

# MONITORING SUBSIDIARITY IN THE EU MULTILEVEL PARLIAMENTARY SYSTEM<sup>1</sup>

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## Abstract

*The development of the construction of the European Union has introduced new concepts, including multilevel governance, and multilevel parliamentary system. One way to render the European Union more democratically would be the development of a multilevel parliamentary system. Draft European legislative acts shall be justified with regard to the principles of subsidiarity and proportionality in the EU legislation. The protocol No 2 of the Treaty of Lisbon (2009) introduced a mechanism of subsidiarity scrutiny by national parliaments known as ex ante “early warning system”, which increases the involvement of national parliaments in the EU policy-making process. The study presents the main features of subsidiarity monitoring and how the practice has evolved. Furthermore, it focuses on the two-level structure in the emerging a multilevel parliamentary system that is the supranational level, embodied by the European Parliament and the national level, represented by 28 national parliaments. The findings examine a trend towards the extension of the EU multilevel parliamentary field to including EU regional parliaments of the federal and regionalised states, and local and regional bodies of unitary states.*

**KEYWORDS:** National and regional parliaments, Principle of subsidiarity, EU legislation, Treaty of Lisbon, Early Warning System, Democratic legitimacy, Committee of the Regions.

## INTRODUCTION

The development of the construction and decision-making of the European Union has introduced new concepts; among them the concepts of a multilevel governance and multilevel parliamentary system. The debates on the multilevel parliamentary system relates to a number of developments within the EU.

With no conventional EU-level „government” making policy, „governance” has emerged as a widely embraced concept for capturing the policy-making processes, which has led to the extension of this concept into a „multilevel governance”. As a result of the „early warning mechanism” national parliaments with a pre-legislative intervention device have the potential to enhance

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participation of national policy-making bodies in the checking of subsidiarity. The legal changes brought along by the Treaty of Lisbon (2009) encourage national parliaments to jointly forge a new mode in the EU institutional architecture.

Multilevel governance emerged within the context of European studies as an alternative approach to state-centric models of the European integration (Hooghe and Marks, 2001; Bache and Flinders, 2004). The European Union is not a state in the traditional European sense in which policy-making elites are held accountable by citizens for their public policies and actions. It represents a new form of supranational authority which is based on strong national systems. It is a critical issue of how the EU policy-making is being shaped in an open and legitimate way through an EU wide public debate.

In the past decades political sciences have increasingly been focusing on the issue of statehood, the changing role of nation states in the process of European integration and globalisation. The intergovernmental theories emphasise the role of the nation state in integration process, and argue that nation-states act according to their national interest. In this view, national governments as ultimate decision makers, devolving limited authority to supranational institutions to achieve specific policy goals while decisions result from bargaining among these governments (Hoffmann, 1966; Taylor, 1982; Moravcsik, 1993).

With no conventional EU-level „government” making policy, governance has emerged as a widely embraced concept for capturing the policy-making processes and it is generally seen as an alternative to the monolithic and hierarchic concept of government in which powers are transferred from national to EU level.

The process of governing through governance, therefore, is complex which has led to the extension of this concept into „multilevel governance” or multilayered governance (Hooghe, 1996; Marks, 1993; Scharpf, 1994; Wallace W., 1994.) Representatives of multilevel governance contend that the EU cannot be properly understood by using the nation state criteria and suggest a new form of governance where decision-making competencies are shared by actors at different governmental levels rather than monopolized by national governments.

There are some differences between multilevel governance and other integration theories. The multilevel governance perspective is an addition to the theoretical attempts to understand the EU whose roots are found in neofunctionalist theories. Proponents of neofunctionalist (Cameron, 1992; Olson, 1982; Rhodes, 1997) and transnationalist approaches (Wallace, 2000) argue against Moravcsik’s liberal intergovernmentalist approach which derives from the theoretical argument that European integration does not render the nation-state obsolete but on the contrary strengthens it. Of all the approaches, neo-federalism comes closest to realizing the spectre of the withering away

and replacement of the nation state by a new, supranational organization with recognizable state features (Pinder, 1985).

The multilevel governance breaks the grey zone between intergovernmentalism and supranationalism (Gal and Brie, 2011, p. 285). The extensive literature on multilevel governance asserts that European-level policy-making competences are no longer monopolized by national governments. The authority and policy-making influence are shared by actors at different levels: supranational, national, regional and local (Hooghe and Marks, 2001).

Multilevel governance does not address the sovereignty of states directly, but simply states that a multilevel structure is created also by subnational and supranational actors. From a governance perspective, the impact of EU legislation is the key to understand the relation between the supranational and subnational levels. Debates concern the Europeanization that implies adapting subnational systems of governance to a European political centre and Europe-wide norms. Europeanization has modified the shared notions of governance in the EU Member States by inserting the (sub-state) regions into a complex set of layers of governance (Jeffrey, 1997; Featherstone and Radaelli, 2009; Keating and Hooghe, 1994; Hooghe, Marks and Blank, 1996). The third level of government is emerging to assume a role in the growing importance of the subnational input into the EU policy-making process alongside the supranational and national levels.

European governance and administration is characterized as a system of rules that affect the way in which powers are exercised. Central states are relinquishing authority to supranational and subnational authorities, but what kinds of jurisdictional architecture might emerge (Hooghe and Marks, 2003, p. 241)? The study's starting point is that the resulting governance system has been far more elaborated on the side of the executive than on the side of the legislative. The European Parliament takes part in the adoption of the Union's legislation, for which it has its individual legal basis, while for long the national parliaments had only restricted possibilities to be involved in the legislation process of the EU. The starting point of the study is the roles and functions of the supranational, national and subnational parliamentary controls over the EU decision-making process. The article tries to find the answer for the question that democratic legitimacy in multilevel systems inherently needs a multilevel type of organisation where decision-making involves a great variety of actors, and not only executives, but legislatives as well.

The European Commission launched a significant reform of governance in the White Paper on European Governance (2001), which is still one of the prime reference points in the discussion of governance in the EU.

The limits to the Commission's White Paper's understanding of governance are that the document focuses predominantly on the effectiveness and efficiency of the EU decision-making system, while disregarding the issues of democratic legitimacy.

Henceforward, the issue is how to improve the legitimacy of the EU. It is expected from good governance to bring about improved proximity between citizens and European institutions. The principle of subsidiarity has both political and instrumentary implications for the distribution of competencies between the Member States and the Union. Its political dimension stems from the need to tackle democratic deficit and strengthen the link between the citizen and the decision-making authority<sup>3</sup>.

The White Paper makes reference to principles that underpin democratic governance and rule of law in the Member States. These principles are: openness, participation, accountability, effectiveness and coherence which apply to all levels of government – European, national, regional and local.

The application of these five principles reinforces the principle of subsidiarity<sup>4</sup>. From the conception of a policy to its implementation, the choice of the level at which action is taken (from EU to local) must be in proportion to the objectives pursued. This means that before launching a policy initiative, it is essential to check systematically if the European level is the most appropriate one<sup>5</sup>.

The main aim of the study is to highlight how to better apply the principles of subsidiarity and proportionality in the work of the Union's institutions, regarding the preparation of Union legislation and policies. With regard to the attribution and the exercise of its competences, how the European Union could involve national parliaments and subnational legislative chambers in the preparation of Union policies, how the European Union could take better account of the principles of subsidiarity and proportionality.

The 1<sup>st</sup> section introduces the concept of subsidiarity linking its scope and application within the common framework of legitimacy arguments. The 2<sup>nd</sup> section focuses on the provisions of the Lisbon Treaty and the practical application of the principle by national parliaments. It shows how through a subsidiarity control mechanism (yellow card and orange card procedure) national parliaments

<sup>3</sup> The European Convention. The Secretariat, Working Group I Working document 13, Working Group I on the Principle of Subsidiarity, WD 13-WG I, Brussels, 03 September 2002, p. 2.

<sup>4</sup> The principle of subsidiarity is defined in Article 3b (now Article 5 (3)) of the Treaty on European Union. *'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.'*

<sup>5</sup> European Commission. European Governance – A White Paper COM (2001) 428 final OJ C 287, 12 October 2001, pp.7-8.

can collectively fulfil representative and deliberative functions in EU policy-making. The 3<sup>rd</sup> section examines the perspectives of a multilevel parliamentary system paying special attention to relations and interactions between the national and regional parliaments with legislative powers. The last section contains conclusions whether the European Union provided a stable institutional framework for the monitoring of the principle of subsidiarity and presents some ideas for more systematic research agenda on multilevel parliamentary system.

The study is based on the review and analysis of academic research, documents and legislative sources of the European Union, extracting and linking key findings from existing research and practice.

## **1 SUBSIDIARITY CONTROL MECHANISM. THE EARLY WARNING SYSTEM**

European integration has strengthened the executives of nation states. Concerns about a growing democratic deficit were addressed through repeated and substantial expansion of the powers of the European Parliament, whereas national parliaments remained on the margins. According to the Treaty of Lisbon<sup>6</sup>, co-decision is the standard procedure for enacting legislation, and the European Parliament now participates on an equal footing with the Council in many policy fields. The twofold democratic legitimacy of the Union, as a union of citizens and of Member States, is embodied in the EU legislative process by the European Parliament besides the Council<sup>7</sup>.

EU democracy necessarily combines two structures of representation, with the direct representation of individual citizens in the European Parliament being complemented by the indirect representation of citizens via their national parliaments (Benz, 2004, p. 85). National parliaments had long only restricted possibilities in the legislation process of the EU, and only the Treaty of Lisbon (2009) acknowledges them as institutions contributing to democratic legitimacy in a multilevel polity<sup>8</sup>. Protocol No 2 on the application of the principles of subsidiarity and proportionality (hereinafter Protocol No 2) annexed to the Treaty of Lisbon introduced the mechanism of subsidiarity scrutiny by the national parliaments of EU Member States on draft legislative proposals. The academic

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<sup>6</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007.

<sup>7</sup> European Parliament resolution of 16 April 2014 on relations between the European Parliament and the national parliaments (2013/2185 (INI)) Strasbourg, 16 April 2014. p. 4.

<sup>8</sup> The EU Treaties did formally recognise the role of national parliaments, first through a Declaration on the role of national parliaments in the EU (annexed to the Final Act of the Maastricht IGC), then in Protocols (annexed to the Treaties by the Amsterdam and Nice Treaties).

literature on national parliaments in the EU has mirrored these changes (Goetz and Meyer-Sahling, 2008; Raunio, 2009; Winzen, 2012).

The concepts of subsidiarity and proportionality are fundamental elements of the policy development process of the EU institutions. Subsidiarity is typically understood primarily as a principle for allocating powers to different levels of governance (Fejes, 2013, p. 25), yet it may also provide guidance on how powers are to be exercised. For example, subsidiarity can be thought to include an element of proportionality that requires powers to be exercised in a way that is not more intrusive for lower levels than alternative ways to achieve the same aim. Subsidiarity may also find expression in procedural mechanisms, such as the involvement of national parliaments in the application of subsidiarity in the EU legislative process<sup>9</sup>.

Protocol No 2 contains a legal framework for a reinforced control of subsidiarity. The regulation opens up the possibility for national parliaments to set out and submit reasoned opinions on draft legislative acts as part of the subsidiarity procedure, when legislative proposals concern a policy area that falls under shared competence<sup>10</sup>. The mechanism allowing national parliaments to scrutinise the compliance of draft EU legislation with the principle of subsidiarity, the early warning system (hereinafter EWS), gives the right to all national parliaments to get involved in the EU legislative process<sup>11</sup>.

In accordance with the Treaty of Lisbon the European Commission, as the main author of legislative proposals under its right of initiative, only may put forward legislative proposals. All proposals from the European Commission for adoption of a legislative act are to be sent to the national parliaments at the same time as they are sent to the co-legislators (the Council and the European Parliament). *'The Commission shall forward its draft legislative acts and its amended drafts to national Parliaments at the same time as to the Union legislator.'*

National parliaments may give a reasoned opinion and collectively they can influence the legislative process if a certain threshold is attained and in the set time limit. Under the early warning mechanism any national parliament or any chamber of a national parliament may, within eight weeks from the date of

<sup>9</sup> Legal framework of the subsidiarity control mechanism is based on the Treaty on European Union (TEU), Title 2 Art. 12. Procedural details are in the Protocols 1 and 2 annexed to the Treaty on the Functioning of the European Union (TFEU).

<sup>10</sup> According to Article 4 of TFEU these areas cover internal market, social policy, cohesion, agriculture and fisheries, environment, consumer protection, transport, trans-European networks, energy, freedom, security and justice, as well as certain public health matters.

<sup>11</sup> The principle of subsidiarity should be applied during the different stages of the European decision-making process, i.e. during the preliminary stage, during the stage of ex-ante political monitoring and during the stage of ex-post judicial control. The ex-post judicial review should continue to be carried out by the European Court of Justice.

transmission of a draft legislative act, send to the Presidents of the European Commission, the European Parliament and the Council the a reasoned opinion stating why it considers that the draft legislative act does not comply with the principle of subsidiarity. Under Protocol No 2, each national parliament has two votes: in countries with unicameral parliaments the sole House of Parliament has two votes, in the case of a bicameral system, each chamber has one vote. Commission proposals can be blocked if there is a consensus among a majority of chambers.

In the case of proposals falling under the ordinary legislative procedure, if a draft legislative act's compliance with the subsidiarity principle is contested by a third of the votes allocated to national parliaments (*yellow card*), the Commission has to review the proposal and decide to maintain, amend or withdraw the act, also giving reasons for its decision. (This threshold shall be a quarter if the draft legislative act is submitted within the area of freedom, security and justice.)<sup>12</sup> If a draft legislative act's compliance with the subsidiarity principle is contested by a simple majority of the votes allocated to national parliaments (*orange card*), the Commission has to justify its position by means of a reasoned opinion.<sup>13</sup>

The procedural mechanisms are based not only on the interaction between national parliaments and the European Commission, but also on the reaction of the European Parliament and the Commission. If the European Parliament by a simple majority of its members (and the Council by a majority of 55% of its members) considers that the proposal is indeed not compatible with the principle of subsidiarity, it is abandoned.

The Treaty of Lisbon has introduced an institutional innovation which could contribute to lowering the democratic deficit of the European Union. The cooperation with EU institutions, especially with the European Commission, on EU affairs provides national parliaments with a formal role in European public policy-making process. Decision-making involves a great variety of actors, and some of them, like the European Commission, clearly play a privileged role. In a loosely integrated multilevel system characterized by fragmentation and complexity in many instances there is also a need for consensual agreements with no exit-options, these patterns are complemented by more flexible arrangements of cooperation involving more than just the executive branches (Benz and Eberlein, 2011, p. 331).

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<sup>12</sup> Article 7 of Protocol No 2 on the application of the principle of subsidiarity and proportionality annexed to the Treaty on the Functioning of the European Union (TFEU)

<sup>13</sup> So far, no orange card procedures have been triggered.

## 2 KEY CASES WHERE SUBSIDIARITY AND PROPORTIONALITY CONCERNS WERE RAISED

The strengthening of subsidiarity control mechanism and participation rights at both national and European levels is often seen as an effective measure to address the perceived democratic deficit in EU decision-making. However, whether these aims can be met depends crucially on whether and how national parliaments actually do get involved in EU affairs.

Through the early warning system the Treaty of Lisbon gives the right to all national parliaments to scrutinise and influence the EU legislative process. National parliaments face with the challenges of Europeanized policy-making in very different ways and to different degrees. Between 1 January 2010 and 31 December 2016 national parliaments have raised their concerns by 350 reasoned opinions in response to an overall number of 154 Commission proposals (See Table 1).

The reasoned opinions issued by national parliaments (both chambers in bicameral systems) vary largely, they have different priorities in choosing Commission proposals to be scrutinised in the context of the subsidiarity control mechanism. Commission proposals and initiatives generated the highest number of opinions in 2013 (88).

The Swedish Riksdag has opposed Commission draft legislation on subsidiarity grounds more often than any other parliament. From Eastern Europe Lithuania, Poland submitted the most reasoned opinions. Bulgaria, Estonia, Latvia, Slovenia, Slovakia and Hungary triggered the lowest number of them.

There is a considerable variation across parliamentary chambers as well. Some parliamentary chambers have submitted a considerable number of reasoned opinions. The lower chamber (Tweede Kamer) of the Dutch parliament, upper chamber (Bundesrat) of Austria, Sénat of France, and the House of Lords of the UK have submitted large number of reasoned opinions to the Commission.

Parliamentary activity in the early warning system is particularly triggered by party political motivation (Gattermann and Heftler, 2015, p. 307). The different political compositions, the intra-party power relations affect the behaviour of the pro-European and anti-European parties (Raunio, 2009, p. 5). The different constitutional constraints and the parliaments' different relations with their governments have a strong impact on the subsidiarity monitoring process. The result is differing levels of parliamentary scrutiny of EU affairs and varying degrees of willingness to cooperate and conduct subsidiarity checks<sup>14</sup>.

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<sup>14</sup> The eight-week deadline is a constraint, through which national parliaments need to make an objection within eight weeks of receiving the proposal.



**Table 1:** Number of reasoned opinions triggered by national parliaments (2010-2016)

Year	2010	2011	2012	2013	2014	2015	2016
<b>Number of reasoned opinions</b>	34/12	64/28	70/34	88/36	21/15	8.3	65/26
-	-	-	1st yellow card procedure	2nd yellow card procedure	-	-	3rd yellow card procedure

Source: processed by the author, based on Annual reports of the European Commission on subsidiarity and proportionality, 2010-2016

The key topics to which national parliaments reacted in their opinions vary from year to year and reflect the political situation and the interests of national parliaments. Under the subsidiarity control mechanism the yellow card procedure was used only three times. In May 2012 national parliaments of the EU issued their first yellow card. Thus for the first time, national parliaments collectively intervened in the legislative process of the EU to decisive effect, expressing subsidiarity concerns on the Commission's proposal for a Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services. In 2012 through the case of the Monti II proposal national parliaments proved with 12 reasoned opinions that the European Commission unnecessarily interfered with domestic labour laws including workers' right to take collective action. The European Commission claimed that the Monti II proposal did not breach the subsidiarity principle but that it withdrew the draft European legislative act because of a lack of political support for it in the European Parliament and the Council.

In November 2013, national parliaments objected to the Commission's proposal to establish a European Public Prosecutor's Office. National parliaments argued that the Commission did not demonstrate that Union level action could achieve better results than actions at national level. Finally, on 8 June 2017 under enhanced cooperation 20 EU Member States reached a political agreement on the establishment of a new European Public Prosecutor's Office (EPPO).

In May 2016, a third yellow card was issued following the proposal for a revision of the directive on the posting of workers, as 14 national parliaments or chambers thereof issued reasoned opinions. In this case a „regional block” of national parliaments managed to establish closer coordination around one

specific topic with shared preferences on the Posted Workers Directive (Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia). Among the 11 national parliaments that submitted reasoned opinions these countries all, except Denmark, are from Central and Eastern Europe.

The above cases underline that national parliaments triggered reasoned opinions not only in view of legal reasons, but also with regard to political opportunity. The way in which most of the national parliaments implement the Protocol No 2 and use the subsidiarity control mechanism has highlighted the political character of the new tool. The political will can stimulate stronger coordination among national parliaments which is indispensable and would considerably help to reach the threshold. Linked to the more political national democratic processes, national parliaments are institutionally well endowed to re-politicise the normative concerns in the EU policy-making process (Bartl, 2015, p. 35).

**Table 2:** Number of yellow card procedures

Year	Yellow card procedure	One third of votes	Number of reasoned opinions	Legislative proposal
2012	First Yellow card	19 votes	12	abandoned
2013	Second Yellow card	18 votes	14	maintained
2016	Third Yellow card	22 votes	14	maintained

Source: compiled by the author, based on Annual reports of the European Commission on subsidiarity and proportionality, 2010-2016

The yellow card procedure is an important development in relations between the European Commission and national parliaments. The use of the yellow card is a clear expression of the willingness of national parliaments to make their opinion expressed in their relations with the Commission on a particular piece of legislation<sup>15</sup>. The Commission withdrew its proposal only once, denying any breach of the principle of subsidiarity in 2012, with regard to the right to take collective action. The Commission maintained the draft legislative act in the second case in 2013 with regard to the establishment of European Public Prosecutor's Office, and in 2016, regarding the revision of the Posting of Workers Directive (See Table 2).

<sup>15</sup> European Commission. Report from the Commission. Annual Report 2013 on relations between the European Commission and national parliaments. Brussels, 5.8.2014 COM(2014) 507 final, p. 2.

The EWS practice, as the yellow card cases have indicated, is that particular policy fields had better be regulated at national level instead of European level. Moreover, the subsidiarity control on shared public policies can promote a regulation which determines what should be European and that should be national. All this is full correlation with the simplified revision procedure set out in Article 48 (6) of TEU which allows for a return to the Member States of competences conferred to the Union<sup>16</sup>.

The cooperation between the EU institutions and national parliaments in the post-Lisbon era became more active and visible than they were in the past. The new provisions for parliamentary engagement in the European Union's policy-making have brought the national parliaments closer across the EU member states. A sizeable number of chambers have chosen to engage with EU affairs as a matter of course, have been adapting their internal procedures and institutional capacity, and are linking up with other parliaments on a regular basis. However, the degree of parliamentary activism remains patchy, which can be explained by poor institutional capacity and the actors' moderate motivation of parliamentary involvement in EU affairs (Katrin and Christiansen, 2015, p. 267).

### **3 DEVELOPMENTS TOWARDS A MULTILEVEL PARLIAMENTARY SYSTEM IN THE EU?**

The Treaty of Lisbon marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to citizens.

The major novelties regarding subsidiarity affect both the EU institutional framework and its procedural mechanisms, and may be considered as a step towards a European multilevel and multi-actor parliamentary system (Arribas and Bourdin, 2012, p. 13). The related development concerns the vertical relations between national parliaments and the European Parliament, the enhanced collaboration between national and European levels' legislatures. Subsidiarity control also requires effective mechanisms of exchange of information and cooperation among national parliaments and regional parliaments with legislative powers. Vertically networked interparliamentary cooperation in the application of the subsidiarity control mechanism indirectly supports the democratic quality of the European legislation.

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<sup>16</sup> On 14 November 2017 the President of the Commission established a Task Force on Subsidiarity, Proportionality and 'Doing Less More Efficiently'. The committee on Task Force should make a written report to the President of the Commission by 15 July 2018 with recommendations. In: Decision of the president of the European Commission on the establishment of a Task Force on Subsidiarity, Proportionality and 'Doing Less More Efficiently'. Brussels, 14.11.2017 C(2017) 7810

National parliaments are able to rely on support from the European Parliament. European Parliament is one of the EU institutions which receives reasoned opinions issued by national parliaments with regard to scrutiny of the principle of subsidiarity (Remác, 2017, p. 33). The European Parliament and national parliaments should together determine the promotion of effective and regular inter-parliamentary cooperation within the EU.

According to Art. 10 of Protocol No 1 on the role of national parliaments in the European Union the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC)<sup>17</sup> provides an informal forum to promote the exchange of information and best practices between the European Parliament and national parliaments and may submit contribution it deems appropriate for the attention of the European Parliament.

However, in the discussion about the nature of parliamentary control in the EU not much has been said about the role of subnational legislative chambers in the post-Lisbon institutional context (Keating and Hooghe, 1996; Jeffery, 2000). The process of regionalisation of European policies and the rise of the regions as new actors in European policy-making produced the novel elements of interlacing and interlocking politics (Benz and Eberlein, 2011, p. 342). In this regard, the Lisbon Treaty recognises, for the first time, subnational parliaments with legislative powers as a separate category of democratic institutions with the right to control the European Union legislation.

The emergence of subsidiarity as a constitutional notion development also relates to the system of regionalised states and decentralised administrative structures. Protocol No 2 opens up a possibility for consultation of the regional parliaments with legislative powers in the early warning system of subsidiarity control. Protocol No 2 takes account of the specific features of the Member States' legal orders, 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'* (Art. 6, Protocol No 2).

The formal recognition of the role of regional parliaments having legislative powers in the early warning system could work in decentralised countries with bicameral legislature or regional assemblies in eight EU Member States (Austria, Belgium, Finland, Germany, Italy, Portugal, Spain and the United Kingdom)<sup>18</sup>. It

<sup>17</sup> COSAC '...may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission.' (Art. 10 of Protocol No 1)

<sup>18</sup> A total of 74 subnational parliaments from eight Member States are affected by the EWS. There is only one regional parliament with legislative powers in an otherwise unitary Member State (such is the case for the Åland Island in Finland). There are numerous regional parliaments in a fully-fledged federal system (as in Germany or Austria), where the second chamber serves as a body for territorial representation. In a regionalized systems regional parliaments have different degrees of sovereignty (as in Spain or UK). In: Committee of the Regions (2013). *The Subsidiarity Early*

is assumed that cooperative relations between subnational parliaments will lead to a stronger subnational parliamentary mobilization under the EWS and will help the latter one to perform its EU scrutiny function better and to become an active interlocutor in contacts with a national parliament (Borońska-Hryniewiecka, 2013, p. 13; Committee of the Regions, 2013). However, because of the low-profile of regions, at present, only a very low percentage of regions and regional parliaments are active in conducting subsidiarity checks. Regional parliaments do not formally participate in the EWS. Thus far no formal mechanisms have been established to integrate regional actors into the subsidiarity monitoring process (Fink, 2015; Fromage, 2016.).

The subsidiarity principle, as laid down in the Treaty on European Union (Article 5(3)), explicitly contains local and regional dimensions and thus underlines the necessity to respect competences of local and regional authorities within the EU<sup>19</sup>. The recognition of the role of the subnational levels in the European integration process is taking into account the local and regional dimensions in the area of subsidiarity controls. European subnational authorities can express their views on compliance with the principles of subsidiarity and proportionality during the legislative phase. The Committee of the Regions<sup>20</sup> carries out monitoring activities via the Subsidiarity Monitoring Network. The network provides additional exchange of information between local and regional authorities and the EU institutions on legislative proposals and can give an „early warning” about EU legislative proposals that may be relevant for subsidiarity scrutiny (Arribas and Bourdin, 2013, p. 16).

The innovations of the Treaty of Lisbon focus on strengthening democratic scrutiny at all levels of EU policy-making. The subsidiarity control mechanism has made the legislative process more transparent and has further enriched the discussions. Incorporation of regional and local levels only can lead to a more balanced allocation of powers between actors of the European polity, but they also can contribute to increase democratic control due to their proximity to citizens.

The emerging multilevel parliamentary structure is of particular significance in a multilevel representative democracy. Undoubtedly, inter-parliamentary

*Warning System of the Lisbon Treaty – the role of regional parliaments with legislative powers and other subnational authorities.* Brussels: European Union.

<sup>19</sup> Committee of the Regions: White paper on multilevel governance. Brussels, 17 and 18 June, 2009. CdR 89/2009 final p. 3.

Local and regional authorities are closely involved in shaping and implementing EU strategies, since they implement nearly 70 % of Community legislation.

<sup>20</sup> Committee of the Regions, whose members are representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly.

relations induced by the subsidiarity control procedure have an outstanding importance. However, there is more to be done.

The national parliaments should recognise the importance of a more structured cooperation during the checking of the principle of subsidiarity, throughout the legislative process they must keep each other regularly informed about their work and on-going negotiations among them. Lack of coordination would make the reasoned opinions a rather weak instrument to put pressure on the Commission (Daukšienė and Matijošaitytė, 2012, p. 41).

Similarly, national parliaments are not bound yet by the positions on subsidiarity expressed by the regional parliaments. In spite of the formal acknowledgement of the regional level in the EWS, the Protocol No 2 has not made the consultations with regional parliaments obligatory, but has left it to the discretion of the national chambers. Important warning signals for national parliaments that in 2016 some regional parliaments took the opportunity to directly inform the Commission of their opinions on certain Commission proposals, which in some instances had also been submitted to their respective national parliamentary chambers as part of the subsidiarity scrutiny procedure<sup>21</sup>.

Legitimacy must be ensured both at national and European levels by the national parliaments and the European Parliament. Nevertheless, the general objective is to ensure democratic legitimacy at all levels at which decisions are taken and implemented. The extension of the principle of subsidiarity to the local and regional actors might also create new possibilities for subsidiarity disputes. It might provide some national parliaments with an additional incentive to become more involved in EU affairs which is an important development towards strengthening democratic legitimacy.

## CONCLUSIONS

The study is intended as a contribution to important and ongoing debates whether the European integration process strengthens the multilevel parliamentary system. It takes the power relationship between levels of policy-making. In general, the multilevel parliamentary system is in a weaker position vis-à-vis executives. European policy-making and legislation would continue to be dominated by executives. In the multilevel polity of the European Union citizens are represented in the Council by their national governments, while representatives of national communities are represented in the European Parliament and by their national parliaments.

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<sup>21</sup> European Commission. Report from the Commission. Annual Report 2016 on subsidiarity and proportionality. Brussels, 30.6.2017 COM (2017) 600 final p. 8.

1. The interaction of Europeanization triggered processes of differentiation of interparliamentary decision-making structures. It has never been more important that national parliaments should play a full and active role, both individually and collectively. Through COSAC this process of differentiation emerges as the primary precondition for the successful management of a multilevel parliamentary system. The greater weight of the parliamentary component in the EU decision-making system, as provided for in the Lisbon Treaty, primarily concerns the role of the national parliaments in monitoring the implementation of the subsidiarity principle. The effective involvement of national parliaments is fundamental to ensuring that there is accountability, and legitimacy, for the actions of the Union.

2. The early warning mechanism works in decentralised countries with bicameral legislature or regional assemblies, although the role of the latter is rather limited. However, in more centralised Member States the level closer to the citizens will have to be the national. Under the Lisbon Treaty, the ex-ante monitoring role of the regional parliaments has been strengthened regarding the control over the subsidiarity principle. It calls on the national parliaments to consult the regional parliaments with legislative powers, and on the Commission to pay attention to the role of the latter. The national and regional parliamentary involvement improves the overall democratic legitimacy of the EU.

3. The subsidiarity control mechanism can also be used as a tool for a better consultation in order to identify specific concerns and expectations of the citizens or local and regional authorities in unitary states. In addition towards emerging a multilevel parliamentary system in the post-Lisbon era an explicit reference has been made for the first time to the regional and local levels concerning the subsidiarity principle.

4. The subsidiarity control mechanism aims to improve the way the EU legislates, and to ensure that EU legislation better serves citizens. Regional and local authorities across Europe are important contributors towards the recognition of a multi-parliamentary system in the European Union. A more inclusive Europe requires better involvement of regional and local expertise in the quest for an increased democratic control.

In sum, the subsidiarity early warning mechanism has proven to be a valuable tool in the policy development process of the multilevel parliamentary system in the EU. The increased role given to the national and subnational legislative chambers in the monitoring of subsidiarity is a positive development, and significant step forward the increased democratic control.

Nevertheless, the early warning procedure is not the most suitable tool to decrease a democratic deficit and improve the EU democratic legitimacy,

because national parliaments directly participate in European policy-making only in policy fields on subsidiarity and concerning their role among other actors in European politics, they probably will remain in a weak position.

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