any case a repercussion on them. The second positive externality, despite different attitudes toward EU affairs, is that the consultation of regional councils has enhanced the cooperation among them and, unlike Spain, strengthened the role of the Conference of the Presidents of regional parliaments. The third positive externality is the strengthening of the national parliamentary process in EU affairs. The introduction of the EWM has triggered a strong form of vertical inter-parliamentary cooperation which has resulted in more parliamentary deliberation and more participation in EU affairs from a parliament which previously did not use to properly scrutinise EU draft proposals. Finally, the current constitutional reform will change the composition of the Senate in favour of a large representation of members of regional councils. If the reform is approved, it is clear that the avenues for regional intervention on EU affairs will further multiply. Fasone concludes that the position of regional councils has at least partially been restored in the Italian constitutional system as a result of the implementation of the EWM.

[27] Fasone has already engaged with this topic in 'Towards new Procedures between State and Regional Legislatures in Italy, Exploiting the Tool of the Early Warning Mechanism' (2013) 5 *Perspectives on Federalism* 122.

Werner Vandenbruwaene and Patricia Popelier examine the most complex case of intertwining between the national and regional levels, that is, Belgium. The logic of Belgian federalism permeates the procedural set-up of subsidiarity scrutiny[28] which entails exclusivity. It is for this reason that Belgium issued Declaration 51 to the Lisbon Treaty stating that regional and communities' parliaments also count as components of the national parliamentary system. Given the number of devolved competences in the Belgian context, such an arrangement clearly empowers the sub-state parliaments as primary actors in subsidiarity review. In order to make subsidiarity review effective in such a pluralist constitutional system, a cooperation agreement among the seven legislative assemblies was signed in 2005 and then modified in 2008. However, because of a number of what Vandenbruwaene and Popelier define as 'endogenous' and 'exogenous' factors, the functioning of subsidiarity scrutiny has been anything but smooth and effective. A close qualitative analysis of reasoned opinions and practice of the Political Dialogue shows that in general, subsidiarity review is understood by all parliaments in a wide political sense, even though it is not possible to deduce a single shared meaning of its content.

The third part of the volume focuses on the analysis of the EWM as used in many of the 28 Member States. A selection of Member States was necessary and it has been made according to certain criteria. The four largest Member States were included by virtue of their role in EU law-making and their value as peculiar constitutional models. The other Member States are grouped according to regional spheres around the Visegrád group and the Scandinavian countries. Belgium, given its peculiar constitutional arrangement and the importance of its regions and communities has been placed in the second part.

This third part opens with a chapter by Anna Jonsson Cornell on some of the most active and highly praised legislative assemblies: the Nordic parliaments. Cornell pays attention to both the similarities and differences between the Swedish *Riksdag*, the Danish *Folketing* and the Finnish *Eduskunta* under three different aspects: constitutional context; procedural aspects of the use of the EWM; and conceptions of the principle of subsidiarity. Referring to Cooper's typology, she concludes that at the constitutional level the differences are more relevant than the similarities because these three parliaments understand 1) the principle of subsidiarity, 2) their role in EU law-making, and 3) the function of the EWM, all in substantially different ways.

In the following chapter, Nicola Lupo examines the Italian approach to the EWM in light of the different experiences of the two chambers of the parliament. His analysis, nested in the wider 'Euro-national Parliamentary System',[29] is centred

[28] Vandenbruwaene and Popelier had already explored the federal organisation of the Belgian subsidiarity scrutiny in 'The Subsidiarity Mechanism as a Tool for Inter-Level Dialogue in Belgium: On "Regional Blindness" and "Cooperative Flaws"' (2011) 7 *European Constitutional Law Review* 221.

[29] A Manzella and N Lupo (eds), *Il Sistema parlamentare Euro-nazionale* (Torino, Giappichelli, 2014).

on both formal and informal elements. The two parliamentary chambers have not yet formalised the procedures for the EWM, but their practice is reconstructed by Lupo by accounting for the influence of the political system, and analysing the reasoned opinions issued until now and other documents mostly produced by the EU policies committees. Lupo concludes that the Italian approach to the EWM results in a view of subsidiarity review as political (rather than formal or legal), dynamic, and generally geared toward the support of the national interest. The two chambers tend to conceive both the EWM and the Political Dialogue in an individualistic way, placing more emphasis on the relation between each national parliament and the Commission rather than on inter-parliamentary cooperation.

France offers a rather distinct case in the application of the EWM because of its semi-presidentialist form of government. Angela Tacea shows how the peculiar French constitutional culture affects the workings of the EWM. The two chambers do not cooperate, and their subsidiarity review is impacted by different political horizons. As happens in other countries, the Senate enjoys more independence from the government and this independence has been strengthened when the election of the lower house has been made to overlap with election of the President of the Republic. Apart from the institutional design, there are other reasons behind the divide between the two Chambers. Traditionally, the lower house has been more pro-European and has conceived the EWM as an instrument in the hands of Euro-sceptics. This is reflected in the less frequent use of the EWM by the Assemblé Nationale, which has mostly adopted reasoned opinions in support of the position of the government. Contrary to this attitude, the Senate has seen in the EWM an opportunity to move beyond the dynamic between government and parliament and, as a consequence, to carve out a new role for itself.

Just as the French parliamentary use of the EWM is heavily influenced by its constitutional design and culture, the same is valid for another important constitutional model: the UK.[30] Adam Cygan's analysis is conducted within the framework of political accountability, usually conceived as the cornerstone of the British model of constitutionalism.[31] This shapes the way in which both Houses undertake subsidiarity review. In fact, both Houses tend to put more emphasis on and resources in parliamentary scrutiny because it is deemed to be more effective than subsidiarity review. As a consequence of this scepticism, it is no wonder that the UK parliament is among the strongest advocates of the introduction of a red card in the EWM. Even though committees are supposed to operate in a less partisan way than the plenary, one can still detect an influence of the Westminster model over the operation of the House of Commons. The fusion of the legislature with

[30] For a reconstruction of the three main European constitutional models (France, UK, Germany) from a US-based perspective, see B Ackerman, 'Three Paths to Constitutionalism' (2015) 45 *British Journal of Political Science* 704.

[31] Cf A Tomkins, *Public Law* (Oxford, Clarendon Press, 2003). Cygan has already worked on a comparison between the British and the German model of scrutiny in *National Parliaments in an Integrated Europe: An Anglo-German Perspective* (Dordrecht, Kluwer, 2002).

the executive makes the opinions of the House of Commons closer to the positions adopted by the national government, while the House of Lords can afford a more autonomous role. This factor, together with the lack of proper and structural communication, explains the difference in the numbers of reasoned opinions sent by the two Houses.

In her chapter on Germany and Austria, Katrien Auel investigates the differences and the reasons behind the decline of interest in the EWM in both countries after what had been an enthusiastic start. Overall, the German and the Austrian parliaments have been less active than the average of the EU parliaments and their contribution is decreasing. Auel reviews how both parliaments use the EWM and the Political Dialogue, with an analysis based on sociological institutionalism. Hence, parliamentary and constitutional cultures play a central role in explaining the norms and values of active parliamentarians. The German and Austrian political systems are still marked by strong party discipline, which represents a disincentive for MPs. In the German case, the Bundestag also perceives itself as exogenous vis-à-vis the European legislative process and it does not consider its task to be holding EU institutions accountable. Both parliamentary majorities tend to agree with the position sketched out by the governing coalitions. Moreover, after initial engagement, in both countries there is a growing sense of a lack of effectiveness of the EWM and the Political Dialogue, due to the absence of press coverage for this activity and the more general difficulty of reaching the electorate. Hence, and despite the actual material capacity to handle a complicated procedure like the EWM, there is no strong incentive to engage with that instrument.

In the final chapter of this part, Katarzyna Granat reconstructs the functioning of the EWM in two neighbouring countries: the Czech Republic and Poland. Both countries are instantiations of asymmetrical bicameral systems with strengthened EU affairs committees. While apparently very similar in constitutional terms, the actual performances of both parliaments are rather different in practice. Granat undertakes a close analysis of the Polish and Czech parliaments by looking at the debates, their reasoned opinions and their participation in the Political Dialogue. Intriguingly, in both countries Protocol no 2 has been interpreted in a wide sense and subsidiarity review has been understood as more than a legal and formal check upon Commission's proposals. Moreover, both parliaments tend to adopt reasoned opinions by unanimity and through a plenary vote, while the level of participation seems not to be determined by EU-friendly positions. In terms of substance, the Polish reasoned opinions assess the material and procedural aspects of the subsidiarity principle while the Czech parliament emphasises the possible violations of fundamental rights. Granat explains the differences in the use of the EWM and the Political Dialogue as a consequence of the procedures put into place for the application of these instruments and, often, the limited resources available to both parliaments.

The last chapter, by Cornell and Goldoni, serves a two-fold aim: to sum up the findings of the previous chapters and to illustrate what directions the future of the EWM might take and with what consequences for national parliaments.

Beginning from the premise that the political context does not allow for a definitive judgment on the effectiveness of the EWM, this chapter draws upon the main continuities and discontinuities in the various experiences of regional and national parliaments. It also engages with the potential future development concerning the EWM, from the red and the green card to the forums of inter-parliamentary cooperation. Overall, the suggestion is that there is still room for parliamentary politics, and in particular national parliamentary politics, in EU law-making.