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Adaption of the parliaments of the Czech Republic, Poland and Slovakia to the Early Warning Mechanism on European legislation

Bakalářská práce

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Abstract

The Early warning mechanism (EWM) is considered to be one of the biggest contributions of the Lisbon Treaty to the democratisation of the European Union. This thesis provides empirical findings in the field of the usage of the EWM. In particular it focuses on the adaption of the Czech, Slovak, and Polish parliaments to the EWM and analyses whether the understanding of the principle of subsidiarity by the respective chambers influences their activity in the EWM. This thesis combines a broad range of data sources including: firstly, primary sources such as official documents, reasoned opinions available from relevant databases (IPEX) and a questionnaire filled out by the parliamentary staff; secondly, secondary sources such as previous research in the field, and lastly direct observations. This study concludes that subsidiarity control is understood by the national parliaments as a tool to defend their legislative prerogatives. Furthermore it suggests that the inclusion of references to the principle of proportionality in the reasoned opinions increases the effectiveness of the mechanism and thus attracts more Euroenthusiast parties to participate in the EWM.

Keywords

National parliaments, Early warning mechanism, Subsidiarity, Proportionality, Conferral, Lisbon Treaty, Democratic deficit

Word count: 19 019

Anotace

Mechanismus včasného varování je považován za jeden z největších přínosů Lisabonské smlouvy v procesu řešení otázky demokratického deficitu Evropské unie. Tato práce přináší empirické poznatky v oblasti praktického využití mechanismu včasného varování a zejména se věnuje adaptaci parlamentů České Republiky, Slovenska a Polska na tento mechanismus. Tato bakalářská práce kombinuje širokou škálu dat, od primárních zdrojů jakými jsou oficiální dokumenty, texty odůvodněných stanovisek z veřejných databází (IPEX) a dotazníky vyplněné zaměstnanci parlamentních oddělení, přes sekundární zdroje jako dříve uskutečnění výzkum v dané oblasti a v neposlední řadě přímá pozorování. Autorka práce dospívá k závěru, že kontrola principu subsidiarity je chápána národními parlamenty jako prostředek k ochraně svých zákonodárných pravomocí. Mimoto naznačuje, že zahrnování odkazů na princip proporcionality do textu odůvodněných stanovisek zvyšuje efektivitu mechanismu a motivuje více Euroenthusiastických stran k zapojení do něj.

Klíčová slova

Národní parlamenty, Mechanismus včasného varování, Subsidiarita, Proporcionalita, Princip svěřených pravomocí, Lisabonská smlouva, Demokratický deficit

Počet slov: 19 019

Declaration of Authorship

1. I hereby declare that I wrote my bachelor thesis independently under the leadership of my supervisor and that the references include all the resources and literature I have used. I also proclaim that this thesis has not been used to obtain the same or any other degree.

2. I grant permission to reproduce and to distribute copies of this thesis document in whole or in part for study or research purposes.

Prague, May 15, 2015 Zuzana Holakovská

Prohlášení

1. Prohlašuji, že jsem předkládanou práci zpracovala samostatně a použila jen uvedené prameny a literaturu.

2. Souhlasím s tím, aby práce byla zpřístupněna pro studijní a výzkumné účely.

V Praze dne 15. května 2015 Zuzana Holakovská

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UNIVERZITA KARLOVA
FAKULTA SOCIÁLNÍCH VĚD
INSTITUT POLITOLOGICKÝCH STUDIÍ

Adaptace parlamentů České republiky, Polska a Slovenska na mechanismus včasného varování u evropské legislativy

Zuzana Holakovská

PROJEKT BAKALÁŘSKÉ PRÁCE

Praha 2014

1. Úvodní část

Vymezení tématu

S otázkou prohlubování evropské integrace je nutně spojen pojem demokratického deficitu. Zatímco v 70. letech 20. století panovaly obavy, že přímo volení poslanci Evropského parlamentu uberou na vlivu národním parlamentům, byla to naopak Rada, která postupně snižovala vliv národních zákonodárců. Amsterdamská smlouva, zahrnující Protokol o použití zásad subsidiarity a proporcionality představuje na poli pravomocí národních parlamentů velký zlom. Proces zapojování národních parlamentů do legislativního procesu EU byl prozatím dovršen Lisabonskou smlouvou ukotvující Mechanismus včasného varování.

Mechanismus včasného varování dává národním parlamentům možnost vyjádřit v rámci osmitýdenní lhůty nesouhlas s navrhovanými legislativními akty s ohledem na princip subsidiarity. Pakliže je včas zaslána alespoň třetina z aktuálních 56 hlasů (2 hlasy za stát, resp. 1 hlas za komoru v bikamerálních systémech), je podána tzv. „žlutá karta" a navrhovatel legislativního aktu (zpravidla Komise) je povinen návrh přezkoumat z hlediska otázky subsidiarity. V případě, že na návrhu trvá, je jeho povinností vyjádřit se k odůvodněným stanoviskům, alternativou je změna návrhu nebo jeho odvolání. Česká republika, Polsko i Slovensko se definitivně zapojily do procesu evropské integrace již v její pokročilé fázi, v momentu, kdy otázky celní unie, hospodářské soutěže a dalších byly čistě v rukou evropských zákonodárců. Co je ovšem nejpodstatnější, již dva roky po vstupu sledovaných zemí do Evropské unie, otevřela Evropská komise prostor pro vyjádření národních parlamentů skrz tzv. Barossovu iniciativu, ve které se zavazuje spolupracovat napříště s národními parlamenty v legislativním procesu.

Jakkoliv lze tuto novou pravomoc národních parlamentů považovat za pozitivní jev, je zřejmé, že evropská legislativa má na poli národních parlamentů jen omezené zdroje, a to jak
časové, tak personální. Přes vytvoření výborů pro evropské záležitosti, speciálních institucí určených pro zpracovávání přicházející evropské legislativy, novelizaci jednacích řádů komor a vyslání stálých zástupců parlamentu/ jednotlivých komor do Bruselu, setrvávají pět let od zakotvení systému včasného varování národní parlamenty poměrně pasivní. V evropském kontextu lze nalézt výjimky, mezi které se řadí i horní

komora Parlamentu České republiky a polský Sejm. Počet podaných odůvodněných stanovisek je ovšem stále značně omezen a v evropské rovině bylo kvórum nezbytné pro udělení žluté karty dosaženo pouze dvakrát.

Cíle práce, formulace výzkumné otázky či otázek, na něž autorka bude hledat odpověď

Zvolené tři země nebyly vybrány náhodou. Česká republika, Slovensko a Polsko sdílejí historii za železnou oponou, mají úzké vazby a do Evropské unie vstoupily společně v roce 2004. Autorka se bude zabývat otázkou: *Jak se parlamenty České republiky, Polska a Slovenska adaptovaly na mechanismus včasného varování u evropské legislativy*?

Ke stanovené otázce autorka formulovala následující podotázky:

- *Jak byly výbory zabývající se evropskou agendou uzpůsobeny mechanismu včasného varování?*
- *Jak se změnily jednací řády výborů a komor?*
- *Jaké faktory ovlivňují výsledná odůvodněná stanoviska, jejich počet a obsah?*
- *Kdo a na základě jaké metodiky vybírá legislativní akty projednávané na poli výboru a případně později na plénu? Jakou roli v tomto procesu hrají stálí zástupci v Bruselu?*
- *Podaly zákonodárné sbory tří vybraných zemí odůvodněná stanoviska v nejvíce diskutovaných kauzách?*

Předpokládaná metoda zpracování tématu

Autorka nahlíží na problematiku národních parlamentů optikou víceúrovňového vládnutí. Se vznikem Evropské unie funguje paralelně s národními legislativními procesy tvorba legislativních aktů na evropské, nadnárodní, úrovni. Autorka vnímá národní parlamenty jako autonomní subjekty evropského legislativního procesu, kteří kromě vládou zprostředkovaného vlivu na jednání Rady, kontrolují, spolu s ostatními národními parlamenty, otázku subsidiarity návrhů aktů. Práce je omezena časově i územně. Budeme se pohybovat v letech 2010 až 2014, tedy po vstupu Lisabonské smlouvy v platnost. Předmětem zkoumání budou zákonodárné sbory České republiky, Polska a Slovenska, které budou v rámci případových studií podrobeny komparaci. Autorka bude ve svém výzkumu pracovat primárně s legislativními akty, texty odůvodněných stanovisek a

výstupů výborů zabývajících se evropskou agendou a jejich poradními orgány. Nelze opomenout též sekundární literaturu jakožto teoretické zaštítění práce.

2. Předpokládaná osnova práce

Práce bude rozdělena do tematických kapitol. První z nich se bude věnovat vymezení jednotlivých aktérů - národních parlamentů zkoumaných zemí, jejich relevantních výborů a poradních orgánů. Stěžejní část práce provede čtenáře procesem mechanismu včasného varování tak, jak probíhá v jednotlivých zemích (v potaz budou brány hlavně poradní instituce jednotlivých komor). Autorka postupně představí proces selekce dokumentů, jejich projednávání a cestu k výsledným stanoviskům. Poslední kapitola bude věnována konkrétním příkladům diskutovaných návrhů legislativních aktů EU, s důrazem na případy kdy se počet odůvodněných stanovisek blížil nutnému kvóru, a postoj národních parlamentů příslušných zemí k nim.

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Acronyms

Commision	European Commission
CZ1	Czech Chamber of Deputies
CZ2	Czech Senate
EWM	Early warning mechanism
NP(s)	National parliament(s)
MP(s)	Member of national parliaments
PL1	Sejm of the Republic of Poland
PL2	Senate of the Republic of Poland
SK	National Council of the Slovak Republic
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union

Použité zkratky

Commision	Evropská Komise
CZ1	Poslanecká sněmovna Parlamentu ČR
CZ2	Senát Parlamentu ČR
EWM	Mechanismus včasného varování
NP(s)	Národní parlamenty
MP(s)	Členové národního parlamentu
PL1	Sejm Polské republiky
PL2	Senát Polské republiky
SK	Národní Rada Slovenské Republiky
TEU	Smlouva o Evropské unii
TFEU	Smlouva o fungování Evropské unie

Introduction

One of the aims of the Treaty of Lisbon (European Union, 2007) was to strengthen the democratic dimension of the EU and to reform the EU institutions and improve the European decision-making process. As a supranational entity the European Union (EU) with its unprecedented and evolving system of checks and balances does not fit into the traditional models of division of power within a state. Despite its explicit declaration of being functionally rooted in representative democracy (Art. 10 TEU), the ties between European citizens and European decision-makers are very weak and remote, which essentially does not allow citizens to hold their representatives accountable for their actions (Moravcsik, Majone, 2002; Hix, Follesdal, 2006). "*One of the main problems regarding the development of the European Union is the growing idea that Community decisions are insufficiently representative of, or accountable to, the nations and the people of the Union*," (Tans et. Al., 2007: 3). Legislative competences have over decades shifted not only vertically, from the national to the supranational level, but also horizontally, from national parliaments to governments which gained legislative powers on top of their executive powers as decision-makers in the Council (Maurer, Wessels, 2001: 17). The increased use of qualified majority voting in the Council makes it difficult for national parliaments to scrutinize governments before taking decisions their behalf at the European level. Overall, the parliamentary control over the legislative process, now carried out on the European level by Members of the national executive body, has eroded, causing the deparliamentarisation of Union (Raunio, 2009:15).

This thesis focuses on the Early Warning Mechanism (EWM), as the so-far most recent development in the long-lasting effort for a stronger involvement of national parliaments (NPs) in the European decision-making processes. The EWM, officially introduced by the Lisbon Treaty (European Union, 2007), entrusts NPs with the task of reviewing EU legislative proposals with regard to the principle of subsidiarity[1] (and potentially proportionality[2]). In order to fulfil this task, national parliaments may, if they

[1] Art. 5(3) TEU: Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

[2] Art. 5(4) TEU: Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

find a breach of the aforementioned principle(s), issue a complaint called a reasoned opinion. Incoming reasoned opinions are counted and weighted as votes: each parliament has two votes, chambers in bicameral parliaments have one vote each (Kiiver, 2012: 1). When a certain threshold (minimum of one third of the allocated votes) is met, the so-called yellow card procedure is initiated and the Commission has a duty to review the proposal. The yellow-card procedure has only been used twice so far, once in the case of the "right to strike" (European Commission, 2012), and once on the establishment of a European public prosecutor (European Commission, 2013).

Despite the general agreement among politicians and academics that the EWM is rarely used (Raunio, 2009; Neuhold, Strelkov, 2012: 4), the data varies vastly among the Member States. While the Swedish Parliament has submitted 52 reasoned opinions to date, followed by the French Senate (21) and Dutch House of Representatives (20), some national parliaments have not submitted any yet (Slovenian National Council with none at all and Slovenian National Assembly, Croatian Parliament, Hungarian National Parliament and Estonian Parliament with only one each). The literature suggests that variance in the number of submitted reasoned opinions can occur due to several reasons, which will be regarded as '*alternative hypotheses*' (the term "alternative" will be used as a synonym to "other"). First of all, the nature of the EWM allows only for negative interventions. National parliaments can only voice complaints, however they cannot issue nor amend proposals (Kiiver, 2008). Moreover the national systems of checks and balances differ, leading to a variance among national parliaments in their institutional strength. Whether national parliaments possess formal scrutiny rights which allow them to veto, amend or only review governmental positions in the Council thus influences the motivation of individual MPs to participate in the EWM (Gatterman, Hefftler, 2015). This variance occurs also within States with bicameral parliaments, in which upper chamber are expected to balance their lack of power over government by voicing their opinion on European affairs through the EWM (Strelkov, 2012: 20). The last group of potential factors are the incentive problems. Assuming "*parliamentarians are rational actors with stable preferences who make decisions based on an analysis of costs and benefits*," (Auel, Christiansen, 2015 in Gatterman, Hefftler, 2015: 306), we have to evaluate the EWM in light of its impact on MPs' re-election. What should be taken into account are the national inter-party relations which mostly stem from their preferences on national issues.

Previous literature (Raunio, 2009: 2) shows that there is a demand for more theory-driven analyses of actual behaviour of MPs that extend beyond describing formal procedures and organizational choices. Moreover, there is a demand for research on the strategies of political parties and the incentives of individual MPs to become involved in European affairs. Therefore, considering the previous literature on the EWM, I have decided to narrow down my research focus and divert slightly from my original research plan to study formal procedures of scrutiny of EU documents and focus on the incentives behind NPs activity in the mechanism. This decision will allow me to contribute more to the existing literature. In brief, based on the theory the EWM is a '*clash of competing interpretations of subsidiarity*' it is '*applied in light of concerns over European integration,'* (Cooper, 2006; Gatterman Hefftler, 2015) I will study closely the connection between political motivation and the scope of the subsidiarity control. In particular, I aim to contribute to the developing debate on the EWM by uncovering causal effects between the interpretation of the subsidiarity control as an independent variable and the activity in the EWM as a dependent variable. My research question reads as follows: *Does the understanding of the scope of the subsidiarity control affect NP's activity in the EWM?* (Grinc, 2013). In particular, I will focus on references to the principle of conferral and proportionality in the texts of the reasoned opinions.

For the purpose of conducting empirical research, I have chosen five parliamentary chambers of three national parliaments of the EU - Czech, Slovak, and Polish, to test my hypotheses. The chosen parliaments have a long tradition of cooperation within the Visegrad group, together with Hungary, and have, since 2006, been organising bi-annual meetings of European affairs committees. Moreover, previous literature (Neuhold, Strelkov, 2012: 23) calls for further research into cross-country variance in order to provide answers for the varying activity between European regions, in this case Central and Eastern Europe (CEE). Although I am mostly acquainted with the reality of the Czech Parliament, through the conduction of a cross-case analysis, I hope to first of all increase the external validity of the research to the population of the selected cases, and to provide the basis for future within case analysis especially in the Czech Republic.

This thesis combines a broad range of data sources including: primary sources such as official documents, data from relevant databases (IPEX), internet-based survey with the parliamentary staff, and secondly secondary sources such as previous research in the field and lastly direct observations, from my past internship in the Parliamentary Institute of the Czech parliament in 2014 and my current internship in the Senate Chancellery, Parliament of the Czech Republic, Foreign Relations Departments, European Union Unit. Such an approach (data triangulation) helps me not only to increase the validity of the study but also to capture different dimensions of the same phenomenon better.

The thesis unfolds as follows: The first chapter introduces the process of a greater inclusion of national parliaments in European decision making followed by a detailed explanation of the EWM. The second chapter provides a comprehensive literature review from which several '*alternative hypotheses'* are derived, based on which, in the third chapter, the theoretical framework is introduced and the studied hypotheses are derived. Drawing upon conclusions of the academic debate, the fourth chapter presents the research design for the following data analysis, including the explanations of the case selection the conceptualisation and operationalisation of the variables. Eventually the test of my hypotheses, concerning the inclusion of the principles of conferral and proportionality in reasoned opinions, are evaluated in the discussion and the conclusion.

1. National parliaments on the rise

1.1. Before Lisbon

The entry into force of the EWM in 2009 could be considered a turning point in the long struggle for direct involvement of national parliaments in European law making (Kiiver, 2012: 1). Up until the Treaty of Lisbon (European Union, 2007), the involvement of national parliaments was possible mainly through national governments. This chapter outlines the mainly legal (Treaty and Protocol reforms) gradual development of the inclusion of national parliaments into the European institutional structure, leading to the introduction of the EWM, which is introduced at the end of this chapter. Using the periodization used by Karlas (2011: 27), I will only focus on the so-called third period which began in the 1990s and is particularly important due to its focus on strengthening of both individual and collective control.

The first step towards an increase of the role of national parliaments was taken in 1989, with the establishment of Conference of the committees of the national Parliaments of the European Union Member States dealing with the European Union affairs as well as representatives of the European Parliament (COSAC). COSAC brings together Committees on European Affairs (six Members per MS) twice a year and serves mainly as a facilitator of informal exchange, as the overall majority of parliaments oppose any further institutionalization (COSAC, 2013). Declaration number 14 attached to the Maastricht treaty (European Union, 1992) on the Conference of the parliaments invited '*the European Parliament and the national Parliaments to meet as necessary as a Conference of the Parliaments (or "Assizes") which will be then consulted on the main features of the European Union, without prejudice to the powers of the European Parliament and the rights of the national Parliaments'*. The following Treaty of Amsterdam (European Union, 1997) also formally recognizes COSAC, which "*may make any contribution ... for the attention of the institutions of the European Union, in particular on the basis of draft legal texts which representatives of governments of the Member States may decide by common accord to forward to it, in view of the nature of their subject matter*'. COSAC still remains a relevant actor, as it provides a platform for national parliaments to meet and review the Commission's legislative plans and identify possible breaches of subsidiarity. Moreover, COSAC's bi-

annual reports based on answers to questionnaires serve as a great source of information on the national parliaments. Based on the demands for further involvement of national parliaments, on top of organising joint meetings, the Declaration attached to the Maastricht Treaty Declaration number 13 on the role of national Parliaments in the European Union expressed the will to '*encourage greater involvement of national Parliaments in the activities of the European Union*'. It also promised that '*governments of the Member States will ensure, inter alia, that national Parliaments receive Commission proposals for legislation in good time for information or possible examination*'.

Moreover, the Maastricht Treaty (European Union, 1992) mentions for the first time the principle of subsidiarity in Art. 3b Treaty of the European Community. Since December 2012, the European Commission is required to report annually to the European Council on the application of subsidiarity and proportionality, in the so-called "Better lawmaking" reports.

However, the first proposal for potential collective action of national parliaments took place almost 5 years after the introduction of the Treaty of Amsterdam (European Union, 1997). The Treaty introduced two Protocols that form the basis for the focus of this study - the Protocol on the application of the principles of subsidiarity and proportionality (Protocol No 2) and the Protocol on the role of national parliaments in the European Union (Protocol No 1). Driven by the desire '*to encourage greater involvement of national parliaments in the activities of the European Union and to enhance their ability to express their views on matters which may be of particular interest to them*' the Protocol No 1 restates that '*all Commission proposals for legislation as well as consultation documents (green and white papers and communications) shall be promptly forwarded to national parliaments of the Member States*' and '*a six-week period shall elapse between a legislative proposal or a proposal for a measure to be adopted*'.

Declaration number 23 of the Treaty of Nice (European Union, 2001), which entered into force in 2003, listed four key questions which the next Intergovernmental Conference was to address, among them "the role of national parliaments in the European architecture" and '*how to establish and monitor a more precise delimitation*

of powers between the European Union and the Member States, reflecting the principle of subsidiarity,' (Raunio, 2009: 9). This was a part of a broader plan to *'improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, in order to bring them closer to the citizens of the Member States.*' (Art. 6 of the Declaration). The Laeken declaration on the future of Europe, following the Treaty of Nice (European Union, 2001) and marking the future content of the Constitutional treaty (European Union, 2004), committed the Union to become more democratic, more transparent and more efficient. It particularly raised several questions in relation to democratic legitimacy of the Union - '*Should NPs be represented in a new institution, alongside the Council and the European Parliament? Should they have a role in areas of European action in which the European Parliament has no competence? Should they focus on the division of competence between Union and Member States, for example through preliminary checking of compliance with the principle of subsidiarity?*'.

In the process of drafting the Treaty establishing a Constitution for Europe (European Union, 2004) eleven working groups on specific issues were formed. One of them was the Working group IV '*The role of national parliaments*' (WG IV), whose Final report (European convention, 2002b) suggested answers to the questions raised by the Laeken declaration. Apart from tackling national scrutiny systems, which should, according to the Group, remain as the primary role of national parliaments in European matters, the Group, for the first time ever '*examined the issue of the role of national parliaments in controlling the application of the principle of subsidiarity at the European level.* The Group considered in particular the following questions: *Is there a role for national parliaments in monitoring subsidiarity? Should they act alone or with others? At what stage, or stages, of the legislative process should they be involved? What mechanism would be most appropriate?'* As Raunio (2009: 9) points out, despite the desire to improve national scrutiny of governments in EU matters through better access to information, hardly any enthusiasm for the establishment a collective body of national MPs or for changing the functions of COSAC was displayed. On the one hand, the Final report expressly rejected the idea of creating new permanent or ad hoc bodies or institutions for this purpose. On the other hand, they agreed on the ground rules for the EWM by stating that the input could most usefully be provided through a consideration of *'a draft piece of legislation from the perspective of subsidiarity at the very beginning of the legislative process. The warning would be addressed to the*

institution that was the source of the amendment'. In comparison to the final version of the EWM, Working group IV suggested that NPs '*should be able to raise concerns about subsidiarity thorough the legislative process, in those cases where a proposal has changed considerably*'. Moreover, it was mentioned that COSAC could from then on '*provide a forum for debate on a general level on the control of subsidiarity, considering that the direct involvement of national parliaments in relation to individual legislative proposals should pass through their scrutiny of governments and the new early-warning mechanism proposed by WG I.'*

A group closely working with Group IV was the Working Group I on subsidiarity, which suggested, for example, the establishment of a parliamentary committee on subsidiarity, composed of MEPs and national parliamentarians (European Convention, 2002a). The group suggested setting up a '*early warning system*' of a political nature, intended to reinforce the monitoring of compliance with the principle of subsidiarity by national parliaments. Moreover, based on the suggestion of the Group, a new practice of including '*subsidiarity compliance sheets*' in every draft legislative act was introduced.

In 2004, still with the hope that the Constitutional Treaty (European Union, 2004) would be ratified[3], the efforts to strengthen NPs' role in the Union proceeded further, mainly through the previously mentioned platform COSAC. At the semi-annual COSAC's XXXII meeting in 2004, the presiding Dutch representation facilitated a debate about subsidiarity checks. "*COSAC agreed to conduct a "pilot project", which would allow national parliaments to test how their subsidiarity early warning mechanisms might work in practice, by examining a specific piece of draft EU legislation. It was agreed that the Commission's 3rd Railway Package would be the subject for this pilot project*," (COSAC, 2004). "*Overall eight tests took place in this phase, three of which with a 6-weeks deadline, as drafted in the constitutional treaty, followed by five test with the currently used eight weeks time frame*" (Knutelská, 2012). Despite the failure of the Constitutional Treaty (European Union, 2004), caused by the negative outcomes of the Dutch and French referenda prior to ratification, the efforts for

[3] COSAC „*welcomes the signing of the Treaty establishing a Constitution for Europe and its ratification by Lithuania, and calls on the parliaments of the other Member States and the citizens of Europe to endorse the Treaty, which is necessary for the adequate functioning of an EU of 25 or more Members*;" (COSAC, 2004).

a better involvement of NPs remained strong. As a reaction to the inability of the MS to reach a consensus on the Constitutional Treaty (European Union, 2004), the Commission launched in 2005 the so-called Barosso initiative (Commission, 2006) , which entailed that all new proposals and consultation papers, such as Green and White Papers, would, from 1 September 2006, be directly forwarded to NPs, inviting them to provide input (Jančić, 2012).[4] Moreover, in 2006, the website Interparliamentary EU Information Exchange (IPEX) was created (on an initiative of the Conference of the Speakers of EU Parliaments) to facilitate the exchange of documents among parliaments on pending EU legislation, including opinions on its subsidiarity compliance. In addition, as Neuhold (2013: 3) remarks, in order for national parliaments to cooperate systematically with one another, and to gain sufficient technical and legal expertise, a network of the permanent representatives of national parliaments (of the EU) has been developed. Already in the 1990s, MS began to establish permanent representatives to the EU in Brussels. Starting with Denmark in 1991, followed by Finland in 1995, and continuing on with the new MS.

1.2. After Lisbon

Building on the Barosso initiative as well as the proposed articles of the Constitutional Treaty (European Union, 2004), the Lisbon Treaty (European Union, 2007) introduced several steps towards the strengthening of NPs, among them the EWM, which is considered to be the most notable (de Wilde, 2012: 5). Despite the wording of Article 10(2) TEU on representative democracy, which only acknowledged the traditional ways of representation (directly through the European parliament and indirectly through the European Council and the Council), article 12 added possible means of citizens' involvement on the European level. However, this is not explicitly acknowledged as a tool for strengthening representative democracy in the EU, but rather as a way of contribution to the '*good functioning of the Union'* (Art. 12 TEU) The outlined contribution of the NPs should stem from a) taking part in the inter-parliamentary cooperation with the European Parliament; b) receiving information and

[4] This was welcomed by the Heads of States: "The European Council notes the interdependence of the European and national legislative processes. It therefore welcomes the Commission's commitment to make all new proposals and consultation papers directly available to national parliaments, inviting them to react so as to improve the process of policy formulation. The Commission is asked to duly consider comments by national parliaments – in particular with regard to the subsidiarity and proportionality principles. National parliaments are encouraged to strengthen cooperation within the framework of the Conference of European Affairs Committees (COSAC) when monitoring subsidiarity."
Presidency Conclusions, Brussels European Council of 15-16 June 2006, Para. 37.

draft legislative acts from EU institutions[5]; c) taking part in the evaluation mechanisms for the implementation of the Union policies in that area freedom, security and justice, and in the revision procedures of the Treaties; d) being notified of applications for accession to the Union; e) and finally from seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality.

Kiiver (2012a) launched an interesting debate by claiming that regardless of the exact wording of article 12, it cannot be taken as taxative (exhaustive) list, simply because national parliaments undeniably contribute to the 'good functioning of the EU' through other means as well. Therefore, it is necessary to take into account, that means of activity listed in the Treaty (European Union, 2007) are only those pursuant to EU law, and many other can be established by national provisions, as long as they comply with the rules outlines in the Treaties.[6]

The legislative basis of the EWM lies in the afore-mentioned Article 12 a, b[7] and most importantly in the Protocol no. 1 on the role of national parliaments in the EU and Protocol No 2. Under the outlined mechanism, the European Commission is, once again, obliged to send draft legislative acts, together with other documents such as White and Green books, to national parliaments at the time of their submission to the Council and the European Parliament. Within an 8-week-long period from the delivery of the respective language version of the respective document, national parliaments can submit through the IPEX a reasoned opinion where they identify a breach of subsidiarity. In order to launch the yellow-card mechanism, one third of the overall amount of potential reasoned opinions has to be gathered; this number is derived from the overall number of chambers of national parliaments, with bicameral parliaments having one vote per chamber and unicameral two votes per chamber. As Cooper (2012:

[5] In accordance with the Protocol on the role of national Parliaments in the European Union Art. 12 a. (European Union, 2007).

[6] This is the case especially for political systems with strong parliamentary scrutiny over national governments such as in Denmark.

[7] National Parliaments contribute actively to the good functioning of the Union:
(a) through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union;
(b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality.

447) points out, while the Constitutional Treaty version of the EWM, with only the "yellow card", was essentially advisory and rather symbolic (as the national parliaments could send "angry letters to the Commission before the EWM as well") (Kiiver 2006: 153), the Lisbon Treaty which also includes the "orange card", really strengthens the NPs giving them the possibility to trigger an early vote in the Council and the EP on a draft legislative act by putting together the majority of votes. Thereby, the Council or the European Parliament may stop the legislative process before the first reading. Nevertheless, not all aspects of the EWM have been broadened by the Lisbon Treaty. On the contrary, the scope of the reasoned opinions (the accepted substantiation) has been reduced. The Lisbon version of the EWM only allows for opinions based on breaches addressing subsidiarity compliance and no other grounds (such as legal basis, proportionality, policy substance). This essentially means that NPs can only object to EU legislation in areas of shared competence, not to legislation in areas of exclusive EU competence or to non-legislative activity such as the Open Method of Coordination, as the principle of subsidiarity only applies where both MS and the EU can act (Cooper, 2012).

From the introduction of the EWM in 2009 until October 2014 the threshold for the yellow-card procedure was met only twice. The legislative proposals under "attack" can be considered quite sensitive, one regulating the "right to strike" (European Commission, 2012) and the second establishing the office of the European public prosecutor (European Commission, 2013). Apart from these rare cases, there is nonetheless a growing tendency to submit of reasoned opinions in the EU. The number of submitted reasoned opinions vary on the scale from 0 in Slovenia to 52 in Sweden and from 0 in Slovenia again and in Finland to 286 in the Czech Republic for the exchange of documents. To some, it may come as no surprise; differences in the traditional involvement of national parliaments in European affairs (through the scrutiny of governments) have been noticeable ever since the establishment of the EU. For example, Denmark fighting against the process of deparlamentarisation through their veto-power over ministers' steps in the Council, while other parliaments have been slowly losing their legislative functions by the vertical transfer of powers. The EWM, however, brings a whole new dimension to the studies of the involvement of national parliaments in European affairs. Not only did they gain access, albeit limited, to directly influence EU policy making, but they were also provided with quite an accessible

platform for inter-parliamentary cooperation, forming a "virtual third chamber" as Cooper (2008) puts it. Despite Knutelská's (2012) recent refutation of the argument, whose research shows that "*national parliaments do not yet fulfil the criteria of acting as a collective body at the European level, which is a precondition of their contribution to the legitimacy of the European Union at this level*", it is clear that certain parliaments or their chambers have intensified the inter-parliamentary communication via IPEX (Czech Senate, British House of Commons, German Bundesrat, Swedish Parliament, and both Chambers of the Italian parliament all submitting more than 100 documents).

Considering the development in national parliament's role in the EU over the two past decades, we can see a transition from none or indirect involvement in European affairs through national governments, to being officially recognized as a stakeholder with rights to voice complaints, at least about the subsidiarity breaches. What this chapter has shown, is that although the subsidiarity control is the most recent of the rights given to the NPs, it in no way replaces the previous rights, such as domestic control of the government.

2. Literature review

The past 26 years of gradual amendments to the decision-making processes in the EU, introduced in the previous chapter, have not gone unnoticed by academia. This chapter reviews relevant literature, summarizes their main findings, in terms of factors influencing the involvement of national parliaments in European affairs, and identifies research gaps. The aim of this chapter is to provide an overview of '*alternative hypotheses'* as a context, in which my theoretical framework will be situated, as well as a basis for the discussion in the end of this thesis.

2.1. General remarks about the role of the Early Warning Mechanism

Empirical research on decision-making processes and the role of various stake-holders have been framed by the debate on the democratic deficit of the Union (Hix, Follesdal, 2006; Moravcsik, 2002; Lord, 2008). This debate became even more relevant when the idea of deparlamentarisation, a process known as a '*gradual shift of power towards the executive',* was introduced (Maurer, 2001; Rizzuto 2003; 2004). Raunio (1999) in his famous article on the loss of powers among national parliaments stated that in spite of the growing importance of the European Parliament as well as national legislatures, the EU still suffers from a low level of parliamentarisation. This is especially significant with regard to the formulation of national stances on European affairs. A premise taken from this debate which holds for all subsequent research is that the EU and its decisions lack democratic legitimacy. The question is, how to fix this?

The EWM can be perceived as a tool to strengthen democracy in the EU and legitimacy of European legislation by engaging European citizens, through the NPs, in the European decision-making process (Gatterman, Hefftler, 2015: 324). Firstly, the role of the NPs in European affairs might change due to the EWM. In 2012, Cooper introduced the idea of the 'virtual third chamber', in which he attributes to the NPs a new, collective role. According to him, the EWM allows the NPs to perform their three traditional functions (legislation, representation, and deliberation) as a collective body and what is important, he also proves that the NPs are able to act as a collective body in practice as well. Nevertheless, this theory was partially refuted in 2012 through an empirical study conducted by Knutelská (2012), who states that, despite the evident potential to act collectively, the NPs currently act more as individual entities. Whether

the NPs act collectively or not, the provisions of the Lisbon Treaty concerning the EWM are expected to put pressure on the NPs to engage more actively in EU affairs and thus serve as a motivation to use, alongside the EWM, also the previously established mechanisms (Kiiver 2008, 78); the more legal tools provided, the greater the chance that it may become embarrassing for parliamentarians to ignore them (Kiiver, 2008: 83). However, considering the fact that there have been only two yellow-card procedures triggered so far, the policy shaping power NPs have remains limited (Gatterman, Hefftler, 2015: 306) (the first case led to the withdrawal of the proposal, while in the second case, the European Commission decided to maintain the proposal).

Overall, although the EWM itself might not become the most powerful tool in increasing NP's influence in European affairs, it certainly does contribute to a further Europeanisation ("*an accelerated process and a set of effects that are redefining forms of identification with territory and people.*") (Borneman, Fowler, 1997) of the political and public environment in the MS. Firstly MPs might gradually start using the mechanism and secondly media and the electorate can charge the MPs for not making a use of their rights.

2.2. Factors

As explained in the previous subchapter, the EWM was acknowledged by academia with rather mixed feelings, and the practical usage of the mechanism remains relatively low (Neuhold, Strelkov, 2012: 4). Thus, in this sub chapter, I will put a special emphasis on the introduction of all factors which have been proved to influence parliaments' activity in European affairs. The division of studied factors has been derived from Cooper's article (2012: 449), in which the author identified three general obstacles to the policy-shaping effectiveness of the EWM: weaknesses inherent to the subsidiarity review, logistical problems, and incentive problems. However, it should be noted that I partially reallocated the factors within the categories based on their causes and added additional ones from other sources, particularly in addition to the logistical problems.

2.2.1. Weaknesses inherent to the subsidiarity review

Before analysing the individual NPs with regard to their activity in the EWM, it is important to acknowledge the weaknesses inherent to the EWM itself. The EWM has been called "*a hybrid between a co-legislative procedure and an accountability procedure"* (Kiiver, 2009: 6), as the NPs are expected to hold the Commission accountable for subsidiarity justifications during the legislative process (as opposed to the tradition ex-ante control). The scope of the control, which only allows 'negative' interventions; therefore the NPs can only disapprove of a proposed draft legislative act, drifts the NPs further away from a legislative towards the accountability function. Further, the role of the NPs is essentially only of a consultative nature, as proposals do not have to be withdrawn if they face opposition from national parliaments (Kiiver, 2008: 78).

Apart from the requirements about the substance of the control, the EWM requires for the NPs to meet a necessary threshold in order to initiate the yellow/orange card procedure. If the Commission is to review the proposal with regard to the principle of subsidiarity one third (yellow card)/ a simple majority (orange card) of the votes allocated to the national Parliaments have to be gathered. Kiiver (2008: 81) correctly points out that the simple majority is in fact an absolute majority, as it is calculated as a share of the total votes distributed rather than as a share of the votes actually cast (as all the casted reasoned opinions (ROs) are expected to be negative by pointing out a breach of subsidiarity, not a compliance). On the contrary, there have been positive reactions to the threshold as well (Fraga, 2005: 499). According to the predictions from the early times of the EWM, the threshold incentivises NPs to increase inter-parliamentary communication and an exchange of information, as each parliament needs information on the overall number of ROs, in order to have their voice heard.

2.2.2. Logistical problems: institutional capacity

What is also vital in the determination of NPs' activity is their institutional capacity, which helps them overcome the weaknesses inherent to the EWM. On the one hand, institutional capacity, is generally not considered crucial in the involvement of the chamber in European affairs (Gatterman, Hefftler, 2015: 323), on the other hand formal

scrutiny rights in European affairs, institutional strength, and human and technical resources cannot be completely omitted.

In order to fully understand the individual reasons standing behind MPs decision to become active or remain inactive in the EWM, it is necessary to understand what position the individual NPs hold in the respective political system, with regard to the scrutiny of the government, especially regarding European affairs. It has been proven (Auel, 2013) that parliaments with more institutional strength do tend to be more active in European affairs (debates, mandates/resolutions, opinions and committee meetings). However, when it comes to the number of opinions they sent with in the EWM or the political dialogue this correlation has not been affirmed. This suggests that "*institutional strength cannot simply be taken as a proxy for actual parliamentary activity*," (Auel, 2013: 23).

The ability to control government in its steps on the European level does not vary only among the individual Member States but also among individual chambers in the 13 bicameral parliaments.[8] Most of the European upper chambers are indirectly elected (as opposed to directly or through nomination) and hold a generally weaker position (the so-called asymmetric bicameralism) (Auel, et.al., 2015: 3). However, in the field of European affairs, Karlas has proven that out of the 13 bicameral parliaments, six upper chambers hold the same position in parliamentary control of European affairs as the lower chamber and the seven others possess less power, however usually by only marginal numbers. Therefore the asymmetry of bicameralism does not lie so much in the field of European affairs but rather in their traditional functions and their division between the two chambers. It has been proven that the upper chambers tend to use the EWM more often, in order to balance their general lack of powers (Neuhold, Strelkov, 2012: 20).

Alternative hypothesis 1: The bigger institutional strength a chamber has, the lesser the incentive to participate in the EWM.

[8] Upper chambers in the EU: directly elected: Czech Republic, Poland, and partly Belgium, and Spain, and indirectly elected: Austria, France, Italy, the Netherlands, Romania, Slovenia, and nominated: Germany, Ireland, and the United Kingdom.

As already partially outlined, the EWM is only one of the several options national parliaments have to influence decision-making of the EU. The traditional mean is through parliamentary influence over governments - the capacity of the legislature to determine the policy choices of the executive (Strelkov, 2012: 7). However, not all NPs/chambers have the same influence over their governments, especially in European affairs. Studies (Holzhacker, 2007; Maurer and Wessels, 2001) measuring how different NPs hold their governments accountable for their decisions with regards to the European Union have been published since late 1990s until the introduction of the EWM and can be considered an independent research field. For the purpose of this thesis I will only mention the currently largest quantitative study on then-all 27 Member States' strength of control conducted by Karlas in 2011. After a thorough conceptualisation and operationalization of "strength", Karlas derived placed individual NPs on a scale, taking into account the following criteria: access (to information), scope (of the control), decentralization (of the control), and influence (on the government). While the criteria of access (directly from the Commission) and scope (subsidiarity) is more or less the same for all NPs, decentralisation and influence (on the draft) can be considered relevant with regard to the EWM itself as well.

To sum it up, whether national parliaments can veto, amend or only review governmental positions in the Council influences the motivation of individual MPs to participate in the EWM (Gatterman, Hefftler, 2015). While for some chambers it is easier to use their parliamentary strength and voice their opinion through the government (typically in the Nordic States such as Finland, Sweden[9] and Germany, the Netherlands and Austria) (Auel, Christiansen, 2015: 268), others are implicitly forced to use the EWM.

Alternative hypothesis 2: The more parliamentary influence over government's stance on European affairs (and its voting in the Council) a chamber has, the smaller its incentive to participate in the EWM.

In practice, the legally set boundaries to the powers of individual NPs/chambers, are often shaped by their capacity to use them. In particular, the position of the

[9] This was proven by for example Strelkov who conducted interviews with representatives of Nordic parliaments, which possess great influence over their governments. (Strelkov, 2012: 16).

respective chamber/NP is complemented by its human and technical capacity and its internal working procedures. This has been quantified for the EWM with the result that "*at the chamber level, the relative number of support staff has the expected effect*" (it slightly, by 0.4 pro cent, increasing the number of ROs); if the Swedish parliament is excluded (extreme case), however, this factor has a generally low explanatory power (Gatterman, Hefftler, 2015: 321). It is questionable whether the usage of relative instead of absolute number of staff with regard to the size of the chamber is a methodologically good choice, as the number of documents coming from the European Commission is the same.

Alternative hypothesis 3: The less staff responsible for subsidiarity control a chamber has, the less reasoned opinions issued.

The number of staff is especially important for three particular reasons. First of all, the time period NPs have to issue a reasoned opinion is relatively short. Reasoned opinions are only accepted if they are received by the Commission in the eight weeks (prolonged from six weeks in the COSAC tests prior to the introduction of the EWM) following the publication of all the language versions of the draft act. Authors who conducted empirical studies (Knutelská 2012: 53) found that time constraints proved to be especially relevant in cases where the six/eight-week period overlapped with parliamentary recess, especially during summer, but also during Christmas holidays. While in August, when summer recess takes place, the deadline is pro-longed (Barroso, Wallström, 2009), Christmas is not taken into account. When empirically tested, time frame is perceived as insufficient only when it comes to Christmas holidays, and also added that when legislative elections fall into the scrutiny period, it does not seem to constrain national parliaments more than usual (Gatterman and Hefftler: 2013).

Opinions on whether the time-frame is sufficient or not differ among individual chambers. According to the 16th Bi-annual report of COSAC from October 2011 ten chambers have expressed their *satisfaction* with the time-frame of Protocol 2, fourteen NPs, were *generally satisfied*, with various reservations, ten find it *insufficient or problematic* and the remaining five provide *general comments* without taking a formal position. In 2013, in the 19th Bi-annual report, the number of *satisfied* chambers doubled, while the number of *unsatisfied* grew by two (from ten to twelve). However,

some Parliaments/Chambers (the UK House of Lords, the Polish Senat, and the Slovenian Državni zbor) who expressed satisfaction also emphasised that a longer period would make the process easier and mitigate the impact of periods of holidays and parliamentary recess. Eight parliaments/chambers said that a 10[10] or 12[11]-week period for internal parliamentary scrutiny of subsidiarity would be better.

Secondly, the parliamentary staff and NPs in general do not only face time-constraints but also receive a high number of documents; the volume of the submitted documents is large and not all documents are of the same importance. Among the forwarded documents are not only draft legislative acts, but also for example white[12] and green[13] papers and amendments to previously adopted legislative acts.

The third reason emphasizing the importance of parliamentary staff, is, in Karlas's terminology, the decentralisation, or the division of labour between parliamentary committees (Gatterman Hefftler, 2015: 315). Primarily, it is the European affairs committee (EAC), which has the primary role in European affairs within a NP. However, "*specialized committees are probably more qualified than the EAC to assess whether the legislative initiative complies with the subsidiarity principle,"* Raunio (2009: 3). As Gatterman and Hefftler (2015: 315) point out, when other committees are involved, the effectiveness of EU affairs scrutiny slightly increases and the number of ROs is higher. When the decentralised system is used, the need for a higher number of staff is even more evident.

2.2.3. Incentive problems

What is still missing in our analysis of potentially influential factors is the behaviour of the MPs themselves, which may provide a generally better explanations

[10] Hungarian *Országgyűlé* and Cypriot *Vouli ton Antiprosopon*.
[11] German *Bundestag,* Irish *Houses of the Oireachtas,* UK *House of Commons,* Czech *Senát,* Belgian *Sénat* and Dutch *Tweede Kamer*
[12] Commission White Papers are documents containing proposals for Community action in a specific area. In some cases they follow a Green Paper published to launch a consultation process at European level. When a White Paper is favourably received by the Council, it can lead to an action programme for the Union in the area concerned.
[13] Green Papers are documents published by the European Commission to stimulate discussion on given topics at European level. They invite the relevant parties (bodies or individuals) to participate in a consultation process and debate on the basis of the proposals they put forward. Green Papers may give rise to legislative developments that are then outlined in White Papers.

for the activity in the EWM (Auel 2015: 287). There seems to be a general consensus about the importance of political incentives among academics - political motivation of national parliaments plays a key role in explaining variation in the extent to which national parliaments become active in the EWS (Gatterman Hefftler 2015: 306).

Despite the general consensus, there still seems to exist no literature uncovering the causal mechanisms between political motivation and the activity in the EWM, other than the large-n case study conducted by Gatterman and Hefftler, in which the authors assume that political motivation is determined by policy influence and re-election prospect. This rational-choice perspective, also previously used in literature on the general role of NPs in European affairs (Auel and Christiansen 2015 in Gatterman Hefftler 2015: 306), work with the premise that parliamentarians are rational actors with stable preferences whose decisions are based on an analysis of costs and benefits. Taking into consideration MPs' busy schedules and limited resources (Sousa 2008: 441), the general expectation is that MPs invest the resources they have – i.e. make use of institutional opportunities – in a way that will advance their electoral preferences. Hence, if an MP is to initiate a submission of a reasoned opinion, it is mainly in order to a) ensure their re-election and b) possibly enhance their chances for policy impact.

Re-election prospects depend largely on the general support for their party which stems first of all from their current political success. In this matter, we can differentiate between the incentive for *governmental* and *opposition* parties. Parliamentary democracies work on the basis of principal-agent mechanism, in which the government is the agent, dependent on its principal, the parliament, whose loyal support in turn enables the government to implement its policies (Auel, Benz, 2005: 287). Therefore, it is less probable that governmental MPs will raise concerns with Commission's proposals, unless the government itself is against the proposal (Cooper, 2012: 449). On the other hand, the opposition parties can use the EWS to voice their concerns, if these are blocked within the domestic political arena (Neuhold, Strelkov, 2012: 12). Similarly to opposition parties, parliaments under minority governments are more likely to submit a reasoned opinion, as they are not constrained by the government-parliament relationship (Gatterman Hefftler, 2015: 307, 308).

Alternative hypothesis 4: The bigger the opposition to the government, the higher incentive MPs have to issue a reasoned opinions.

The division between governmental and opposition parties is not the only, or even the main, division line; the re-election prospects also depend on party ideology represented in its political program. In this case, we can differentiate between *mainstream* and *other*[14] parties. Mainstream parties can be defined as parties which are successful in the existing structure of contestation, although they may not currently hold the governmental seats. Electoral competition, in which mainstream parties succeeded, is traditionally based on national issues such as taxation or social policy. In comparison to these topics, European affairs lack saliency (the added-value of EU topic for an MP's re-election is low) (Strelkov, 2012: 10). If the MPs were nonetheless to use European affairs as an election leverage, they would face large indifference of the public and trying to mobilize the electorate on EU affairs wouldn't be cost effective as parties would need to invest a lot of resources into 'activating the electorate' (Strelkov, 2012: 42).

Moreover, the fear of losing credibility as a mainstream party plays a role. An example for this is the Czech social-democratic party which has strong ties with the S & D group in the European Parliament and critical attitude towards EU issues could tarnish its image (Strelkov, 2012: 42). To summarize this argument, it has been proven on three diverse[15] cases (Sweden, Romania and the Czech Republic) that mainstream political parties have an interest in keeping the status quo, and try to de-link European affairs (Strelkov, 2012: 10) (depoliticize) from national politics and thus, European affairs remain largely unaddressed. On the contrary, unsuccessful (small) or extreme left/right political parties have greater incentive to open a new area of political competition for electorate and try to 'break the cartel' or the intraparty cohesion (Hooghe, Marks, 2009) by discussing European affairs.

Overall we can see that parties with weak electoral support or generally non-governmental parties (as mentioned above) can be expected to become more active than

[14] Among this category we can find e.g. niche or radical/extreme-left or right parties.
[15] Diverse cases, as opposed to typical, are those cases that span the maximum range of scores on the underlying cause and the outcome. (Rohlfing, 2012: 70 – 72).

the mainstream and governmental parties. Given these arguments, the nature of the party system (e.g. coalition/majority/minority government) and the dispersion of the party positions regarding EU integration have an impact on the political motivation of MPs to become involved in EU affairs (Gatterman, Hefftler, 2015: 308).

Alternative hypothesis 5: The higher the share of mainstream parties, the lower the incentive MPs have to issue a reasoned opinions.

2.3. Research question

In this chapter, I have outlined the contributions of the literature on NPs and especially the EWM, with an emphasis on factors, influencing NPs' involvement. For the purpose of this thesis, I have allocated the alternative hypotheses into three different categories. The first category is the weaknesses inherent to the EWM (negative interventions, threshold) which have a generally comparable impact on all NPs. On the contrary, the second category, the logistical problems, indicate the capacity the respective NP possesses (institutional strength, formal scrutiny rights) and its ability to use its resources (human and technical capacity) to conduct the subsidiarity checks. Last and most importantly, there are the incentive problems. Granted that political motivation is determined by policy influence and re-election prospect, activity within the EWM is not among the easiest way towards the common goal. If the MPs were to issue a reasoned opinion: a) the relationship between the governmental party/coalition parties and the government might be threatened, if the parliament takes a different stance than the government, but opposition parties can use the mechanism to voice their opinion; b) the costs of issuing reasoned opinion to gain the support of the electorate would be higher than the effectiveness of the mechanism, and c) parties' relations with their sister parties or European political group might be either endangered or strengthened.

Despite the negative outlook of the above hypotheses, in almost all NPs there were cases when the MPs decided to issue a reasoned opinion. In this thesis, I would like dig deeper into the area of political motivation and study closely the correlation between the scope of the control (subsidiarity checks) and the incentive NPs' have to become active in the EWM. The object of the control (subsidiarity) and its scope is usually taken for granted and Cooper (2012), whose division of factors has been applied

in this thesis, allocated the scope of the control to the category of factors inherent to the EWM, which essentially should have the same impact on all NPs. However, both the content of the issued reasoned opinions, as well as COSAC (2012) questionnaires have proved, that the understanding of the scope of the control varies vastly among the NPs. While keeping in mind the alternative hypotheses derived from literature, I would like to study the following research question "*Does the understanding of the scope of the subsidiarity control effect NP's activity in the EWM*?" (Grinc: 2013). This research question is explained further in the following chapter together with its reasoning.

3. Theoretical Framework

This chapter presents the theoretical substance of the studied research question on whether the understanding of the scope of the *subsidiarity* control affects NP's *activity* in the EWM. Following the presentation of the context of my concept and the introduction of alternative hypotheses (explanatory variables), this chapter specifies the studied concept of subsidiarity. The in-depth explanation will be done by combining two separate sources of literature - theoretical input on the EWM and literature on the principle of subsidiarity. After the analysis of my concepts, I will derive my hypotheses.

3.1. Principles of EU law and their control: Overview

The scope of the EWM as set out in Art. 6, Protocol No 2, is the compliance with the principle of subsidiarity only. What I will try to prove in this chapter on a theoretical level is that the perception of the principle of subsidiarity vary among the NPs and this variance influences their activity within the EWM. Essentially, the EWM is "*a clash of competing interpretations of subsidiarity*" (Cooper 2006: 294) not only among the NPs but also between the Member States and the Commission.

The differences between the understandings of the principle are caused by the several dimensions there are to subsidiarity outside of its legal definition. The ambiguous interpretation of its substance stems mainly from the fact that it overlaps with other principles limiting the legislative function of the EU, the principle of conferral, and proportionality. [16]

The right of the EU to legislate is based on the conferral of powers from the Member States onto the EU. EU legislative acts can therefore only regulate areas within the scope of its competences.[17]

> *Art. 5 (2) TEU: Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out*

[16] The principles have been firstly included in the Treaties as Article 3b of the Maastricht Treaty (European Union, 1992).
[17] The list of the competences can be found in Art. 3 (exclusive) and Art.4 (shared) of the TFEU.

> *therein. Competences not conferred upon the Union in the Treaties remain with the Member States.*

The principle of conferral is generally understood as a legal principle and the question of the compliance with the principle is of objective, legal nature (European Convention, 2002a). Whether the Treaties contain such competence is decided by the judges of the CJEU, based on article 263 TFEU.

The application of Union's competences is further limited by the principle of proportionality, which regulates the scale and intensity in which the competences (both exclusive and shared) coffered to the Union are exercised by the institutions (European Convention, 2002a).

> *Art. 5 (4) TEU: Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.*[18]

The principle was developed through the case-law of the Court of Justice (and is often used by national courts), according to which "*it is necessary to verify whether the means which the legislation employs are appropriate to achieve the objective pursued and whether or not they go beyond what is necessary to achieve it.* "(Case 56/86 OBEA [1987] ECR 1449). When monitoring the principle of proportionality, the following questions should be answered: *1) Is the aim/objective of the act legitimate? 2) Is the measure suitable to achieve the aim? 3) Is this particular measure necessary, are there any other, less onerous means, of achieving the aim?.* Despite its traditional usage in the judiciary to test the lawfulness of a measure, the nature (legal or political) of the principle of proportionality is questionable. We can certainly differentiate: "*A measure may be politically disproportionate without being legally disproportionate*," (Kiiver, 2009: 37).

[18] The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

Thirdly, the application of Union's competences is limited through the principle of subsidiarity, which regulates the level on which the legislative act is issued. However, it can only limit legislative acts issued within the scope of non-exclusive competences (as opposed to proportionality which applies to the exclusive competences as well), in which the Member States may exercise their competence only in so far as the EU has not exercised, or has decided not to exercise, its own competence.

> *Art. 5(3) TEU: Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.* [19]

With the inclusion of the principles in the text of the Treaties in 1992, compliance with the principles of conferral, proportionality, and subsidiarity became judicially enforceable in front of the Court of Justice, which is responsible for conducting the *ex post* control. Nevertheless, there are at least two arguments against the judicial control of the principles. The first one, normative, stems from the idea that the judiciary should not take on political tasks (European Convention, 2002a). Whether the EU should have less or more powers (the principle of conferral), or whether its regulations are unnecessary (proportionality, subsidiarity) are from their nature political decisions (European Convention, 2002a). However, the political importance of the control is softened by the narrow, even technical scope of the review, compared to for example to scrutiny of national governments that it calls for a disinterested body of experts (Cooper, 2006: 290). Secondly, empirically speaking, for the cases of subsidiarity breaches, the CJEU has been unwilling to review community legislation for alleged breaches (Cooper, 2006: 283); by the time of the drafting of the EWM (in 2005) the

[19] The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

CJEU had never annulled an act on the grounds of infringement of the principle of subsidiarity, although it has been invoked in certain cases, admittedly only in a small number (European Convention, 2002a). Also for this reason, it was agreed that the subsidiarity control should be done by political actors, rather than judicial ones.

What is important to realise is that the NPs are not the first political bodies to control the principle of subsidiarity, but rather added procedural actors to the existing structure (Cooper, 2006: 287) of the political control of subsidiarity conducted by the Council and the European Parliament. The political, *ex ante* control, of the three principles has always been a part of the legislative bargaining between the initiator, the Commission, and the co-legislators, the Council and the European Parliament. As Michel Petit Stated in 2005, in practice, the question of compliance with the subsidiarity principle often arises in the Council. The Council has had, since 1992, *guidelines on the application of the subsidiarity principle* under which "*the examination of the compliance of a measure with the provisions of Article 3b should be undertaken on a regular basis; it should become an integral part of the overall examination of any Commission proposal and be based on the substance of the proposal*" (European Convention, 2002a). However, what we considered a subsidiarity check substantially does not always include a formal explicit reference to the term subsidiarity itself. The subsidiarity control takes place when the Council calls for amendments of the draft legislative act so that it is less detailed or that it should leave more space for Member States' deliberation (European Convention, 2002a). Subsequently, the European Parliament has also been included in the control through the *Interinstitutional Agreement on procedures implementing the principle of subsidiarity* (European Communities) of 1993. The Agreement provides that "the three institutions (Commission, Council and the European Parliament) shall, under their internal procedures, regularly check that action envisaged complies with the provisions concerning subsidiarity as regards both the choice of legal instruments and the content of a proposal. Such checks must form an integral part of the substantive examination" (European Convention, 2002a).

3.2. Principle of subsidiarity and its nuances

Building on the overview provided in the previous subchapter, I will now introduce the dimensions to subsidiarity as well as their probable usage as argumentation-leverage by the NPs.

According to Craig (2012: 72, 73) there are three perceived roles of the subsidiarity principle. First of all, subsidiarity should serve as a means for distinguishing between the 'federal' (EU) and States' competences. Hand in hand with the first goes the second purpose of subsidiarity which is avoiding excessive (disproportionate) centralisation. The last point is that subsidiarity should ensure prevention of excessive use of legislation proposed by the European Commission. We can see that all of the outlined reasons are not only inter-connected but also overlap with other principles (conferral and proportionality) of EU decision-making. My first argument is that the control of the principle of subsidiarity has a broader scope and includes the control of the division of competences, the principle of conferral. This has been confirmed to be the case by 28 out of 41 chambers (COSAC, 2012).

Subsidiarity control is conducted in the field of shared competences, in which the Member States may exercise their competence only in so far as the EU has not exercised, or has decided not to exercise, its own competence. Thus, when the EU decides to legislate in the field of shared competence, it entails a potential encroachment upon national parliaments' domain (Cooper 2006: 292). The EWM in fact forces them to choose of level of legislature and to say (though often implicitly by not taking action) whether it is the EU or them, who should regulate certain policy areas or particular problems (European Convention, 2002a). Essentially, by raising a subsidiarity concern, the NPs defend their own legislative powers from being moved to the European level. The reason why this is important for my research question is the fact that the more the principle of conferral is perceived as a part of the subsidiarity control, the bigger its Eurosceptic nature.

Hypothesis 1 (H1): The number of issued ROs containing references to the principle of conferral is higher, when Eurosceptic[20] parties hold a majority in the chamber.

My second argument concerns the principle of proportionality, which is, according to 15 chambers (out of 31 respondents) an inextricable component of the principle of subsidiarity (COSAC, 2012: 4), and 37 out of 41 chambers consider the principle of proportionality when scrutinising draft legislative acts (COSAC, 2012: 5). In my opinion, the formal elimination of the principle of proportionality makes the EWM a mean for blunt, unconstructive criticism and the reasoned opinions are expected to be less reasonable and more opinionated (Cooper, 2006: 301, 302). This has been confirmed by a COSAC questionnaire, in which 28 out of 41 chambers said that the subsidiarity checks are not effective without the inclusion of the proportionality check (COSAC, 2012: 6). To demonstrate - in a situation when we argue for a breach of the principle of proportionality, we have a whole scale of possible suggestions ranging from *legally binding*, directly or indirectly enforceable, acts through *voluntary means* such as recommendations to *no regulation* at all. In contrast, in the case of subsidiarity, which serves to determine the most appropriate level of regulation (EU/State/regional), the only mean of expression is an approval or a disapproval of the proposed measure, with relevant reasoning. Overall, it can be said that if the chamber considers the principle of proportionality, even implicitly, a part of the EWM, the subsidiarity control becomes more constructive mechanism of criticism of European draft legislative acts. Thus we can expect to see this argument more frequent in ROs issued by Euroenthusiast NPs.

Hypothesis 2 (H2): The number of issued ROs containing references to the principle of proportionality is higher when Euroenthusiast parties hold a majority in the chamber.

As shown above, the subsidiarity control is of an anti-EU nature. First of all, the subsidiarity control inherently contains the question 'Should more powers be transferred to the EU level?'. Secondly, the current scope of the EWM, strictly focused on subsidiarity breaches, is an unconstructive mean of criticism as it only allows for thumbs-up or thumbs-down for EU regulation. However, the purpose of the mechanism

[20] Conceptualised in the following chapter.

may be changed by references to the principles of conferral and proportionality with the first one making the mechanism more anti-European and the second one more constructive and pro-European.

4. Research design and methods

Following the introduction of my hypotheses and the conceptualisation of the principle of subsidiarity as a part of my dependent variable, this chapter presents the design of my research which will be conducted in the subsequent chapter. Here, I will first of all justify the choice of my cases and then introduce the dependent (number of submitted ROs with specific understandings of subsidiarity), and operationalise the independent (EU-stance) variable. In the end I will provide a short overview of my sources.

In order to answer my research question *Does the understanding of the scope of the subsidiarity control affect NP's activity in the EWM*? I have decided to conduct a small-n qualitative[21] case study[22]. Through a cross-case[23] (comparative) case study, I would like to uncover causal effects (cause-effect relationships) between my independent variable (EU-stance) and my dependent variable (number of submitted ROs with specific understandings of subsidiarity). Through a test of the following hypotheses:

H1: The number of issued ROs containing references to the principle of conferral is higher, when Eurosceptic parties hold a majority in the chamber.

H2: The number of issued ROs containing references to the principle of proportionality is higher when Euroenthusiast parties hold a majority in the chamber.

I aim to resolve the puzzle of subsidiarity nuances and their role as potential political incentives. Moreover, I would like to contribute to the advancement of research on the EWM, thus my case study is theory-centred (Rohlfing, 2012: 1-2) rather than case-centred, as I see the purpose of this thesis in the development of the general theory on the incentives behind the usage of the EWM rather than the explanation of the activity of the particular selected cases (Rohlfing, 2012: 1-2).

[21] Qualitative study involves different or at least additional elements of qualitative assessment, the pool of collected evidence is more diverse and includes primary and secondary sources. (Rohlfing, 2012: 27).
[22] An empirical analysis of a small sample of bounded phenomena that are instances of a population of similar phenomena. (Rohlfing, 2012: 27).
[23] Cross-case studies, as opposed to within-case studies, are centered on a cause, in which the author builds or tests hypothesis which stipulate a specific outcome for a given cause. (Rohlfing, 2012: 41).

4.1. Case selection

The case selection was conducted on the basis of the distribution of the chambers on the "activity axis". '*Chamber's activity*' is conceptualised as the number of submitted reasoned opinions since the introduction of the EWM until October 31st, 2014. However, the temporal boundaries will be further restricted by the length of the legislative periods in which the reasoned opinions were submitted. As I will omit those legislative periods, in which the chambers did not show any activity in the EWM, the temporal bounds differ for individual cases.

Potentially, the number and content of exchanged documents via IPEX could also be included, however I have decided not to do so, for the following reasons. First of all, it is the assumed purpose of the two possible actions within the EWM (issuing reasoned opinions, and engaging in the political dialogue[24]). In the previous chapter, I have presented my argument that the EWM is a mechanism meant for the defence of NPs' legislative prerogatives and thus it is overall an anti-EU mechanism. It would be bold to claim that the same applies for the political dialogue as well, and as my own research shows, it would not be factually correct. Based on a questionnaire I have sent to the representatives of my cases, I have partially uncovered the reasons why NPs become active in the political dialogue. What applies to all the cases is their wish to influence the proposed legislative drafts (Q:CZ1, Q:CZ2, Q:PL2, Q:SK). Moreover some chambers have stated that they use the mechanism to show whether the draft legislative act has a political support or not (Q:CZ1) and provide reasoning for such decision (Q:PL2). Two of the questioned representatives (Q:CZ2, Q:SK) also expressed their wish to influence other parliaments, especially those which have mandating powers over their governments with regard to their stances in the Council (SK), whereas one of the representatives stated that there is no reason not to do so (Q:CZ2). I believe that the vast variance among the chambers in terms of their motivation to engage in political dialogue justifies my decision to exclude such documents from my study and moreover it also increases its validity. In addition, it has been proven on the example of the Czech Senate that the number of exchanged documents are distorted by for example a submission of two language versions which causes a 100% increase in the statistics

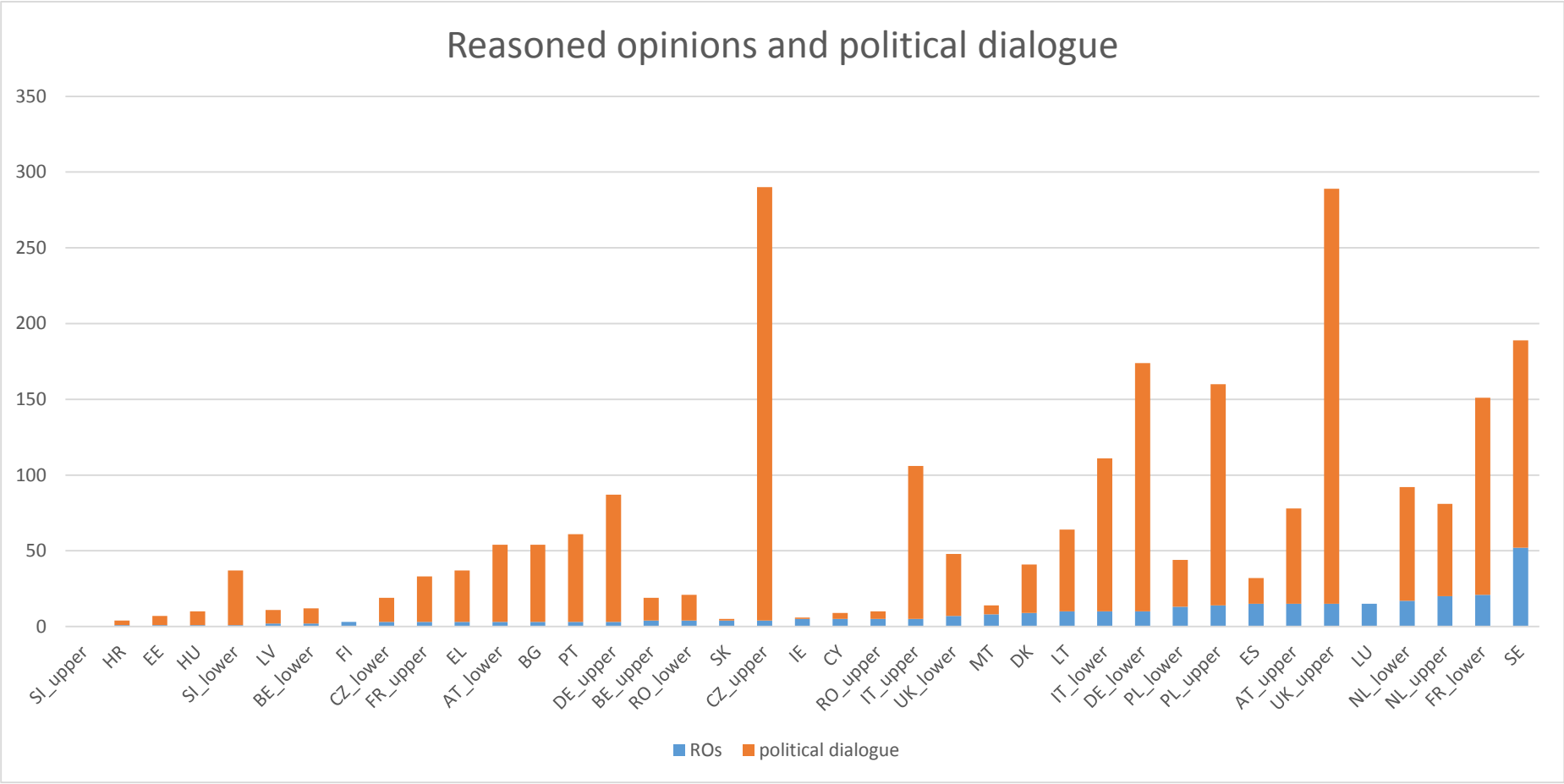
[24] The exchange of document is not the mean of engaging in the political dialogue. NPs also host Commission visits, take part in pre-legislative consultations by the commission through informal meetings, and organise parliamentary meetings with MEPs. (COSAC, 2012: 10).

(Holakovská, 2015: 57). Figure 1 below illustrates the variance between the number of submitted reasoned opinions and documents exchange among Member States.

Chambers' activity[25] within the EWM, as the number of submitted reasoned opinions can be operationalised, in absolute terms, on a scale ranging from 0 to 52 submitted reasoned opinions within the studied time-frame. As previously proved in academic literature as well as statistics, the EWM does not enjoy a high level of interest among chambers and it remains rarely used. Figure 2 bellow demonstrates where individual chambers are situated on the scale. It also illustrates well that the distribution of the NPs along the activity axis is quite equal, thus it is difficult to clearly distinguish between active and inactive NPs within the system, except of the case of the very active Swedish parliament, which can be considered an extreme case (a case which exhibits extreme or rare values) (Gerring, 2007).

[25] The word chambers and NPs is used interchangeably.

Figure 1: Political dialogue and Reasoned opinions



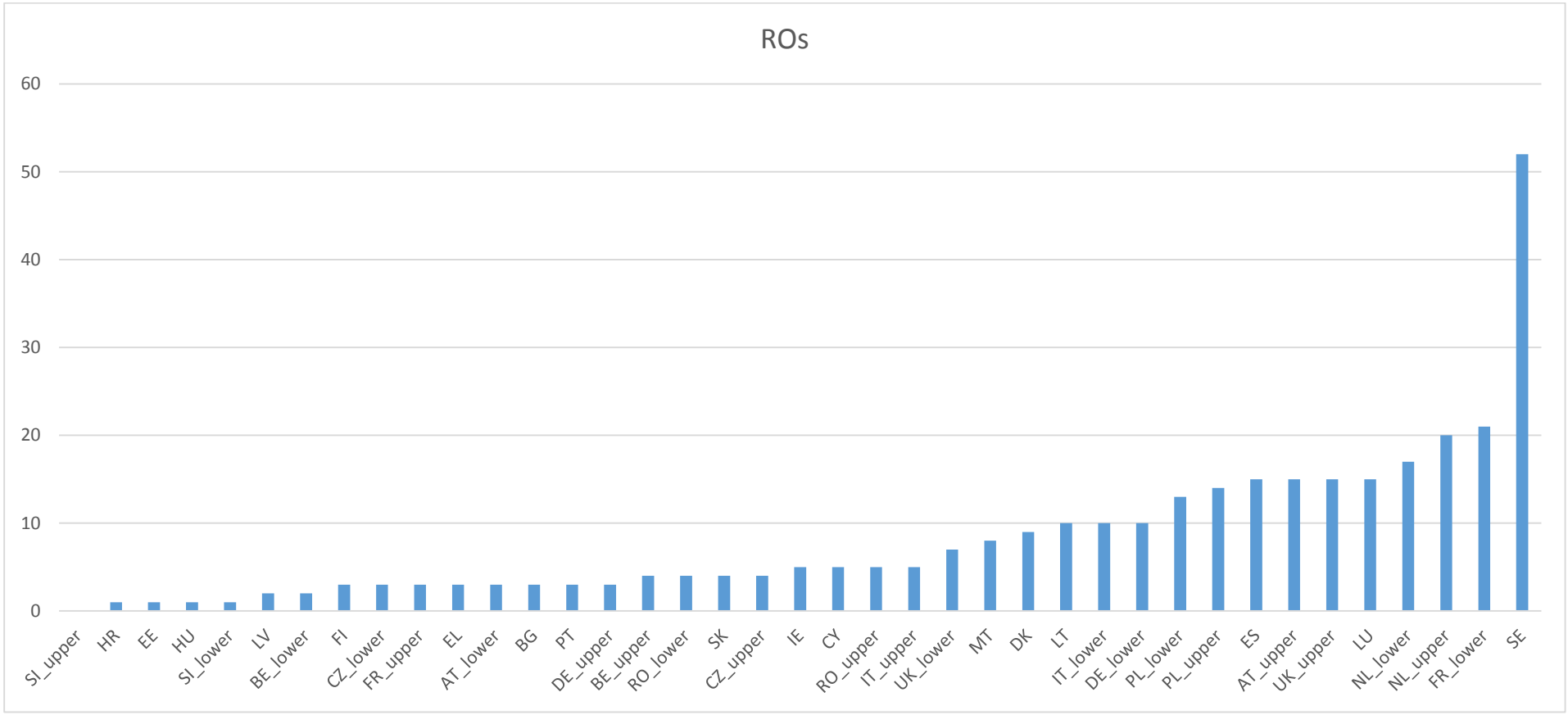
Source: Created by the author based on data **collected on October, 31st, 2014 from IPEX**

The population (Rohlfing, 2012: 26) of my research constitutes of the subjects of the EWM, the individual chambers of national parliaments, in their particular legislative periods, which have taken part in the mechanism at least once and do not fall into the category of an extreme case. In order to contribute to the advancement of the theoretical literature on the EWM applicable to the whole population, I have decided to conduct a cross-case comparison, which should show bigger external validity than a single-case study.

For the cross-case study, I have chosen three countries (Czech Republic, Slovakia and Poland) whose chambers during particular legislative periods, as individual cases, will be analysed. The cases chosen for empirical research can be regarded as typical, as they belong to countries which are among the 27 '*inactive*' Member States. Yet the countries show a slight variance on the activity scale, thus covering almost a full scope of the population. While the Czech Chamber of Deputies (3) belongs to the bottom quarter, the Czech Senate (4) together with the Slovak National Council (4) close the second quarter and Polish Sejm (13) and Senate (14) are placed in the middle of the second half of the scale. By choosing typical cases, I hope to be able to generalize (Rohlfing, 2012: 65) the researched insights to the whole population of my cases.

The chosen cases are appealing objects for research also for other reasons than simply quantitative data. For example Raunio (2009: 7) claims that the new post-communist EU Member States are perhaps more interesting cases for empirical work, given their legislatures are both quite young in terms of institutional history and still in the process of adjusting to the demands of the EU membership.

Figure 2: Number of reasoned opinions and documents exchanged through IPEX



Source: Created by the author based on data **collected on October, 31st, 2014 from IPEX).**

4.2. Dependent variable: Operationalising the principles of conferral and proportionality

My independent variable (number of submitted ROs with references to the principles of conferral and proportionality) is a combination of two concepts: '*understanding of the principle of subsidiarity*' and '*chambers' activity*', which have been both thoroughly conceptualised above.

Although the understanding of the principle of subsidiarity in the ROs cannot be easily quantified as the previously operationalised dependent variable, I have derived a number of questions, based on which I aim to identify the presence or absence of the principles of conferral and proportionality in the studied ROs. In particular, I will try to identify the statements of the NPs which would fit as a suitable answer to any of the following questions. The questions are based first of all on their legal definition and secondly on secondary literature (Kiiver 2012: 69-73).

Table 1: Principles of EU law: operationalisation

step	**Area** / **Principle**	**exclusive**	**step**	**Area** / **Principle**	**Non-exclusive – shared, …**
1.	**Conferral**	*1) Does the EU have a **competence** to issue a legislative act in the area?*	**1.**	**Conferral**	*1) Does the EU have a competence to issue a legislative act in the area?*
2.	**X**	X	**2.**	**Subsidiarity**	*2) Is the level of the legislation appropriate? Can the **objective** of the legislative act be **sufficiently achieved** on the State/regional level or would it be better achieved at a Union level?*
3.	**Proportionality**	*2) Is the **aim/objective** of the act legitimate?* *3) Is the measure **suitable** to achieve the aim?* *4) Is this particular measure **necessary**, are there any other, less onerous means, of achieving the aim?*	**3.**	**Proportionality**	*3) Is the **aim/objective** of the act legitimate?* *4) Is the measure **suitable** to achieve the aim?* *5) Is this particular measure **necessary**, are there any other, less onerous means, of achieving the aim?*

Source: Created by the author

4.3. Independent variable: EU stance

Table 2: Expected correlation between the independent and dependent variable

Independent variable: **EU stance** / Dependent variable: **Scope of subsidiarity**	**Eurosceptics**	**Euroenthusiasts**
H1: **Subsidiarity** (**conferral**)	higher activity	lower activity
H2: **Subsidiarity** (**proportionality**)	lower activity	higher activity

Source: Created by the author

As demonstrated in Table 2, the existence of a causal effect is according to my hypotheses dependent on a variable identified as 'EU-stance'. For the purpose of allocating the parties on the scale according to their stance on EU integration (both as a general idea, as well as its current development), I will use the definition of Euroscepticism developed by Taggart: "*Eurosceptics express the idea of contingent, or qualified opposition, as well as incorporating outright and unqualified opposition to the process of European integration*" (Taggart, 1998: 366), together with a more elaborate analysis of Euroscepticism by Kopecký and Mudde (2002). Kopecký and Mudde differentiate between two categories. Firstly *diffuse* support for European integration which distincts between Europhiles and Europhobes. By support for the general ideas of European integration, it is meant that the parties support the institutionalised cooperation on the basis of pooled sovereignty (political element) and an integrated liberal market economy (economic element). The second dimension is the *specific* support based on which parties can be called EU-optimists and EU-pessimists are. EU-optimist parties support for the general practice of European integration as it is and as it has been developing. (Kopecký, Mudde 2002:301). The four categories (Europhiles, Europhobes; EU-optimists, EU-pessimists) are merged into another four, based on their diffuse and specific support, or a lack of them, for the EU, as demonstrated in the table:

Table 3: Czech, Polish and Slovak political parties with regard to their EU stance

	INTEGRATION: *EU-optimism*				
EU: *Europhile*	**EUROENTHUSIASTS** (Europhile + EU-optimists)		**EUROPRAGMATISTS** (Europhobe + EU optimists)		**EU: *Europhobe***
	CZ	ČSSD, KDU-ČSL, TOP 09, ANO, SNK, US-DEU, Greens	CZ		
	PL	PO, PSL, SLD, Palikot's movement (Grodzka, 2013)	PL		
	SK	KDH, SMER, SDK, Most-Híd	SK		
	EUROSCEPTICS (Europhile + EU-pessimists)		**EUROREJECTS** (Europhobe + EU-pessimists)		
	CZ	ODS, VV	CZ	KSČM	
	PL	PiS	PL		
	SK	SaS, KDH	SK	SNS	
	INTEGRATION: *EU-pessimism*				

Source: Created by the author based on Kopecký and Mudde (2002: 316) methodology and party programs

If we want to better understand why some parties support the general idea of European integration, yet disagree with the current course it is taking, Hooghe and Marks provide an explanation. Hooghe and Marks have earlier pointed out what is evident from the Table 3 above that support for the European Union runs counter the tradition left-right logic. According to the authors, the conflict evolves around the division between green (ecology)/alternative (e.g. participatory democracy)/libertarian[26], or GAL, and traditional[27]/authoritarian/nationalist (TAN) party positions, rather than based on their positioning on the left-right axis.[28] As one of the main consequences of the European integration is the gradual loss of sovereignty of the Member States, parties closer to TAN are generally more Eurosceptic. Parties towards the GAL end of the axis are not so motivated, as European integration has brought about ecological advancements on the one hand, but it has weakened democracy on the other hand, and the overall outcome from their perspective is rather mixed. Thus, among the mainstream parties, we can expect a higher activity among the TAN parties.

In Table 4 below, I have illustrated the percentage of EU-enthusiasts, EU-sceptics and EU-rejects in all of the studied chambers over the examined legislative periods. In addition, I have included a category of "independent" which is especially relevant to chambers with majority-plurality or first past the post system, such as in the case of the Czech and Polish upper chambers whose Members tend to behave more independently of official party positions.[29] The data in the table is relevant to my research in regard to my hypotheses and the expected results.

[26] Libertarian parties tend to favour expanded personal freedoms and rights. Such parties, for example, support abortion, doctor assisted suicide, same-sex marriages. They favour increased democratic participation and freedom of speech. At the same time, they oppose discrimination on ethnic, religious, political or sexual grounds. In sum, these parties want government to stay out of the life choices that people make and they promote widespread democracy p. 967 (Hooghe, at. Al., 2002: 967).

[27] The government should be a firm authority that expresses moral voice.

[28] The right spectrum is defined as seeking a reduction of the economic role of the government; lower taxes, less regulation, privatization, reduced government spending, and a leaner welfare State that poses fewer burdens on employers. Parties to the left on economic issues want the government to retain an active role in the economy. Using these criteria, please indicate where the parties are located in terms of their economic ideology. (Hooghe, at. Al., 2002: 966).

[29] This has been proven on the case of Czech Senate in a survey conducted in 2000, in which full 88 % of Senators said they vote based on their own opinion, while in the Chamber of Deputies the number was only 55 %. Moreover, only 6 % of Senators feel as representatives of their parties, as opposed to 40 % of Members of the Chamber of Deputies. (Mansfeldová, 2001: 28).

Table 4: EU-stance in particular legislative periods

chamber	**Legislative period**	**EU stance**			
		enthusiasts	**sceptics**	**rejects**	**independent**
CZ - lower	**2010 - 2013**	**48,5 % (97)**	**38,5 % (77)**	**13 % (26)**	**X**
CZ - upper	2008 - 2010	**37,5 % (30)**	**41,25 % (33)**	**3,75 % (3)**	**18,75 % (15)**
	2012 - 2014	**51,25 % % (41)**	**17,5 % (14)**	**2,5 % (2)**	**30 %(24)**
	2014 - 2016	**63,75 % (51)**	**17,5 % (14)**	**1,2 % (1)**	**23,75 % (19)**
PL - lower	**2007 - 2011**	**63,9 % (294)**	**36,1 % (166)**	**-**	
	2011 - 2014	**65,9 % (303)**	**34,1 % (157)**	**-**	
PL - upper	2007 - 2011	**61**	**39**	**-**	
	2011 - 2014	**69**	**31**	**-**	
SK	**2010 - 2012**	**69,3 % (104)**	**24,7 % (37)**	**6 % (9)**	

Source: Created by the author based on electoral results in combination with the categorisation in Table

4.4. Sources

My analysis of the understanding of the principle of subsidiarity relies on data triangulation which should increase the internal validity of my research. Alongside secondary sources which have served as a basis for the theoretical framework, I will be working with three primary sources. The first one are the reasoned opinions submitted by the studied chambers for their exact nature. The reasoned opinions are often, outside of the political dialogue, the only input the Commission receives within the EWM, thus the clash of subsidiarity interpretations can be best observed in the reasoned opinions and replies to them from the Commission. Secondly, I will be using COSAC questionnaires, which are of great help considering their frequency and large scope of asked questions. Additionally, as an intern of first the Parliamentary Institute of the Czech Parliament in 2014 and currently of the Senate Chancellery, Parliament of the Czech Republic, Foreign Relations Departments, European Union Unit, I was able to conduct a survey among the staff of the respective chambers. This source will be used as an additional insight to the usage of the EWM by the individual chambers, however it should be noted that the answers from the questionnaires in no way represent the official stance of the chambers.

5. Data Analysis

The aim of this chapter introduce my analysis of the content of the submitted ROs and eventually conduct a test of my hypotheses.

5.1. National parliaments' arguments used in reasoned opinions

This subchapter presents a careful analysis of NPs arguments which were tracked from 33 ROs submitted by them since the introduction of the EWM until October 31st, 2014 (see Table XYZ). It is essential to analyse the arguments in-depth, in order to keep the internal validity of my research when confirming or rejecting my hypotheses concerning the understanding of the principle of subsidiarity and their influence on NPs' activity in the EWM.

Kiiver, who has conducted an elaborate analysis of submitted reasoned opinions on eight draft legislative acts concluded that NPs' arguments about subsidiarity breaches usually evolve around the following arguments: a) EU acts in areas with no cross-border elements; b) EU acts in areas that are already covered, or that could be covered, by international agreements between member States outside the EU framework; and c) EU action comes dangerously close to regulating an area of law in which the EU has no or limited competence. On the basis of Kiiver's summary and the content of the studied ROs, I have developed the following allocation of NPs' arguments: a) explicit subsidiarity concerns; b) proportionality breaches; c) conferral breaches; and finally d) missing subsidiarity justification. It is to be noted that the groups are not mutually exclusive – on the contrary, NPs may fall into several, or even all of the following categories (see Table XYZ).

5.1.1. Subsidiarity in its legal scope

Although the EWM is meant to provide a mean for NPs to voice concerns about breaches of the subsidiarity principle, the NPs often fail to provide substantiation for why they believe the subsidiarity principle has been breached. Out of the 33 ROs, only 13 contain an explicit statement that would contain a variant of the legal definition that the "*objective of the proposal could be sufficiently reached at a lower level*". The usual practice is that after a general statement such as "*The Senate declares that this proposal is incompatible with the principle of subsidiarity*" (PL2:10), a text of descriptive nature

about the content of the proposal follows, drawing no connection between the initial statement and the content of the RO.

Nonetheless, some chambers have established a good practice in extending their introductory statement concerning the incompatibility with the principle of subsidiarity. With regard to this, the chambers can be divided into three groups. On the one side, there is the Polish upper chamber which never included an elaboration on the breach, followed by the Czech and the Slovak parliament which did it irregularly, and finally the Polish Sejm, which in its last term (2011 – 2014) established a practice of including the following statement: "*the proposal breaches the principle of subsidiarity inasmuch as the proposed directive/regulation does not guarantee that the objectives of the proposed measure will be better achieved at the European Union level than as a result of measures taken at the national level*." (PL1:8 – 12). Although such definition is not a panacea and should certainly be followed by a set of proofs to such claims, it already adds credibility to the RO and assists the NP to avoid premature rejections of the respective RO by the Commission, such as in the case of CZ2:3 ("*This letter addresses the arguments submitted by the Senát which according to the Commission's assessment do not relate to the principle of subsidiarity and hence fall outside the scope of the subsidiarity control mechanism and of the Commission's Communication*") (Commission to CZ2:3). Moreover, considering that only two out of the 33 ROs were based purely on subsidiarity breaches (see Annex 1: Table 7), a thorough reasoning of the assumed subsidiarity breach is a helpful mean of covering other reasons of submitting a RO.

5.1.2. References to the proportionality principle in reasoned opinions

Among "other reasons" for submitting a RO there are breaches of the principles of conferral and proportionality. Overall, the principle of proportionality was referred to in the ROs nine times (at least once by each chamber) and always in combination with breaches of other principles. The formulation of the allegations concerning incompatibility with the principle of proportionality usually match the previously derived questions such as: *'Is this particular measure **necessary**, are there any other, less onerous means, of achieving the aim?'* Some chambers referred to a planned implementation of a proposed mechanism as disproportionate or directly said that there are no sufficient proofs that the proposal's objective cannot be accomplishment

sufficiently without issuing a regulation (SK:3). Particularly disproportionate was according to the chambers the *Proposal for a directive on gender quotas* (European Commission, 2012a). The **Czech Chamber of Deputies** (CZ1:2) referred to the legally binding quotas as "*an extraordinary and borderline solution*" that can "*only be applied if other means fail*". Similarly, the **Polish Sejm (PL1:11)** explicitly raised a concern about a breach of the principle of proportionality by saying that "*a standardisation of appointment criteria would be sufficient to meet the objective thus there is no need for legally binding quotas*". Furthermore, proportionality concerns also lead to one of the only two initiations of the yellow-card procedures, particularly in the case of the Proposal for the Regulation on the right to exercise collective action (European Commission, 2012b). For example, the Polish Sejm (PL1:8) had *"doubts as to whether a regulation is an appropriate legal instrument to provide a general clarification. A non-binding act would be more favourable."* As a result of the number and extent of reactions, the Commission decided to withdraw the proposal.

5.1.3. References to the principle of conferral in reasoned opinions

Among the most common alternative and additional complaints to the breaches of the principle of subsidiarity were alleged breaches of the principle of conferral. Overall, there were 15 additional and 6 alternative references that means that over two thirds of the analysed ROs contained a disagreement with the potential transfer of powers to the European level.

The concerns were especially significant in three draft legislative acts which initiated ROs issue by at least two of the five chambers. The first case was the *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)* (European Commission, 2011) in which, according to the Polish Sejm (PL1:6), the content exceeded the competences conferred upon the European Union and fell within the exclusive competence of the Member States. Polish Sejm offered quite extraordinarily elaborate reasoning, demonstrating the scope and borders of EU competences in the field of taxation (Art. 113 TFEU), and eventually ruling out the legal basis (Art. 115 TFEU) put forward by the Commission. The Polish Sejm explicitly expressed that the exceeding of competences must be considered an infringement of the principle of subsidiarity. The opinion of the Sejm was seconded by the Slovak National Council (SK1). The Commission's reply (European Commission, 2015a) concerning the CCCTB, as opposed to its regular answers of rather general nature, firstly explained the

motivations of the draft and then argued that the draft is in accordance with the principle of subsidiarity, because the objective of the proposal could not be achieved by the Member States individually.

The field of family law proved to be a competence that many chambers passionately defended. This was the case for the *Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships* (European Commission, 2011a) as well as the *Proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers* (European Commission, 2010). In the case of registered partnerships, the Polish Sejm (PL1:7) raised concerns about a breach of the principle of conferral by directly referring to Art. 5(2) TEU stating that the EU acts only within the limits of its competences … to attain the objectives of the Treaties. The Sejm further emphasised that it is not a Treaty objective to transfer regulations within substantive family law concerning registered partnerships from those Member States which do not intend to embrace such legal concepts (such as Poland, where the principle of protecting marriage being a union of a man and a woman is inscribed in the Constitution). Same as in the case of CCCTB, the Polish Sejm concluded that the encroachment on the competences conferred upon the EU must be considered as an infringement of the principle of subsidiarity. Commission (European Commission, 2015a), in its response, referred to the aim of the draft: an increase of legal certainty in cross-border cases that can only be accomplished if court decisions are mutually recognised by the Member States. Contrary to the Sejm, the Commission believed that the proposal does not interfere with substantive family law and the (non)existence of the concept of partnerships, but deals only with property consequences of registered partnerships in cross-border cases. The Commission also emphasises the margin of appreciation which left the Member States' courts the possibility to refuse to rule in such a case if the concept of registered partnerships does not exist in their legal system (the exception terminates if all relevant courts refuse). Polish Senate (PL2:8) brought in its very brief RO a new dimension to the interpretation of the subsidiarity principle by implying that the object of the proposed draft should not be regulated at all. It states that due to the low number of states which recognise the concept of registered partnerships and thus low number of cases of cross-border registered partnerships, there are no reasonable grounds for taking action on EU level. This argument was, however, refuted by the

Commission (2015b) by stating that only in year 2007 there were 211 000 new registered partnerships, 41 000 of those had an international element.

The last highly salient proposal was the afore-mentioned *Proposal for a directive on gender quotas*, which initiated three reasoned opinions issued by studied chambers. The Czech Chamber of Deputies (CZ1:2) stated that the proposed directive breaches the principle of subsidiarity "*because positive action should be carried out as close to the citizens as possible, in this case on the Member States level*". At the same time however, the Czech Chamber of Deputies refers to the Art. 157(4) TFEU and interprets it in a way that only Member States may take action in this field, therefore actually claims a breach of conferral, not subsidiarity.

The question arising now is whether the control of the principle of conferral is inherent to the subsidiarity review and thus should be accepted by the Commission as an argument within the EWM, or whether these two principles should be strictly separated. Kiiver (2012: Ch. 4) provides an answer to the question. According to him, the division of the competences themselves in the Treaties implies the usage of the principle of subsidiarity, therefore the principles of subsidiarity and conferral are inextricable. Nonetheless, it is important to state that since the principle of subsidiarity is only applied in the area of non-exclusive competence, any references to Commission's exceedance of competences should be taken as conferral complaints not references to breaches of the principle of subsidiarity.

Apart from the general concerns about a further transfer of powers vertically from the national to the European level, numerous concerns about a horizontal shift of power from European legislature (the Council and the European Parliament) to the Commission appeared. These concerns formed a specific kind of alleged breaches of the principle of conferral through a delegation of legislative powers to the Commission on the basis of Art. 290 (delegated acts) and 291 (implementing acts) TFEU that are not subject to scrutiny by NPs, as they do not fall under the definition of a legislative act under Art. 289(3) TFEU.[30] The Sejm (PL1:2) as well as the Polish Senate (PL2:4), were concerned with the fact that the proposed legislative act would empower the Commission to adopt, through delegated[31] acts, definitions of inheritance and

[30] Legal acts adopted by legislative procedure shall constitute legislative acts.

[31] Art. 290(1) TFEU: A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

anticipated inheritance, although the EU does not have competence to regulate substantive inheritance law. The Polish Senate (PL2:4) stated that *"(the system) should remain a competence of the Member States, which can manage the area (…) more efficiently and effectively as they have a better knowledge of the local conditions and needs."*

The lack of clarification of the scope of delegated acts, has been, on its own, six times (PL1:3,4; PL2:3, 5-7) considered a breach of the subsidiarity principle. However, after a thorough analysis of the argumentation, it is obvious that in reality the chamber is not concerned with the level of the regulation (subsidiarity) but with the legality of it. In order to avoid such delegations of power, both Polish chambers (PL1:1, PL1:3, PL2:3) called repeatedly for clear, precise and detailed definition of the division of powers. The Commission (2011c) in its reply assured the Polish Sejm that although NPs do not have the power to control the content of delegated acts, the European parliament and the Council retain their right to oppose delegated acts or to revoke the rights delegated to the Commission. However, it is questionable whether Commission's arguments about the "incomplete" horizontal shift from the legislature to the Commission can sufficiently answer NPs concern about the actual shift of power from their "area of power" (be in indirectly through the Council or directly through the EWM).

5.1.4. Subsidiarity justification

The last reasoning often used as substantiation for the issuance of reasoned opinions, alongside or instead of a subsidiarity breach, is an insufficient justification of the compliance with the principle of subsidiarity provided by the Commission in the draft legislative act. The duty to justify each draft legislative act with regard to the principle of subsidiarity is required in Art. 5 of Protocol No 2. Out of the 33 ROs, 13 contained such complaint. The NPs have stated that when there is no or only limited justification, they are given "no opportunity" to evaluate the compliance with the principle of subsidiarity (PL1:2). Moreover, proper justification enables NPs to "become familiar with and evaluate arguments of specific provisions" (PL1:5).

In my opinion, considering the purpose of the EWM, which is to give the NP the right to evaluate the compliance of the draft legislative acts with the principle of subsidiarity, the claims about insufficient justification are of low relevance. The duty of

the Commission to justify the compliance was originally introduced as a mean of forcing the Commission to ensure the compliance and only secondarily as a source of information for other institutions. Moreover, it can be expected that the Commission will always provide reasons in favour of the compliance. Therefore, if the NPs wish to raise a subsidiarity concern, they should evaluate the draft legislative act independently and in case the Commission does not fulfil its duty to provide reasoning, alternative punitive mechanisms should be launched instead of the EWM procedure.

5.2. Hypotheses-testing: Results

In the previous subchapter, I have proven that the scope of the subsidiarity control is quite large and only rarely are the ROs issued purely on the basis that the objectives of the proposal could be sufficiently reached at the national level. The question emerging now is whether the inclusion of the principles of conferral and proportionality in the ROs happens systematically and whether the system reflects the number of Eurosceptic and Europhile parties in the parliament in the respective legislative period.

In order to test my hypotheses, it was necessary to define, whether the parliamentary majority holds a Eurosceptic or Europhile views. Based on Kopecký's and Mudde's (2002) methodology and categorisation, I have allocated the political parties present in the studied chambers during the respective legislative periods into four categories – Euroenthusiasts, Eurosceptics, Europragmatist and Eurorejects (see Table 3). It is to be noted that the allocation regards the party positions to the 'general' idea of European integration and their support for the current, albeit also 'general', development of the EU. Therefore disagreements with individual policy fields, such as the common agricultural policy, were not reflected during the allocation. This limitation will be further discussed and reflected in the conclusion.

5.2.1. Hypothesis 1: The principle of conferral and its usage by Eurosceptic majorities

My first hypothesis reads as follows:

H1: *The number of issued ROs containing references to the principle of conferral is higher, when Eurosceptic parties hold a majority in the chamber.*

Through the test of H1, I hoped to uncover, whether NPs with Eurosceptic majorities use the EWM to voice their concerns about further transfer of competences to the European level, in addition to the scope of the principle of subsidiarity set out in Protocol No 2. A necessary condition for the confirmation of the hypothesis was the presence of a parliamentary majority with Eurosceptic views. Such parties are generally in support of the idea of European integration, however they do not support the current development of the Union. The presence of the Eurosceptics may be further underpinned when the so-called Eurorejects are present in the NP. Eurorejects not only do not support the current development of the EU but also generally reject the idea of European integration (Kopecký, Mudde 2002: 301 - 302).

Overall, there were nine legislative periods in which the five chambers issued at least one RO. Out of the nine, in only two cases held the Eurosceptics, together with the Eurorejects, a majority in the chamber (see Table 5). For each of the nine cases, I have counted the ratio of ROs with references to the principle of conferral and then counted the average for Group one (Eurosceptics) and Group two (Europhiles). By comparing the two final numbers, I have conducted a test, whether the hypothesis holds. The data shows that while only one in four ROs issued by chambers with Eurosceptic majority contains a reference to a breach of the principle of conferral, in the chambers with Euroenthusiast majorities the percentage is much higher, at 65 points. When evaluating the cases individually, we can see that the result holds in six out of seven Euroenthusiast cases - only one Euroenthusiast case has a lower percentage of references to the principle of conferral than the Eurosceptic chambers.

Table 5: Hypothesis 1: results

chamber	period	EU-stance	ROs	conferral	Ratio H1
CZ1	2010 - 2013	Eurosceptic	3	1	1/3 – 33 %
CZ2	2008 - 2010	Eurosceptic	1	0	0/1 – 0 %
		Average Eurosceptic			**¼ 25 %**
CZ2	2012 - 2014	Euroenthusiasts	2	2	2/2 – 100 %
	2014 - 2016	Euroenthusiasts	1	0	0/1 – 0 %
PL1	2007 - 2011	Euroenthusiasts	7	7	7/7 – 100 %
	2011 - 2014	Euroenthusiasts	5	2	2/5 – 40 %
PL2	2007 - 2011	Euroenthusiasts	8	5	5/8 – 62 %
	2011 - 2014	Euroenthusiasts	3	1	1/3 – 33 %
SK	2010 - 2012	Euroenthusiasts	3	2	2/3 – 66 %
		Average Euroenthusiasts			**19/29 - 65 %**

Source: Created by the author

5.2.2. Hypothesis 2: The principle of proportionality and its usage by Europhile majorities

The second hypothesis I have tested reads as follows:

H2: *The number of issued ROs containing references to the principle of proportionality is higher when Euroenthusiast parties hold a majority in the chamber.*

Through the test of H2, I hoped to find out, whether NPs with Euroenthusiast majorities use the EWM more constructively by adding the proportionality dimension to the legal scope of the principle of subsidiarity. Euroenthusiast parties are those which first of all support the general idea of European integration and secondly do not object the current development of the Union. (Kopecký, Mudde 2002: 301 - 302). The Euroenthusiasts held a clear majority in the chambers in seven out of the nine studied legislative periods.

In the same manner as for H1, I have counted the number of ROs with references to the principle of proportionality for each of the cases and eventually counted an average for Group one and Group two. Unlike in the case of H1, where the results quite clear, the results of H2 are quite ambiguous – ROs issued by the Eurosceptic chambers have a 25 % share of proportionality references, which is only 2 % less than ROs issued

by the Euroenthusiasts. However, once again, unlike in the case of H1, the individual results for each of the nine chambers vary vastly. One out of the two Eurosceptic chambers and three out of the seven Euroenthusiast chambers have zero references to the principle of proportionality. Although the second hypothesis does not show clear results and thus cannot be neither confirmed not rejected, the data analysis provides a solid basis for a fruitful discussion.

Table 6: Hypothesis 2: results

chamber	**period**	**EU-stance**	**ROs**	**proportionality**	**Ratio H2**
CZ1	2010 - 2013	Eurosceptic	3	1	1/3 – 33 %
CZ2	2008 - 2010	Eurosceptic	1	0	0/1 – 0 %
		Average Eurosceptic			**¼ - 25 %**
CZ2	2012 - 2014	Euroenthusiasts	2	0	0/2 – 0 %
	2014 - 2016	Euroenthusiasts	1	1	1/1 – 100 %
PL1	2007 - 2011	Euroenthusiasts	7	0	0/7 – 0 %
	2011 - 2014	Euroenthusiasts	5	3	3/5 – 60 %
PL2	2007 - 2011	Euroenthusiasts	8	0	0/8 – 0 %
	2011 - 2014	Euroenthusiasts	3	2	2/3 – 66 %
SK	2010 - 2012	Euroenthusiasts	3	2	2/3 – 66 %
		Average Euroenthusiasts			**8/29 – 27 %**

Source: Created by the author

6. Discussion

In this chapter, I would like to draw some concluding remarks from my empirical research and discuss them briefly. My first hypothesis concerned the frequency of references to the principle of conferral made by Eurosceptic parties. Although the Treaty of Lisbon (European Union, 2007) assigns the NPs a role of "contributors to the better functioning of the Union" by the means of subsidiarity control, empirical research (Kiiver, 2012: Ch. 4) shows that the NPs do not hesitate to drift away from the legal definition of the principle of subsidiarity, which they are meant to control, and issue reasoned opinions with regard to breaches of the principles of conferral and proportionality as well. What I was trying to figure out was whether this is done systematically and whether Eurosceptic parties make a use of this practice. Surprisingly, the data proved that the frequency of references to the principle of conferral were much higher for the Euroenthusiast parties than for the Eurosceptics. In my opinion, the answer to the rejection of my hypothesis lies in the following argumentation.

Several academics have proven that subsidiarity control contributes to a maintenance of the maximum number of competences on the national level, rather than to a better or more effective legislation in the Union. If this premise that the EWM is inherently an anti-EU mechanism holds, does it mean that the EWM would only be used by Eurosceptic parties? I am convinced that it would be unrealistic to expect that all Euroenthusiastic MPs show unlimited support to all EU proposals and thus refrain from using the EWM at all; similarly as Eurosceptic MPs do not disagree with all aspects of EU legislation and do not use the EWM on a regular basis. What we see in my data analysis is that, as the overall number of submitted ROs is quite low and the references to the principle of conferral are relatively equally spread among the chambers, the ROs are probably issued mostly in extreme cases of exceeding of EU-competences in which it essentially does not matter whether a party if Eurosceptic or Euroenthusiastic. The respondents to my questionnaire proved this theory as well. For example the Czech Chamber of Deputies (Q:CZ1) considers the mechanism as a mean for expression of politicians' rights to refuse Union's interference to national competences in certain fields. The Polish Senate also views the mechanism as a tool of prevention of further transfers of powers to the European level, and the low number of ROs issued by their

chamber "*proves only that we usually agree that there are a lot of areas that could be more effectively regulated at the EU level*" (Q:PL2).

My second hypothesis was focused more on the pro-European aspects of the EWM, particularly the references to the principle of proportionality as a mean of increasing the effectivity of the mechanism and making the criticism more constructive, as suggested by COSAC (2012: 6). My expectations that Euroenthusiastic-lead chambers would include references to the principle of proportionality more often was not unambiguously confirmed. What stroke me was that while some chambers have not ever tackled the issue of disproportionate measures, some have been doing so in more than 50 % of cases.

I believe that both the Eurosceptic and Euroenthusiast chambers which refer to the principle of proportionality reflect the irony of the legal definition of the principle of subsidiarity stating that "the objectives of the proposed action cannot be sufficiently achieved by the Member States." This was brightly summarised by Kiiver (2012: 75) who said that "only an EU measure can achieve the aims of an EU measure". In another words, the Commission always has the possibility to phrase the objective of the draft in a way that is it impossible for the MS to fulfil it individually. Therefore the objective itself may often be phrased disproportionately to the real issue at stake.

It is vital to acknowledge that the division of parties into categories based on their EU stance show some limitations. Although Kopecký and Mudde's methodology (200) allows to differentiate between the diffuse and specific support for the EU, the reality of the 21st century brings another dimension to this categorisation. In order to fully reflect the variance in saliency of individually policy fields of EU decision-making, we would need to re-allocate the parties with regard to the topic of the draft legislative act. Due to this limitation, I would like to add some remarks notwithstanding the categorisation used. Considering the fact that 13 out of the 33 studied ROs contain an explicit reference to a breach of the principle of conferral and another seven of them refer to it indirectly, it is probable that subsidiarity control is understood by the national parliaments as a tool to defend their legislative prerogatives. Moreover, contrary to my first hypothesis, it cannot be claimed that the defence of national legislative rights is only conducted by Eurosceptic parties. Through an analysis of the content of 33

reasoned opinions, I have found out, that both parliaments with a Eurosceptic and a Europhile majority sometimes issue reasoned opinions containing a complaint concerning the principle of conferral. This confirms the fact that the categories concerning parties' EU-stance are relative and depend on the issues discussed.

Ultimately, my empirical research has confirmed what has been previously suggested by individual NPs as well as academics that the principle of subsidiarity is of a general and abstract nature and compliance with it can hardly be evaluated without taking the principles of conferral and proportionality into consideration as well. Moreover, I have shown that as all the alternative hypotheses derived from literature, the understanding of the principle of subsidiarity either is not a uniform explanatory factors to the variance in NPs activity in the EWM. While some chambers see the political motivation of MPs as the only factor (Q:SK, Q:PL2, Q:CZ2), others attribute the low usage of the EWM to its lack of efficiency. (Q:CZ1). Which broader implication can be drawn from my research, will be elaborated on in the conclusion.

Conclusion

The Lisbon Treaty is considered to be a big step in the process in reversing the process of deparlamentarisation in the Union and subsequently in fixing the democratic deficit of the Union. The Early warning mechanism in particular, allows the national parliaments for the first time ever, to act independent actors, or even as a new collective body (Cooper, 2012), in the European decision-making process. However, their rights are limited – their submissions, called reasoned opinions, can only regard subsidiarity breaches, and are thus of a negative nature. Previous literature (e.g. Raunio, 2009: 2) called for more theory-driven analyses of actual behaviour of MPs that go beyond what has been done so far, that being describing formal procedures and organisational choices. Therefore, now, almost twenty years from the initial talks about the mechanism and five years since the mechanism has been launched, it is in my opinion the time to build upon theoretical works concerning the EWM and analyse, how the mechanism is used in practice.

This thesis presented empirical research on the usage of the Early warning mechanism by three national parliaments, trying to answer the question whether the understanding of the principle of subsidiarity affects the usage of the EWM. Statistical data, as well as literature (Neuhold, Strelkov, 2012: 4) show that the usage of the mechanism will remain limited. Why this is the reality can be explained by multiple reasons. First of all, it is necessary to evaluate the mechanism in light of the fact that members of parliaments are rational actors and activities they engage in are meant to increase their re-election prospects. If parties wish to engage in European affairs, using their parliamentary influence to control the government, might be a more accessible and effective mean of doing so (Auel, Christiansen, 2015: 268). Moreover, keeping the argument over European affairs in the national arena might be more comprehensible for the electorate, as the saliency of EU affaires in the eyes of the electorate is generally low (Strelkov, 2012: 10).

Despite the obstacles to the usage of the EWM, the mechanism proved to have an effect at least once, when the Commission decided to withdraw a proposal which initiated the yellow card procedure. In other cases, the NPs seem to tackle the problem of being unable to collect enough votes required to issue the yellow card. Literature

suggests that not only does the number of reasoned opinions per chamber vary (from 0 to 52) but also the content is, despite the narrow scope of the principle of subsidiarity, quite different. Essentially, the EWM is "*a clash of competing interpretations of subsidiarity*" (Cooper 2006: 294). Due to the close proximity of the three principles of EU law – subsidiarity, proportionality and conferral, the clash happens between interpretations with and without references to proportionality and conferral.

The aim of my study was to uncover the causal effects between the understanding of the principle of subsidiarity (references to the other principles) and NPs' activity in the EWM, which could be generalised on the whole studied population, the 28 Member States. The external validity of my research was to be ensured by a justified selection of my cases, based on the number of their submitted reasoned opinions. Although my cases cover almost the full scope of the 'activity axis', there is a space for self-reflection in regard to the case selection. As an intern in both of the chambers of the Czech parliament, I possess incomparably more knowledge about these two cases. Moreover, the strengthened cooperation between all my selected cases through the Visegrad forum in the field of European affairs, contributed to the selection, as I was able to be physically present at the bi-annual meeting of the European affairs committees in the facilities of the Czech Senate this year.

With regard to my research question, I was particularly interested in finding out, if the stance on the European integration affects the extent to which individual NPs refer to the principles of conferral and proportionality in their reasoned opinions. Although I was not successful in confirming my hypotheses in all cases unambiguously, broader implications can be drawn from my research, building on the existing theories evolving around the existence of the EWM. My research proved some patterns of correlation, in particular between Euroenthusiasm and the usage of the principle of proportionality as a substantiation for reasoned opinions, however, it did not uncover how exactly the causes affect the outcomes. Therefore, I believe that my thesis can serve as a solid basis for a future within-case analysis of individual chambers. In particular, I would suggest that future research moves into the following directions.

Firstly, the results of my empirical analysis in terms of explaining incentives behind the usage of the mechanism remained limited. Therefore there is space for more

within-case analyses, uncovering causal mechanisms between the incentives for the usage of the mechanism, such as the understanding of the principle of subsidiarity, and NPs' activity in the EWM. In particular, it would be interesting to research, what makes the draft legislative acts salient in the eyes of the MPs. Secondly, considering the low amount of successful cases of amendment or withdrawals of the draft legislative acts, future literature should assist the NPs in finding good argumentation leverage for their ROs while taking into account their political objectives. Lastly

Overall, the main contribution of this thesis can be considered the advancement of the theoretical literature on the EWM, supported by my empirical research. On the basis of hypothesis raised by Cooper (2006) about the multiple possible interpretations of the scope of the control and empirical observations from parliamentary staff, I have to my knowledge for the first time analysed a large number of submitted reasoned opinions and proved that the usage of references to the principle of conferral as well as proportionality are not rare but rather on the contrary quite often used. I have also uncovered some argumentation faults made by the parliaments and identified space for improvement which could increase the legitimacy of their subsidiarity concerns when evaluated by the Commission. Lastly, I have made a contribution to the literature in the field of European studies on cases from Central and Eastern Europe, which are often disregarded by academia.

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Annexes

Annex 1: Table 7: Analysed reasoned opinions

Chamber	Legislative period	Code	RO: No. RO: Keyword	Subsidiarity breach	Conferral	Proportionality	Subsidiarity justification	others
CZ lower (3)	2010 – 2013	CZ1:1	COM(2010) 379 Seasonal workers					Current national legislation is sufficient
		CZ1:2	COM(2012) 614 Gender balance	X	**X**	**X**		
		CZ1:3	COM(2012) 788 Tobacco	X				Non-legislative acts
CZ upper (4)	2008 – 2010	CZ2:1	COM(2010) 379 Seasonal workers	X				
	2012 – 2014	CZ2:2	COM(2013) 535 Eurojust		X		X	
		CZ2:3	COM(2013) 534 Public prosecutor		X			Overall does not tackle the issue of subsidiarity
	2014 – 2016	CZ2:4	COM(2014) 397 Packaging waste			X	X	

Chamber	Legislative period	Code	RO: No. RO: Keyword	Subsidiarity breach	Conferral	Proportionality	Subsidiarity justification	others
PL lower (14)	2007 – 2011	PL1:1	COM(2010) 537 EAFRD	X	X		X	Delegated acts
		PL1:2	COM(2010) 539 Farmers	X	X		X	Delegated/ implementing acts
		PL1:3	COM(2010) 728 Milk				X	Implementing acts
		PL1:4	COM(2010) 738 Marketing standards				X	Delegated acts
		PL1:5	COM(2010) 799 Single CMO regulation	X			X	Delegated acts
		PL1:6	COM(2011) 121 CCTB		X			
		PL1:7	COM(2011) 127 Registered partnerships		X			
PL lower (14)	2011 – 2014	PL1:8	COM(2012) 130 Collective action	X		X		
		PL1:9	COM(2012) 369 Medical products	X	X	X	X	
		PL1:10	COM(2012) 372 Musical works	X			X	Regulated better on the national level already
		PL1:11	COM(2012) 614 Gender balance	X	X	X		Current national legislation is sufficient
		PL1:12	Com(2013) 396 Financial transparency of ports	X				

Chamber	Legislative period	Code	RO: No. RO: Keyword	Subsidiarity breach	Conferral	Proportionality	Subsidiarity justification	others
PL upper (11)	2007 – 2011	PL2:1	COM(2010) 061 FRONTEX					Effectivity
		PL2:2	COM(2010) 379 Seasonal workers					No cross-border element
		PL2:3	COM(2010) 537 EAFRD					delegated acts
		PL2:4	COM(2010) 539 Support schemes for farmers		X			Delegated acts
		PL2:5	COM(2010) 738 Marketing standards					Delegated acts
		PL2:6	COM(2010) 745 Financing CAP					Delegated acts
		PL2:7	COM(2010) 799 Single CMO					Delegated acts
		PL2:8	COM(2011) 127 Registered partnerships					No reason to regulate
	2011 – 2014	PL2:9	COM(2012) 049 Medical products for human use			X	X	
		PL2:10	COM(2012) 614 Gender balance		X		X	
		PL2:11	COM(2013) 133 Maritime spatial planning			X		International law

Chamber	Legislative period	Code	RO: No. RO: Keyword	Subsidiarity breach	Conferral	Proportionality	Subsidiarity justification	others
SK (3)	2010 – 2012	SK:1	COM(2011) 121 CCCTB			X	X	
		SK:2	COM(2011) 560 Temporary reintroduction of border control	X	X		X	
		SK:3	COM(2011) 779 Statutory audit	X	X	X		
Overall		33		13	13	9	13	

Annex 2: Questionnaires sent to the studied chambers

Czech Republic – Chamber of Deputies
Questionnaire – The Early warning mechanism

This questionnaire will serve as a source for my thesis „Adaption of the parliaments of the Czech Republic, Poland and Slovakia to the Early Warning Mechanism for the principle of subsidiarity (on European legislation)“ in which I am aiming to test the following hypothesis: “Does the variance in understanding of the principle of subsidiarity and its control correlate with the variance in the number of submitted reasoned opinions?”. This will be done through the analysis of submitted reasoned opinions (in addition to COSAC questionnaires, Commission’s replies and secondary literature) and answers to this questionnaire.

Thank you for your time and assistance.

Zuzana Holakovská
Charles University in Prague
Intern at the Chancellery of the Senate of the Czech Republic

1) General information

1.1.: According to IPEX, your chamber has submitted three reasoned opinions until October 31st, 2014.

- **1.1.1.:** Do you recall what sources of information did you primarily use to identify the breach of the principle of subsidiarity?
- **1.1.2.:** If you were to choose between a “technical/legal” (the breaches are usually identified by the staff, either in the Parliament or in Brussels, who analyze the documents) and “political” approach (the Members of the parliament identify the breach themselves), into which category would you put your chamber?

2) Factors

2.1.: In the Annex to the 16th Bi-annual report of COSAC (2.1.8), you have stated that the time provided for subsidiarity control is insufficient.

1. **2.1.1.:** Has your position on the issue of time constraints changed since then?
2. **2.1.2.:** Do you believe that the 8-weeks-deadline hinders your chamber from submitting more reasoned opinions?

2.2.: Please order the following factors influencing the number of submitted reasoned opinions in accordance with the relevance to your chamber. Feel free to mix the categories, they only serve as a guideline.

- **External reasons** – the nature of the EWM
    - Lack of efficiency of the EWM
    - Time limitations
    - Low salience of the documents
- **Internal reasons** – institutional capacity
    - Position of the chamber in the national systems of checks and balances
    - Number of staff working
    - Usage of specialized committees
- **Political aspects**
    - Europeanisation of the public debate
    - Political motivation – political points connected to European issues
    - the role of the chair of the European Affairs Committee
    - the division of power within the chamber – the strength of the majority
    - political division within the chamber along the left-right axis

3) Subsidiarity control – substantiation, grounds

Subsidiarity = In area which do not fall within its exclusive competence, the Union shall act only of and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional or local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.
Proportionality = *the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.*
3.1 Considering the legal definition outlined above, would you say that the general understanding of these principles in your chamber corresponds with the legal definition?

- 3.1.1.: If not, how do they differ?

3.2.: In the annex to the 18sth Bi-annual report of COSAC, you have stated that whether a reasoned opinion submitted by your chamber is based on a broader implication of subsidiarity than the wording of Protocol no 2 is a matter of political consideration. Does this opinion still hold?

- 3.2.1.: If no, why?

- 3.2.2.: If yes, why?
- 3.2.3.: Can you please elaborate on this and possibly provide a practical example?

4) Political dialogue

4.1: According to the data available on IPEX, you have submitted 16 documents within the political dialogue, until October 31st, 2014.

- 4.1.1.: What is in your opinion the purpose of sharing such documents?

4.1.2.: What factors influence the frequency of documents-sharing?

Czech Republic – Senate

Questionnaire – The Early warning mechanism

This questionnaire will serve as a source for my thesis „Adaption of the parliaments of the Czech Republic, Poland and Slovakia to the Early Warning Mechanism for the principle of subsidiarity (on European legislation)“ in which I am aiming to test the following hypothesis: “Does the variance in understanding of the principle of subsidiarity and its control correlate with the variance in the number of submitted reasoned opinions?”. This will be done through the analysis of submitted reasoned opinions (in addition to COSAC questionnaires, Commission’s replies and secondary literature) and answers to this questionnaire.

Thank you for your time and assistance.

Zuzana Holakovská
Charles University in Prague
Intern at the Chancellery of the Senate of the Czech Republic

1) General information

1.1.: According to IPEX, your chamber has submitted four reasoned opinions until October 31st, 2014.

- 1.1.1.: Do you recall what sources of information did you primarily use to identify the breach of the principle of subsidiarity?
- 1.1.2.: If you were to choose between a “technical/legal” (the breaches are usually identified by the staff, either in the Parliament or in Brussels, who analyze the documents) and “political” approach (the Members of the parliament identify the breach themselves), into which category would you put your chamber?

2) Factors

2.1: In the Annex to the 16th Bi-annual report of COSAC (2.1.8), you have stated that the time provided for subsidiarity control is insufficient.

3. 2.1.1.: Has your position on the issue of time constraints changed since then?
4. 2.1.2.: Do you believe that the 8-weeks-deadline hinders your chamber from submitting more reasoned opinions?
    - 2.1.2.1.: If yes, why?
    - 2.1.2.2.: If no, why?

2.2.: Please order the following factors influencing the number of submitted reasoned opinions in accordance with the relevance to your chamber. Feel free to mix the categories, they only serve as a guideline.

- **External reasons** – the nature of the EWM
    - Lack of efficiency of the EWM
    - Time limitations
    - Low salience of the documents
- **Internal reasons** – institutional capacity
    - Position of the chamber in the national systems of checks and balances
    - Number of staff working
    - Usage of specialized committees
- **Political aspects**
    - Europeanisation of the public debate
    - Political motivation – political points connected to European issues
    - the role of the chair of the European Affairs Committee
    - the division of power within the chamber – the strength of the majority
    - political division within the chamber along the left-right axis

3) <u>Subsidiarity control – substantiation, grounds</u>

Subsidiarity = In area which do not fall within its exclusive competence, the Union shall act only of and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional or local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

Proportionality = *the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.*

- 3.1 Considering the legal definition outlined above, would you say that the general understanding of these principles in your chamber corresponds with the legal definition?
    - 3.1.1.: If not, how do they differ?

3.1.: In the annex to the 18sth Bi-annual report of COSAC, you have stated that subsidiarity has a general and abstract nature and it is not a strict and clear legal concept, therefore a broad interpretation should be used.

5. 3.1.1.: Considering the change of political environment, does this opinion still hold?
6. 3.1.2.: If yes, why
7. 3.1.3.? If not, why?

4) Interparliamentary dialogue

4.1: According to the data available on IPEX, you have submitted 286 documents within the political dialogue, until October 31st, 2014.

- 4.1.1.: What is in your opinion the purpose of sharing such documents?
- 4.1.2.: What factors influence the frequency of documents-sharing?

Poland – Senate

Questionnaire – The Early warning mechanism

This questionnaire will serve as a source for my thesis „Adaption of the parliaments of the Czech Republic, Poland and Slovakia to the Early Warning Mechanism for the principle of subsidiarity (on European legislation)“ in which I am aiming to test the following hypothesis: “Does the variance in understanding of the principle of subsidiarity and its control correlate with the variance in the number of submitted reasoned opinions?”. This will be done through the analysis of submitted reasoned opinions (in addition to COSAC questionnaires, Commission’s replies and secondary literature) and answers to this questionnaire.

Thank you for your time and assistance.

Zuzana Holakovská
Charles University in Prague
Intern at the Chancellery of the Senate of the Czech Republic

1) General information

1.1.: According to IPEX, your chamber has submitted thirteen reasoned opinions until October 31st, 2014.

- 1.1.1.: Do you recall what sources of information did you primarily use to identify the breach of the principle of subsidiarity?
- 1.1.2.: If you were to choose between a “technical/legal” (the breaches are usually identified by the staff, either in the Parliament or in Brussels, who analyze the documents) and “political” approach (the Members of the parliament identify the breach themselves), into which category would you put your chamber?

2) Factors

2.1: In the Annex to the 16th Bi-annual report of COSAC (2.1.8), you have stated that the time provided for subsidiarity control is sufficient.

8. 2.1.1.: Has your position on the issue of time constraints changed since then?
9. 2.1.2.: Do you believe that the 8-weeks-deadline hinders your chamber from submitting more reasoned opinions?
    - 2.1.2.1.: If yes, why?
    - 2.1.2.2.: If no, why?

2.2.: Please order the following factors influencing the number of submitted reasoned opinions in accordance with the relevance to your chamber. Feel free to mix the categories, they only serve as a guideline.

- **External reasons** – the nature of the EWM
    - Lack of efficiency of the EWM
    - Time limitations
    - Low salience of the documents
- **Internal reasons** – institutional capacity
    - Position of the chamber in the national systems of checks and balances
    - Number of staff working
    - Usage of specialized committees
- **Political aspects**
    - Europeanisation of the public debate
    - Political motivation – political points connected to European issues
    - the role of the chair of the European Affairs Committee
    - the division of power within the chamber – the strength of the majority
    - political division within the chamber along the left-right axis

3) <u>Subsidiarity control – substantiation, grounds</u>

Subsidiarity = In area which do not fall within its exclusive competence, the Union shall act only of and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional or local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

Proportionality = *the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.*

- 3.1 Considering the legal definition outlined above, would you say that the general understanding of these principles in your chamber corresponds with the legal definition?
    - 3.1.1.: If not, how do they differ?

3.2.: In the annex to the 18sth Bi-annual report of COSAC, you have stated that subsidiarity and proportionality are independent of each other and there is no reason

why the principle of proportionality should be considered as a component of subsidiarity.

- 3.2.1.: Does this opinion still hold?
- 3.2.2.: If yes, why
- 3.2.3.? If not, why?

3.3.: In the annex to the 18sth Bi-annual report of COSAC (5.), you have stated that reasoned opinions submitted by your chamber are not based on a broader implication of subsidiarity than the wording of Protocol no 2 and that subsidiarity checks should be understood strictly as aimed at determining the compliance of a draft legislative act with the principle of subsidiarity only.

- 3.3.1.: Does this opinion still hold?
    - 3.3.1.1.: If yes, why?
    - 3.3.1.2.? If not, why?

4) <u>Interparliamentary dialogue</u>

4.1: According to the data available on IPEX, you have submitted 31 documents within the political dialogue, until October 31st, 2014.

- 4.1.1.: What is in your opinion the purpose of sharing such documents?
- 4.1.2.: What factors influence the frequency of documents-sharing?

Slovakia – National Council
Questionnaire – The Early warning mechanism

This questionnaire will serve as a source for my thesis „Adaption of the parliaments of the Czech Republic, Poland and Slovakia to the Early Warning Mechanism for the principle of subsidiarity (on European legislation)“ in which I am aiming to test the following hypothesis: “Does the variance in understanding of the principle of subsidiarity and its control correlate with the variance in the number of submitted reasoned opinions?”. This will be done through the analysis of submitted reasoned opinions (in addition to COSAC questionnaires, Commission’s replies and secondary literature) and answers to this questionnaire.

Thank you for your time and assistance.

Zuzana Holakovská
Charles University in Prague
Intern at the Chancellery of the Senate of the Czech Republic

1) General information

1.1.: According to IPEX, your chamber has submitted four reasoned opinions until October 31st, 2014.

- 1.1.1.: Do you recall what sources of information did you primarily use to identify the breach of the principle of subsidiarity?
- 1.1.2.: If you were to choose between a “technical/legal” (the breaches are usually identified by the staff, either in the Parliament or in Brussels, who analyze the documents) and “political” approach (the Members of the parliament identify the breach themselves), into which category would you put your chamber?

2) Factors

2.1: In the Annex to the 16th Bi-annual report of COSAC (2.1.8), you have stated that the time provided for subsidiarity control is sufficient, however additional time could be sometimes helpful.

10. 2.1.1.: Has your position on the issue of time constraints changed since then?
11. 2.1.2.: Do you believe that the 8-weeks-deadline hinders your chamber from submitting more reasoned opinions?
    - 2.1.2.1.: If yes, why?
    - 2.1.2.2.: If no, why?

2.2.: Please order the following factors influencing the number of submitted reasoned opinions in accordance with the relevance to your chamber. Feel free to mix the categories, they only serve as a guideline.

- **External reasons** – the nature of the EWM
    - Lack of efficiency of the EWM
    - Time limitations
    - Low salience of the documents
- **Internal reasons** – institutional capacity
    - Position of the chamber in the national systems of checks and balances
    - Number of staff working
    - Usage of specialized committees
- **Political aspects**
    - Europeanisation of the public debate
    - Political motivation – political points connected to European issues
    - the role of the chair of the European Affairs Committee
    - the division of power within the chamber – the strength of the majority
    - political division within the chamber along the left-right axis

3) <u>Subsidiarity control – substantiation, grounds</u>

Subsidiarity = In area which do not fall within its exclusive competence, the Union shall act only of and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional or local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.
Proportionality = *the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.*

- 3.1 Considering the legal definition outlined above, would you say that the general understanding of these principles in your chamber corresponds with the legal definition?
    - 3.1.1.: If not, how do they differ?

3.2.: In the annex to the 18sth Bi-annual report of COSAC, you have stated that subsidiarity has a general and abstract nature and it is not a strict and clear legal concept, therefore a broad interpretation should be used.

- 3.2.1.: Considering the change of political environment, does this opinion still hold?
- 3.2.2.: If yes, why
- 3.2.3.? If not, why?

4) Interparliamentary dialogue

4.1: According to the data available on IPEX, you have submitted 25 documents within the political dialogue, until October 31st, 2014.

- 4.1.1.: What is in your opinion the purpose of sharing such documents?
- 4.1.2.: What factors influence the frequency of documents-sharing?

Annex 3: List of responses to the questionnaires

Q:CZ1	Chamber of Deputies of the Parliament of the Czech Republic
Q:CZ2	Senate of the Parliament of the Czech Republic
Q:PL2	Senate of the Republic of Poland
Q:SK	National Council of the Slovak Republic