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FACULTY OF SOCIAL SCIENCES

Institute of Political Studies

Department of International Relations

Master's Thesis

2018 **Bc. Maria Shkaruppa**

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The Inter-Parliamentary Cooperation in the EU: the Three Cases of Yellow Cards

Master's thesis

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Year of the defence: **2018**

Declaration

1. I hereby declare that I have compiled this thesis using the listed literature and resources only.
2. I hereby declare that my thesis has not been used to gain any other academic title.
3. I fully agree to my work being used for study and scientific purposes.

In Prague on Maria Shkaruppa

References

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Abstract

This Master thesis focuses on the three occurrences of the so-called Yellow Card procedure, a part of the Early Warning Mechanism introduced into the EU legislative practice with the Lisbon Treaty. The analysis of the practical cases helps to shed light on the development of the interparliamenatry cooperation among the national parliaments of the EU Member States and the ability of this cooperation to affect the EU decision-making process. The work discusses how the Mechanism was institutionalised and whether it established a more direct link between the EU decision-making and the EU citizens, thus creating an additional accountability channel. The thesis addresses to which extent the Mechanism is capable of compensating the national parliaments for being cut off from the EU processes.

The next task of the work is to assess how well the interparliamentary cooperation works and whether in the three practical instances the Mechanism proved to be effective. Furthermore, the thesis elaborates on whether the novelty was successful and if it realised the potential to curb the democratic deficit problem in the EU. Attention is given as well to the practical issues with the Mechanism implementation and to how the national parliaments are capable of dealing with them. All in all, the thesis at hand is a multi-aspect analysis of the Early Warning Mechanism and its practical use.

Abstrakt

Tato diplomová práce se zaměřuje na tří případzy tzv. Žlutých karet, součásti mechanismu včasného varování (Early Warning Mechanism), který byl uveden do legislativní praxe Evropské Unie s Lisabonskou smlouvou. Tyto praktické případy přispívají k objasnění vývoje meziparlamentní spolupráce mezi národními parlamenty členských států EU a schopnosti této spolupráce ovlivnit proces rozhodování v Unii. Táto práce zkoumá, jak byl mechanismus vytvořen a zda přispěl k navázání vyváženějšího propojení mezi občany EU a rozhodovacím procesem, a tak stvoření doplňujícího kanálu odpovědnosti vůči občanům. Dále se v textu zkoumá, do jaké míry byl mechanismus schopen vykompenzovat stav, ve kterém národní parlamenty byly odříznuty od evropských procesů.

Cílem této práce je posoudit funkčnost spolupráce národních parlamentů, a zda v těchto třech zkoumaných případech byl mechanismus efektivní. Dále se práce zabývá otázkou, zda nové pravomoci parlamentů naplnily cíl zmenšení problému demokratického deficitu. Pozornost je také věnována praktickým úskalím, se kterými se setkávají národní parlamenty při použití mechanismu a tomu, jak tato úskalí překonávají. Celkově vzato, práce je mnoho aspektovou analýzou mechanismu včasného varování a jeho praktického použití.

Keywords

Early Warning Mechanism, European Union, Yellow Card, Orange Card, interparlaimentary cooperation, democratic deficit, EU decision-making, subsidiarity

Klíčová slova

Mechanismus včasného varování, Evropská Unie, Žlutá karta, Oranžová karta, meziparlamentní spolupráce, demokratický deficit, proces rozhodování v EU, subsidiarita

Title

The Inter-Parliamentary Cooperation in the EU: the Three Cases of Yellow Cards

Název práce

Meziparlamentní spolupráce v Evropské Unii: tři případy Žlutých karet

Acknowledgement

I would like to express my gratitude to my supervisor Mgr. Viera Knutelská, Ph.D. for her patience and insightful help in the process of creation of this Master thesis. I would also like to thank Mrs. Knutelská for the cycle of lectures on the interparlaimentary cooperation of the EU Member States and the EU institutions that sparked my interest in the topic and thus motivated my thesis topic choice. My acknowledgements are as well addressed to the lecturers and instructors of the Institute of the International Relations for their helpful and inspiring approach that have made studying the International Relations program a joyful and enriching experience. Last but not least, I would like to mention the extensive help and support offered to be by Jaime Roser and my family.

Master Thesis Project

I. Reasons for choosing the topic

In the recent years EU scholars, politicians as well as citizens grow more and more concerned about the crisis of the European Union and about the alleged lack of control over decision-making in Brussels. Many Europeans do not trust the EU; they feel that many decisions are being imposed on them without the consent of their home country. Nevertheless, there are many ways in which individual EU countries can affect the EU decision-making. One of them - the newly introduced Early Warning Mechanism - is to be thoroughly discussed in my Master thesis.

The concerns mentioned above and the allegations of a so-called democratic deficit existence in the EU are being dealt with such potential remedies as, for instance, the Early Warning Mechanism (EWM). However, EU national parliaments do not seem to be inclined to use the new available instrument too much. In seven years a so-called yellow card process, which is a part of the EWM, was triggered only three times. I believe that a thorough study and a comprehensive comparison of all the three cases can shed light on why the EWM is used so rarely.

Another reason why the study of this topic seems interesting is that the outcomes of the three yellow card cases differed. In theory, the Commission can react in three different manners: after checking whether a proposal in question complies with subsidiarity principle, it can modify it or it can withdraw it completely (which happened in the very first yellow card case) or it can keep it as it is, which happened in the second, and, potentially, in the third yellow card case. The reasons behind such different reactions are interesting; they can shed more light on the actors' behaviour in the legislation process of the EU.

Overall, the reason why this topic was chosen is that it represents an understudied but, nevertheless, very peculiar phenomenon. Addressing it may well contribute to the studies of the EU interparliamentary cooperation and to the studies of democratic deficit management.

II. Aim of research. Research question

The aim of this research is to conduct a comprehensive, thorough and manifold comparison of the three yellow card cases in the EU practice. The process of comparing the cases, apart from explaining the EWM phenomenon, will also reveal the practical patterns that are followed in Member States' scrutiny of the Commission's proposals, the dynamics of interparliamentary cooperation and the factors that push the Member States' parliaments to work together. It would also provide an insight into the Commission's behaviour and its ways to deal with issues raised by the means of the EWM. This all may contribute to an answer to a bigger question many EU scholars seek to tackle: whether interparliamentary cooperation can help curb the EU democratic deficit.

The main research questions therefore will be the following: Why is the EWM used so rarely? What are the reasons behind different outcomes of the enactment of the same mechanism? In order to find an answer to these complicated question a set of smaller questions will have to be tackled: What is the legal framework behind the EWM? To which areas of expertise did the legislations belong? Was subsidiarity principle actually breached in any of the cases? What were the main concerns raised by national parliaments concerning the legislations? What was the communication process behind the interparliamentary cooperation?

Not many scholars have devoted their effort to studying the phenomenon of the Early Warning Mechanism. That despite the fact it can shed new light on various "hot topics" on the EU studies, such as democratic deficit, accountability or the alleged lack of control over EU legislation by individual Member States. The existing articles mostly study one case in depth, for instance, as in the cases of Cooper (2015), Fabbrini and Granat (2013), or Fromage (2015). Therefore, I believe that conducting a thorough comparison of the cases and drawing the inferences that take into account all existing experience of the EWM practice may enrich the debate and contribute to the understanding of the mechanism's functioning.

III. Conceptual framework. Concepts operationalization

In order to understand the processes and aims of EWM, the following concepts will need to be operationalized:

Subsidiarity - a principle stating that issues should be tackled on the lowest level possible;

Accountability – an ability of the citizens to have a real impact the development course of the EU by "punishing"/supporting ideas and politicians by, e.g., election process;

Democratic deficit - a term used by people who argue that the EU institutions and their decision-making procedures suffer from a lack of democracy and seem inaccessible to the ordinary citizen due to their complexity (taken from eur-lex.europa.eu/summary/glossary/democratic_deficit.html);

Virtual third chamber – a name given by the scholars to national parliaments of the EU Member States cooperating together in order to influence the EU legislative process, a concept believed to be created by the use of the EWM.

All these concepts are highly relevant for the research at hand. Subsidiarity is a key principle of the EU functioning and in order to ensure it is followed the EWM was created, among other safeguards. The mechanism ensures that national parliaments, actors that are probably the most interested in that the principle is followed, can act as watchdogs and scrutinize every potential legislation in this regard. Nevertheless, practice shows that national parliaments use the EWM to voice criticisms that are quite different from just subsidiarity concerns. Even if parliaments include complains on subsidiarity breach in their reasoned opinions, in all three cases the Commission discarded these allegations. This dynamics shows how important it is to understand the notion of subsidiarity and to be able to differentiate it from other complaints of parliaments. This understanding is essential for reasoned opinions analysis.

As for the accountability, the concern that the decision-making in Brussels is realized too far from common EU citizens has emerged in the academic literature quite a time ago. Some scholars believe there is a major lack of accountability in the EU system. We might find it useful to raise the accountability issue when speaking about the right of the Commission to maintain legislation intact despite a yellow card issuance as it seems to some that even a substantial amount of citizens represented by their national parliaments has a very weak ability to "punish" the Commission for inappropriate, in their opinion, legislation. Whether the EWM curbs or on the contrary, strengthens accountability is one of the major topics of discussion in this thesis.

Democratic deficit notion concerns the EU decision-making inaccessibility to the influence of the citizens and parliaments due to the design of the system, as described previously. Also, connected to it is the fact that the Commission's proposals are very often of a very technical nature and therefore they are hard to access. That creates another burden for proper citizens' monitoring of political processes. Because of the tight time constraint and lack of resources national parliaments are also often unable to study very technical legislations proposed by the Commission well enough to issue a reasoned opinion. Therefore, one might claim, a substantial amount of legislation outputs stays beyond the influence of citizens. Others might say that despite this all being true, nevertheless, national parliaments have actually more chances and capabilities for assessing such complex proposals. Therefore, one might claim the EWM is an instrument to curb the democratic deficit. Overall, understanding the concept of the democratic deficit is essential for deriving meaningful conclusions about the EWM's nature and efficiency.

Lastly, the concept of the Virtual third chamber is useful when assessing and understanding the dynamics behind interparliamentary cooperation for the purposes of a yellow card issuance. The parliaments meet physically together only in COSAC meetings framework, which happen only twice a year, nevertheless, when having enough will, they are able to build effective cooperation, for instance through their representatives in Brussels or with the help of the IPEX web platform. This dynamics create a so-called Virtual third chamber which can be seen as another means to curb democratic deficit. Understanding this concept and these dynamics is essential for realizing how the EWM works in practice.

IV. Methodology. Preliminary structure

Regarding the methodology, I believe the most useful one in my case will be a comparative case study. This methodology allows scholars to perform a clear-cut analysis of the cases at hand through a clear well-established structure. Other methods were considered for the thesis, for instance – congruence analysis or process tracing. Nevertheless, they were rejected at the early stages as the first one would to a great extent mirror already existing articles on the EWM, and the second would require a set of data hardly available in the scope of this research (evidence of legislators or equivalent).

The thesis is to be divided into three main parts: the first one will present the EWM as such, including its legal framework. In it the tool will be briefly compared to other ways of influence on EU legislation EU national parliaments have. The innovative features of this tool, which was introduced into practice latest, as well as its flaws (especially those of the functional side) will be discussed.

The next part will deal with the three cases directly, describing their nature and the outcome of the yellow card procedure. A brief analysis of the arguments presented in the reasoned opinions is to be conducted here, even though most of the analysis will be performed in the subsequent part.

In the beginning of the third part the comparison criteria will be defined and, subsequently, a comparison will be conducted. The comparison results will be helpful in drawing comprehensive and argument-based conclusions about the EWM functioning.

V. Preliminary sources

European Union, Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, 13 December 2007, 2007/C 306/01, available at: http://www.refworld.org/docid/476258d32.html

COSAC website containing access to National Parliaments' reasoned opinions, eulex.eu, Europe.eu and other EU portals on legislation, press releases, etc.

Richard Bellamy & Sandra Kroger (2014) Domesticating the Democratic Deficit? The Role of National Parliaments and Parties in the EU's System of Governance, Parliamentary Affairs, 67, 437–457.

David Bokhorst, Adriaan Schout & Jan Marinus Wiersma (2015) The Emperor's New Clothes? A Political Evaluation of the Early Warning Mechanism, The International Spectator, 50:2, 93-108.

Ian Cooper (2012) A 'Virtual Third Chamber' for the European Union? National Parliaments after the Treaty of Lisbon, West European Politics, 35:3, 441-465.

Ian Cooper (2015) A yellow card for the striker: national parliaments and the defeat of EU legislation on the right to strike, Journal of European Public Policy, 22:10, 1406-1425.

Federico Fabbrini & Katarzyna Granat (2013), "Yellow Card, but no foul": The Role of The National Parliamnets Under the Subsidiarity Protocol and the Commission Proposal For An EU Regulation on the Right to Strike, Common Market Law Review, 50, 115–144.

Diane Fromage (2015) The Second Yellow Card on the EPPO Proposal: An Encouraging Development for Member State Parliaments?, Yearbook of European Law, 1–23.

Katjana Gattermann & Claudia Hefftler (2015) Beyond Institutional Capacity: Political Motivation and Parliamentary Behaviour in the Early Warning System, West European Politics, 38:2, 305-334.

Nikola Lupo & Cristina Fasone (2016) Interparliamentary Cooperation in the Composite European Constitution, Hart Publishing.

Rik de Ruiter (2013) Under the radar? National parliaments and the ordinary legislative procedure in the European Union, Journal of European

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1. Introduction

1.1. Presentation of the topic and the goals of the thesis

The introduction of the Early Warning Mechanism into the legislative practice of the European Union by the Lisbon Treaty marked a new attempt by the EU politicians to deal with the issue of the democratic deficit. This Mechanism allows the Member States' national parliaments (NPs) to influence the legislative process by issuing via a cooperative effort with other parliaments a sort of warnings, the so-called Yellow Cards (or Orange Cards). These are supposed to signal to the European Commission that a substantial amount of national parliaments sees a breach in the subsidiarity principle in the draft of a piece of legislation. The Mechanism, despite the fact that it was designed to tackle such a crucial matter as the democratic deficit in the EU, has been used only three times since its introduction.

This Master thesis seeks to find an answer to the question why the quorum threshold for achieving the Yellow Card is reached quite rarely. To be more specific, the thesis will focus on what concretely has led, in these three cases, to this Mechanism being triggered and its triggering being possible at all. It will also enter the debate of whether the Mechanism can be considered a successful innovation and to determine whether and in which aspects there is room for improvement. The thesis will do so by providing an extensive comparison of the three occurrences of the Yellow Card, studying both each case in depth and the similarities and differences across them.

There are certain limitations of this Master thesis's concept; one of them is that it deals with a relatively new phenomenon (the latest occurrence of the Yellow Card triggering happened roughly a year and a half before this thesis was finalized). Nevertheless, I believe it may contribute to the field of interparliamentary cooperation studies by adding up the newest perspective on the issue. The thesis will bring the newest Yellow Card occurrence, not studied extensively before in the scholar literature,

into the equation. Therefore, it will shed a new light on how the Early Warning Mechanism can be used and how well the national parliaments are able to put in into effect. This thesis may also serve as a basis for further research on the matter.

1.2. Literature review

Previous research has accumulated quite extensive knowledge about interparliamentary coordination and in general about the involvement of the national parliaments in the European Union affairs. It is worth noting that the instruments of interparliamentary cooperation emerged as far as in 1980s (e.g. meetings of the EU affairs committees representatives in COSAC format) and their number and profoundness since kept growing (Political dialogue initiative emerged in 2006, national parliaments representatives' offices establishment in Brussels, etc.). For instance Neunreither (2005) touched upon all the variety of the interconnection and cooperation that the national parliaments and the EU structures, the European Parliament in particular, developed after the Maastricht treaty was adopted.

After the treaty adoption, the Member States' national parliaments, as Neunreither puts it, realized that "*the EU did matter after all*"[1] and that they should find ways not only to engage deeper in the EU affairs, but also to coordinate their efforts with other states' national parliaments. A vast network of informal types of cooperation was developed, some of its forms more successful that others. In general Neunreither underscored the tendency for this cooperation to expand. Other scholars, among them, prominently, Raunio (2011), point out that the increase of the interparliamentary cooperation and coordination served as a mere answer to growing deparliamentarisation[2] in the EU political system.[3] The deepening cooperation and engagement was a remedy for the "alienation" of the national parliaments, which, as

[1] NEUNREITHER, Karlheinz. The European Parliament and National Parliaments: Conflict or cooperation?. *Journal Of Legislative Studies* [online]. 2005, vol. 11, no. 3/4, p. 466-489 [ref. 2017-12-20]. DOI: 10.1080/13572330500273802. Available at: https://www.tandfonline.com/doi/abs/10.1080/13572330500273802.

[2] AUEL, K., O. ROZENBERG and A. TACEA. Fighting back? And if so, how? Measuring Parliamentary strength and Activity in the EU affairs. In: NEUHOLD, C., O, ROZENBERG, J. SMITH and C. HEFFTLER. (Eds.). *The Palgrave Handbook of National Parliaments and the European Union.* Houndsmills, Basingstoke, Hampshire: Palgrave Macmillan, 2015, p. 60-61. ISBN 978-1-137-28912-4.

[3] RAUNIO, Tapio. The Gatekeepers of European Integration? The Functions of National Parliaments in the EU Political System. *Journal of European Integration* [online]. 2011, vol. 33, no.3, p. 303-309. [ref 2017-11-20]. DOI: 10.1080/07036337.2010.546848. Available at: http://dx.doi.org/10.1080/07036337.2010.546848.

many scholars put it, ended up being the "losers" of the European integration (Raunio 2009, Crum and Fossum 2009).

The greater involvement of the NPs in the EU scrutiny was seen by many as a potential way to curb the alleged democratic deficit in the EU (Cooper 2012, Bellamy and Kroeger 2014). The critics though voiced concerns that the bigger involvement of the national parliaments in the EU affairs does not automatically mean that the representation of the citizens in the EU politics would improve. The national parliaments, or, more precisely, the mainstream parties that usually hold the majority, according to Raunio, have little incentive to subject the EU affairs to plenary discussions and would rather keep such discussions behind closed doors not to risk to lose their voters who may have different opinions regarding the EU integration (Raunio 2011). Others believe that the national parliaments "lack resources, information and incentives to actually become more active in EU policymaking" and thus to form a more profound link of the policies to the EU citizens (Bokhorst, Schout, Wiesma, 2015).

After the Lisbon Treaty's entry into force in December 2009 the involvement of the national parliaments in the EU affairs became official, and therefore the issue attracted even bigger scholarly interest. The question of how now the national parliaments will use their new powers (namely, the Early Warning Mechanism) to influence the decision-making process posed a great interest. Whilst some scholars were generally pessimistic about the potential impact and improvement brought by the EWM (Raunio 2007, Bokhorst, Schout and Wiesma 2015), others, on the contrary, had big hopes about the novelty (Cooper 2012). Cooper even suggested that now institutionalized and reinforced cooperation between the national parliaments can lead to the creation of the so-called "Virtual Third Chamber" in the EU system (Cooper 2012).

The big breakthrough after all the speculations emerged when the Mechanism was triggered for the first time. Multiple case studies followed, seeking to understand what has finally happened so that the triggering of the Mechanism could be possible (Fabbrini and Granat 2013, Cooper 2015) and whether the outcome was satisfactory for the NPs. Cooper, for instance, suggested that probably the most important "ingredient" in the Yellow Card recipe was the initiative of just one NP's chamber, the Danish Folketing and its MP, also a European Affairs Committee chair, Eva Kjer Hansen, in not only adopting the first reasoned opinion (i.e a "vote" for a Yellow Card triggering),

but also in persuading the representatives of other national parliaments to follow suit. In the absence of a natural leader under other circumstances, it was argued, the NPs could hardly coordinate that well.

The second Yellow Card also became a subject of close-up studies (Fromage 2015). The comparison of two cases was also unavoidable and some scholars reached a conclusion that two cases were too different to draw any comprehensive knowledge from their comparison (Bokhorst, Schout and Wiesma 2015). Some though believed that despite the difference of two cases and the extreme rareness of the Mechanism triggering (twice in 6 years), it actually worked quite well. After all, it was designed to be used rarely and to act only in the extreme cases of the alleged subsidiarity breach (Cooper 2012).

All in all, scholars agree that two cases are a very small sample to base judgments on, considering the fact that they are very different in many aspects such as the field of the legislation, the objections of the NPs, etc. The year 2016 brought the third case into the equation, and therefore testing already existing hypotheses on it is essential for the study of the EWM. Studying the third case of a Yellow Card and comparing its features with the previous two cases would be helpful for a better understanding of why, when and under which conditions all the obstacles for the Mechanism triggering can be overcome. That, in turn, may benefit with a new perspective the answers to the lengthy and controversial questions that scholars keep on researching on: Is the Mechanism effective? And, is it capable of curbing democratic deficit?

There are not many articles on the Yellow Card cases themselves, but those devoted to the specific Mechanism triggering cases (Fabbrini and Granat 2013, Cooper 2015, Fromage 2015) have raised various hypotheses on the Mechanism's use and triggering, which can be checked on the third case. The fact that there was not still any study devoted exclusively to the third Yellow Card case in its turn adds up to the relevance of this Master thesis.

On the other hand, there are plenty of resources on subsidiarity, democratic deficit and the ways to tackle it, common competences and interparliamentary cooperation, as well as the early evaluations of the Mechanism (even before it was triggered), which represent a valuable source of information for this thesis. Tracing the changed perception of the Mechanism from before it was first triggered (when some

scholars even doubted it would be ever used at all) to the post factum analysis is a valuable exercise for those who study the concept. It helps as well to address the scholars' assumptions more critically, sometimes even with a healthy skepticism.

Apart from the abovementioned articles, the thesis will build on the chapters of the four major books by EU scholars on the role of the national parliaments in the EU. First of all it is "The Palgrave Handbook of National Parliaments and the European Union", an edited volume on EU vs. national parliaments' relationship published under a common name, which provides the reader with an array of points of view on the role national parliaments play in the EU political system. The articles of the book frequently touch upon the Early Warning Mechanism and the authors seek to investigate the place of the EWM in the interparliamentary cooperation, and its impact on the latter. The central notion behind the articles is the growing influence the national parliaments have on the EU decision-making, as well as its development, from unofficial, modest and fragmented to a truly institutionalized one (that with the help of being enshrined in the official EU treaties). The national parliaments are still in the process of assuming their role of the "policy-shapers", as it may seem from the level of their involvement in the process. In my thesis, basing my research on what has been established already in this book and in other sources, I would argue that gradually the NPs' involvement becomes more deliberate and influential.

The second crucial book, Philipp Kiiver's "The Early Warning System for the Principle of Subsidiarity: Constitutional Theory and Empirical Reality" has the central locus of attention on the EWM itself, representing an in-depth study of the implementation of the Mechanisms, the reasons for its emergence and the influence it has on curbing the democratic deficit. Siding with a rather critical view of the Mechanism, Kiiver nevertheless stops at all the aspects of the influence of the new tool and discusses valuable points on how the EWM could be improved.

The third monograph, belonging again to Phillip Kiiver, studies in depth the role the national parliaments play in the European Union, starting with the classic functions explicitly described in the EU procedures (treaties ratification, for instance) to a newer and more flexible functions such as parliaments' horizontal cooperation and the best practice exchange as well as being "the guardian of subsidiarity".[4] The book was written

[4] KIIVER, Philipp. *The national parliaments in the European Union: a critical view on EU constitution building*. The Hague: Kluwer Law International, 2006. European monographs. *ISBN 9789041124524,* p. 154-156.

during the Constitutional treaty approval process and therefore Kiiver uses it later on as the basis of his other monograph mentioned above, "The Early Warning System for the Principle of Subsidiarity…". Despite the fact that, as it has already been mentioned, Philipp Kiiver is quite critical towards the Mechanism, he raises a wide array of very important issues with the Mechanism that may risk diminishing its role as a cure for a democratic deficit.

Lastly, "Practices of Inter-Parliamentary Coordination in International Politics: The European Union and Beyond" by B. Crum and J.E. Fossum (eds.) elaborates more on the phenomenon of the interparliamentary socialization and the potential creation of the *multi-level parliamentary field*, which are capable of bringing a new strong accountability dimension to the EU political system.

Various academic articles are used extensively for the purposes of this case study as well, such as the single-case studies of Yellow Card procedures by Cooper (2015), Fabbrini and Granat (2013), or Fromage (2015) as well as the evaluations of the Mechanism by Raunio (2011), Bellamy and Kroger (2012), Neunreither (2005), Bokhorst, Schout and Wiersma (2015), Auel and Christiansen (2015), Milkin (2017) and Cooper (2013) again. Some of these insights were published before the EWM was ever triggered or even before the Lisbon treaty was adopted, some were finished later, basing themselves already on one or two Yellow Card occurrences. It is crucial, when using these sources, to take into account how they vary in many aspects as the time of publishing and on the overall attitude towards the issue. Whereas Ian Cooper and Diane Fromage hold a generally positive opinion of the impact and most importantly potential of the EWM, Raunio, Kiiver and others are quite critical. In this Master thesis I will attempt to present a balanced opinion and Mechanism's functionality evaluation, dealing with both shortcomings and benefits of the issue. As a disclaimer I may mention that my overall perception of the phenomenon is positive, which will find its reflection in the final assessment.

As the latest case of Yellow Card Mechanism triggering happened quite recently – in May 2016 – I believe it is justified to use online newspaper articles as well to engage the very first available information on the matter. In order to ensure the reliability of the information drawn from such a source only well-known and trustworthy sources that specialize themselves on EU coverage will be used, such as EurActiv, Politico and EU Observer.

I believe the diversity of the sources used will allow creating a solid and reliable base for the assessment and analysis for this Master thesis. The aspiration is though, of course, to base conclusions and analysis not only on the ones already drawn by other scholars, but rather to create genuine findings and analysis capable of enriching this research field. The aim of this thesis, as stated above, is thus to assess the third Yellow Card case within the framework created by scholars while studying the first two cases and the issue of interparliamentary cooperation in general. The thesis aims as well at generalizing the pattern of the Mechanism triggering (if there is any) and thus creating an in-depth evaluation of the use of the Mechanism, taking into the account the third Yellow Card case.

1.3. Theoretical and conceptual framework

The thesis does not base itself on one exact European integration theory. It might be pointed out that if we speak about the influence of national parliaments on the European Union legislation process, we are actually moving in the framework closest to the Multi-level governance approach. This approach exploits the nature of the EU as an entity *sui generis*, not quite an international organization, but neither a full-fledged federal state, instead – an entity guided by the rules borrowed from both in different policy fields. Multi-level governance characterizes a state of affairs in which the political process of the EU is not subjugated to a fixed hierarchy of actors; rather, this process is influenced by several actors on different levels and from different territorial belonging at the same time. It comprises not a ladder, but a net of policymakers and policy influencing entities.[5]

In a classic international organization framework the cooperation between states is realized purely on the basis of member countries' governments' negotiations, therefore there is actually no room for any member state parliament to influence the decision-making. In the EU we see that that is not the case. While this thesis does not have the ambition to assess to which extent the Multi-level governance approach works and whether indeed the decision making in the EU is made beyond the basis of mere

[5] LELIEVELDT, Herman T. a S. B. M. PRINCEN. *The politics of the European Union*. Second edition. Cambridge: Cambridge University Press, 2015, p. 41-44. ISBN 978-1-107-11874-4.

governmental negotiation, the assessment of the EWM is a small contribution to the study of the application of this extensive theory.

The thesis will work with a wide array of concepts belonging to the field of EU studies, which are necessary to be thoroughly explained and operationalised:

A. Subsidiarity - a principle stating that policy issues should be tackled on the lowest (most local) political level possible.

This principle is closely connected to the Multi-level governance concept. As all the levels of governance – subnational, national and international – are involved in the decision-making process according to the MLG position, it is logical that the lower levels prefer to address problems themselves if they are capable of doing so, as they are "physically closer" to the problem, therefore knowing all the aspects of it better and being capable to tailor a solution accordingly.[6] On the other hand, some issues cannot be resolved on local or even national level, especially when they concern several countries. A good example of that would be any regulation on food safety: in the condition of free movement of goods adopting such a regulation on local level is pointless and will not protect the local consumer enough because of the inflow of products that are not a subject to these rules from other states. On the other hand some policy domains are very sensitive for the nation states, such as taxation policy as it influences the competitiveness of the states, defense policy or the aspects connected closely to the predominant religious beliefs (abortion laws, for instance). Thus even for such an integrated entity as the EU is, it is very hard to try to harmonise these policy fields across all the Member States.[7] All in all, in many occasions subsidiarity is a way for the EU Member states to hold on to control over which issues are delegated on the EU level and which are not.

The subsidiarity concept is undoubtedly the cornerstone of the Early Warning Mechanism. The Mechanism was created in order to let the national parliaments be a sort of "watchdogs"[8] of subsidiarity. Indeed, who could better ensure that the proposed legislative acts do not meddle in policy fields that are more suitable for the NPs or

[6] Ibid., p. 99-100.
[7] Although it should be mentioned that 2017 and 2018 were highlighted with the Commission making further steps for pursuing this idea, to a great distress of the representatives of some Member States.
[8] COOPER, Ian. A 'Virtual Third Chamber' for the European Union? National Parliaments after the Treaty of Lisbon. *West European Politics* [online]. 2012, vol. 35 no. 3, p. 459 [ref. 2017-11-20]. DOI: 10.1080/01402382.2012.665735, 441-465. Available at: https://www.tandfonline.com/doi/abs/10.1080/01402382.2012.665735?journalCode=fwep20.

national governments to act on? Some scholars, notably Kiiver, opposed that this justification for the creation of the Mechanism is quite problematic, as the Member States governments involved in the decision-making process would already not be willing to pass a legislation that breaches this principle, even without the NPs' involvement. It is also true though that the fact that the word is given directly to the national parliaments, without the need of the mediation of their respective government, is an unprecedented step in the EU policy making.

What is in fact understood under the term subsidiarity is as well questioned by scholars. Kiiver, again, for instance, claims that "*the definition of the term is quite elusive*".[9] By analyzing the reasoned opinions (ROs) raised by the national parliaments during the pre-assessment of the legislation, Kiiver "distilled" three features we can distinguish when we speak about a subsidiarity breach, as understood by the NPs' representatives:

- When the legislation does not touch upon any cross-border elements and thus is unnecessary on the Union level;
- When the issue raised in the legislative act is better tackled on the intergovernmental level and these regulations already suffice;
- When the Commission or a legislator interferes with policy fields that are under the exclusive competence of the Member States.

In many reasoned opinions, Kiiver states, the criticisms as well concern the fact that the Commission did not justify the necessity of the proposal sufficiently. As it is an obligation of the Commission to "*consult widely*"[10] and to justify the proposal of a legislative act, which is enshrined in the TEU, these criticisms are as serious as the ones mentioned above. After all, as Kiiver puts it, "*if even the initiator himself cannot give proper reasons for an intended piece of regulation, chances are that no-one can*".[11]

When analyzing the reasoned opinions, one needs to understand what may constitute a subsidiarity breach. This understanding would help to determine whether the issues raised by the NPs deal with subsidiarity at all, or if they are rather aimed at the political, not technical, dimension instead.

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[9] KIIVER, Philipp. *The Early-Warning System for the Principle of Subsidiarity: Constitutional Theory and Empirical Reality*. Abingdon: Routledge, 2012, p. 76. ISBN 9781136459849.
[10] Protocol (No 2) on the application of the principles of subsidiarity and proportionality. *Consolidated Version of the Treaty on European Union*. 2010. [ref. 2017-04-20]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT.
[11] KIIVER, ref. 2, p. 77-102.

B. Accountability – an ability of the citizens to have a real impact on the development course of the EU by "punishing"/supporting ideas and politicians by, e.g., election process;

If we speak about accountability, it is essential to understand which type of accountability is referred to. Kiiver deems the EWM as an instrument that allows the national parliaments to voice only the subsidiarity concerns, therefore an instrument of "technical" accountability, i.e. it ensures that the technical EU rules are followed. Removing the political scrutiny from the equation (as the Commission is not obliged to react on criticisms not connected to subsidiarity expressed in the reasoned opinion) in fact makes the instrument incapable of fixing the problem of the democratic deficit, in the author's opinion.[12]

I explore the notion of accountability further in the next section as connected closely to the "democratic deficit" concept.

C. Democratic deficit - a term used by people who argue that the EU institutions and their decision-making procedures suffer from a lack of democracy and seem inaccessible to the ordinary citizen due to their complexity.[13]

The concepts of accountability and the democratic deficit are inseparably interconnected; a simplified relationship between them may be suggested as follows: a lack of accountability creates a democratic deficit. The politicians are accountable to citizens when the latter make a conscious choice to elect a representative judging by their policy proposals, and then this politician should seek to fulfill his or her promises so that the citizens support them in a potential reelection. Such a model supposedly characterizes every democratic system. The European Union claims to be one, but many scholars argue that the EU system has problems with accountability and therefore there is a democratic deficit in it.[14] Many scholars suggest the representatives of Member States in the Council and the Commission are linked to the voters too indirectly. The ministers are members of government cabinets of their respective countries, often appointed by the elected party or parties, but their appointment is not directly influenced

[12] KIIVER, ref. 2, p. 117-125.
[13] Democratic deficit. In *EUR-Lex* [online]. [ref. 2017-11-20]. Available at: eur-lex.europa.eu/summary/glossary/democratic_deficit.html.
[14] LELIEVELDT and PRINCEN, ref. 1, p. 288-289.

by citizens. The Commission members are appointed again by the cabinets, but in contrast to politicians in the Council of the EU, their job is to be impartial functionaries and promoters of EU legislative development. A Commissioner's job implies knowing about the EU policies unlike in the case of Member States ministers whose primary concerns are expected to lie in the national level, not in the Union one. But in both cases, the Council ministers and the Commissioners are not directly elected by the EU citizens thus making the representation of the actual EU citizens in these institutions questionable. An important fact to consider here is that these representatives are appointed by the parties which were elected in the domestic elections, universally known to be dominated by home-salient issues across the Union's Member States. The issues on the level of the EU are very often left out of the domestic campaigns, therefore it is argued that it cannot be said the representatives of the Member States in the Commission and the Council are the direct representatives of the will of the citizens regarding the EU issues.

This problem is high on the agenda of the EU politicians and apart from the EWM, many tools were introduced to tackle this problem, for instance the Spitzenkandidat initiative.[15]

The European Parliament (EP), directly elected by the EU citizens starting from 1979, also seems to be a solution this problem. Moreover, the power of this institution has been significantly increased with every subsequent Union treaty. With the course of time it acquired a say in such matters as budgetary control, EU expansion, and many others. A real breakthrough for the EP came with a firstly limited and subsequently full-fledged capability to co-decide upon the Commission proposals and with a potency to substantially influence the European Commission President's candidacy (The Spitzenkandidat procedure).[16]

But despite this fact the scholars keep on speaking about the democratic deficit in the EU. The incapacity of the Parliament to be this "missing link in the chain"

[15] The Spitzencandidat initiative, introduced for the first time in 2014 European Elections, encouraged the parties to appoint a leader, which would take the post of the Commission President in case of the party's victory in the election. The current Commission president Jean-Claude Junker was the Spitzenkandidat (top candidate) for the EPP party. Although the actual procedure of the Commission President's appointment involves the European Parliament approval and prior to the elections some Parliamentarians were saying they would not take the top candidate novelty into account when voting for the Commission leader, Jean-Claude Junker's candidacy was nevertheless approved by the EP. Whereas the top candidate initiative is to last is no be seen in the next year's European Parliament elections.

[16] "About" section. In *European Parliament website* [online]. [ref. 2017-11-20]. Available at: http://www.europarl.europa.eu/aboutparliament/en/20150201PVL00022/The-EP-and-the-treaties.

between the EU institutions and the EU citizens makes the notion of the democratic deficit in the EU stay sound. In general, considering the EP an adequate representative organ of the EU citizens is problematic because of the nature of the elections into the EP, which are considered to be so-called "second-order elections". These elections are perceived with no doubt as less important by a quite substantial amount of EU citizens, which obviously makes impact on the participation rates as well as on the nature of issues that motivates people to vote in these elections. Allegedly, quite a number of people decide upon whom to vote in the European elections on the premise of domestic issues, not the European ones.[17] There is another trend revealed in this matter, and that is the fact that many citizens use the European Parliament elections to actually "punish" the parties they previously supported in the domestic elections for non-compliance with their promises.[18] To sum up, the elections into the European Parliament often have not much to do with the European Union and that plus the fact that the participation in the European elections remains quite low (43% in 2014, and 2009, 45% in 2004)[19] makes it a questionable representation organ for the EU citizenry.

All in all, the issue of the democratic deficit is hard to ignore. Therefore, the Lisbon Treaty has introduced new means of how to tackle it. One of them is the very Early Warning Mechanism which will be discussed in this thesis.

D. Virtual Third Chamber – a name given by the scholars to the national parliaments of the EU Member States cooperating together in order to influence the EU legislative process, a concept believed to be created by the use of the EWM.[20]

Lastly, the concept of the Virtual Third Chamber is useful when assessing and understanding the dynamics behind interparliamentary cooperation for the purposes of a Yellow/Orange Card issuance. Suggested by Ian Cooper in his articles "A 'Virtual Third Chamber' for the European Union? National Parliaments after the Treaty of Lisbon" (2012) and "Bicameral or Tricameral? National Parliaments and Representative Democracy in the European Union" (2013), the phenomenon would be explained as

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[17] CORBETT, Richard. 'European Elections are Second-Order Elections': Is Received Wisdom Changing?. *Journal of Common Market Studies* [online]. 2014, vol. 52, no. 6, p. 1194-1196. [ref. 2017-11-20]. DOI:10.1111/jcms.12187. Available at: https://onlinelibrary.wiley.com/doi/abs/10.1111/jcms.12187.

[18] Ibid., p. 1196–1198.

[19] European Parliament election turnout 1979 – 2014. In: *UK Political Info* [online]. [ref. 2017-11-20]. Available at: http://www.ukpolitical.info/european-parliament-election-turnout.htm.

[20] COOPER, ref. 1, p 441-465.

follows: the parliament representatives meet physically together in COSAC meetings framework, which happen twice a year (to many scholars too infrequent to call it a stable cooperation). Nevertheless, when having enough will, the national parliaments are able to build effective cooperation, for instance through their representatives in Brussels or with the help of the IPEX web platform. This dynamics create a so-called Virtual Third Chamber for the EU which can be seen as another means to curb democratic deficit. Crum and Fossum (2013) coined another term to express a similar notion: the Multilevel Parliamentary field, expressing the new developing dimension of interparliamentary coordination, which is, as the authors put it, "*not a panacea or a holy Grail to deliver viable democracy*", but nevertheless indeed have several beneficial impacts on the accountability rate of the EU and on the rate of NPs involvement into the EU processes.[21]

Other scholars, notably Kiiver (2006) debunked the notion claiming that by no means one can and should perceive the sum of national parliaments as a *phantom collective* [22] as that would be misleading. The parliaments do not act as single parliamentarians in a classical idea of a parliament, they represent first of all the interests of their state. According to the author, the citizens of these states care predominantly only of how their parliaments will act, having little regard of other parliaments' concerns, according to the author. Further chapters will elaborate more on the viability of the idea of the existence of the "Third Chamber", connecting it with the EWM notion.

Now that the theoretical framework is set and the theoretical concepts are defined, I would like to move to the discussion of the method used for the purposes of this Master thesis.

1.4. Method

For the purposes of my Master thesis I decided to turn to the comparative or multiple-case study method. Case study method in general is recommended to be used

[21] CRUM, Ben and John Erik FOSSUM. Practices of Inter-Parliamentary Coordination in International Politics: The European Union and Beyond. In: CRUM, Ben and John Erik FOSSUM. *Practices of Inter-Parliamentary Coordination in International Politics: The European Union and Beyond*. ECPR Press, 2013, p. 3-5. ISBN 1910259306.
[22] KIIVER, ref.1, p. 162-164.

when the issue at hand belongs to the contemporary events.[23] According to Yin's definition[24] of a case study (emphasis added),

1. *A case study is an empirical enquiry that*
    - *Investigates a contemporary phenomenon in depth and within its real-life context, especially when*
    - *The boundaries between phenomenon and context are not clearly evident.*

I believe this definition perfectly matches the task at hand: the thesis deals with a contemporary phenomenon, a new instrument within the EU legislative process. The context is the reforming EU striving to become more a more accountable, legitimate and effective political system.

The reasons why a *multiple-case* study is used are various. First of all, since there was in general in history just three cases of the Yellow Card so far, it is quite obvious that that is a finite-N research. Also, it comes out of the logics of the matter that it would make sense to compare the three cases to identify the existence of any general patterns, to outline the differences and to assess how effective the new tool is.

But even if all those conditions were altered, it would still be appropriate to use the multiple-case study method. Yin proposes several criteria which determine that a multiple-case study is a suitable one. The first one is the nature of the question asked in a study: if your ask a "why?" question, which refers to more than one case and can be asked about each of them, the use of a comparative case study is justified.[25] In case of this Master thesis there actually can be several important "why" questions to ask: "Why was the legislation, to which a Yellow Card was "flashed", withdrawn\maintained?", "Why did the Commission choose to elaborate on non-subsidiarity issues raised in the national parliaments' reasoned opinions despite the fact that it was not obliged to do so?" or, "Why is the threshold for a Yellow Card is reached quite rarely?".

Then, as Yin proposes, the choice of a multiple-case study method is justified when replication logic is sought in research. The cases in such a study are each treated

[23] YIN, Robert K. *Case study research: design and methods*. 4th ed. Los Angeles: Sage, 2009. Applied social research methods, p. 9. ISBN 978-1-4129-6099-1.
[24] Ibid., p. 18.
[25] Ibid., p. 10.

as separate experiments. The replication logic though does not necessarily mean that each case should bring the same results as the previous one. The cases can be selected in the way that "*contrasting results are predicted but for anticipatable reasons*".[26]

In regard to this Master thesis the cases are selected naturally and the same course of action is taken in each of them to a certain extent: a piece of (controversial) legislation is prepared by the Commission, and then the same Mechanism is used by the national parliaments in case they wish to issue their warnings. To determine *why* the outcomes are different is the purpose of the thesis.

As for the concrete approach within the case study method, I suppose this thesis would most correspond to the Configurative-idiographic study type as distinguished by Harry Eckstein.[27] In his own words: "The configurative element in such studies is their aim to present depictions of the overall *Gestalt* (that is, configuration) of individuals: polities, parties, party system and so on."[28] Eckstein compares idiographic study to a clinical study in the practice of medicine and psychology fields. The reports such a study produces "are generally characterized as narrative and descriptive: they provide case histories and detailed portraiture." In some way, he says, they can be also labeled synthetic, but beyond description, they also present "interpretation". The aim of such a study is "to capture the particular and unique"[29] about the cases.

Such a description matches well with the idea about how this thesis should proceed. Indeed, it will examine in detail all the peculiarities of the three cases. Their subsequent interpretation will base itself on the comparison between the cases, which will in its turn also allow determining the specialties of each of them. The aim of the research is thus to present an exhaustive analysis of the instances of the Yellow Card triggering, to conduct a comparison of these occurrences and subsequently to understand under which circumstances the triggering of a Yellow Card is possible.

The method implies paying close attention to the sources of the data regarding the occurrences. Among the primary sources the biggest significance is to be attributed to the Lisbon Treaty as it was the very piece of legislation that introduced the EWM into the set of practices common for the EU legislative process.

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[26] Ibid., p. 54.
[27] ECKSTEIN, Harry. Case Study and Theory in Political Science. In: GOMM, Roger, Martyn HAMMERSLEY and Peter FOSTER. *Case study method: key issues, key texts*. Reprint. Los Angeles: SAGE, 2011, p. 132-134. ISBN 978-0-7619-6414-8.
[28] Ibid., p. 132.
[29] Ibid., p. 121.

The next important primary source are the reasoned opinions (ROs) issued by the EU Member States. It is important to asses which kind of objections Member States raised in connection to each of the legislation pieces and whether these objections were in compliance with the Mechanism's principles. Also, the European Commission's answers to these reasoned opinions represent a valuable source of information. They as well reveal the stance of a very important actor, the Commission, on that matter, and most importantly represent the understanding of the Mechanism by the Commission. While studying this source one can see whether the texts presented by different NPs were similar or very different, whether the issues raised were coinciding or varied from state to state.

The difficulty in working with this source is that quite frequently the ROs would either not be published on IPEX (but mostly yes) or they would be available only in the country's language and a translation would be either absent or presented as rather a sum up, not communicating crucial details. But otherwise the availability of the texts and Commission's responses on IPEX is noteworthy and serves well both to scholars and to the public.

In some cases it will be useful to address the texts of the proposed legislations as well. This thesis though does not pose as its aim a legislative analysis of the proposal, but merely the analysis of the Mechanism's functioning via the method proposed.

2. Explaining the Early Warning Mechanism

2.1. The origins and the earlier instruments of national parliaments involvement

The Early Warning Mechanism was introduced into EU practice with the Lisbon Treaty. The Article 5 of the Lisbon Treaty outlines the limits of the EU-level decision-making in three principles: *conferral* (meaning that the Union bodies would propose legislative acts only in the competencies conferred to them by the Member States), *subsidiarity* (the Union bodies would only propose legislation in the fields in which it does not have exclusive competencies to tackle the problems that are, by their scale and nature, best resolved on the Union level) and *proportionality* (the scale and proportion of The Union action should correspond to the scale of the objective of the Treaty pursued). The article then refers to the protocol attached to the Treaty. The Protocol (No. 2) "On The Application Of The Principles Of Subsidiarity And Proportionality" in its turn describes the Early Warning Mechanism and the principles of its functionality. Such indispensable principles as the obligation of the EU Commission to send all the drafts of potential legislation to the national parliaments, the deadline of eight weeks for the national parliaments to issue their objections ("reasoned opinions", ROs) to the Commission in case they suspect the legislation may contradict the subsidiary principle and the further actions the Commission should take in case the amount of reasoned opinions (i.e. "votes") exceeds a certain threshold were outlined there. The threshold was set to be a third of the available "votes" (understood that for bicameral parliaments there is one "vote" for each chamber and for unicameral parliaments there are two "votes" for their ROs) for common legislative proposals, or a fourth of "votes" in case of legislation in the area of Justice and Home Affairs. The gain of the number of "votes" as stated above is called a Yellow Card for a piece of legislation, even though the Protocol itself does not use that term.

The Orange Card Mechanism, that has not been triggered so far, would in its turn mean that a half of the parliaments/chambers of parliaments of the Member States found issues with subsidiarity compliance of the proposed legislation. If in case of the Yellow Card the Commission has an obligation to review the proposal again and after which it may maintain the proposal intact, change it of withdraw it, the Orange Card would mean an early vote with the Council and the European Parliament to determine

whether the piece of legislation would be considered at all or if the Commission will be forced to withdraw it. In practice, scholars deem, the triggering of the Yellow Card means a request for the Commission to propose a better explanation for why it deems the proposal necessary and compliant with the subsidiarity principle.

The aim of the Early Warning Mechanism was to give a greater say for the national parliaments of the EU Member States (MS) in the matters regarding the EU legislation. The EWM institutionalized the rules under which the national parliaments could exercise the "pre-moderation" of the European Commission's proposals even before they would come to the consideration to the European Parliament and the European Council. The NPs in theory only have a right to scrutinize these proposals regarding their compliance with the subsidiarity principle, as to see to that one of the abovementioned key principles of EU functioning is fulfilled.[30]

Giving a bigger say to the national parliaments is seen as one of the remedies for the alleged democratic deficit in the EU political system. Involving the national parliaments, many scholars suggest, means creating the missing link between the EU citizens and the EU institutions, ensuring its democratic accountability. But a lot as well suggests that NPs might as well be not the most suitable (and willing) actor for this purpose.

The EWM also makes up for "cutting off" of the NPs from the EU system and the asymmetry in which the MS governments are represented in the EU level in a much broader manner (e.g. in the Council, in the Intergovernmental conferences, etc.) than the national parliaments.[31] The concern existed that the national parliaments' access to decision-making on the EU matters was quite restrained. The representatives of the Member States governments seating in the Council could decide upon the matters and new legislation "behind closed doors", without being much accountable to their corresponding parliaments. The NPs would be just informed of the outcome. Considering that in many political constellations of the Member States it is possible that a government and a parliament are not on the exactly same position on the political spectrum, such a state of affairs might have not been satisfactory for the NPs. The EWM therefore proposed albeit a week but nevertheless a legitimate opportunity for the

[30] BOKHORST D., A SCHOUT and J. M. WIERSMA. The Emperor's New Clothes? A Political Evaluation of the Early Warning Mechanism. *The International Spectator*, [online]. 2015, vol 50, no. 2, p. 94. [ref. 2017-12-20]. DOI: 10.1080/03932729.2015.1024083. Available at: http://dx.doi.org/10.1080/03932729.2015.1024083.
[31] COOPER, ref. 1, p. 453.

national parliaments to make their voices heard. Different from the previous instruments (political dialogue, NP representatives in Brussels), this tool encompasses certain rules of conduct and regulates how the Commission should react, making it as a "legislative branch of the European Union political system" accountable to the representatives of the EU citizenry.

Each proposal drafted by the European Commission, before being votedon, first is directed to the main institutions such as the EP and the Council (more precisely, COREPER) for preliminary assessment. It is sent to the national parliaments as well and after the draft of the legislation is translated into the EU working languages[32] the "clock starts ticking". The NPs have eight weeks to review a proposal and, in case they see a breach in the subsidiarity principle in the draft proposal, they can issue a so-called reasoned opinion.[33] An act of issuance of a RO counts as a "vote" in favor of granting a piece of legislation a so-called Yellow Card.

All in all, as it was mentioned before, each national parliament is given two votes – two for a unicameral parliament and one for each parliament chamber in case it is a bicameral parliament. Therefore, in the current state of affairs there is a maximum of 56 votes for EU-28. In order for the motion for a Yellow Card to pass, a third of votes should come in favor of it (therefore, currently that would be 19 votes). For the legislation concerning the field of Justice and Home Affairs policy field, one fourth of the votes suffices for triggering the Yellow Card procedure (14 votes).

The fact that a Yellow Card was drawn means that the Commission is obliged to revisit the act they have proposed for the subsidiarity concerns. The Commission has three options on how to act afterwards: it can withdraw the act, it can change the text of the proposal or it can leave it as it is and resume its approval process. The existence of the last option raises the biggest doubts about the effectiveness of EWM and about whether NPs should invest their time and effort in coordination and collection of enough reasoned opinions at all.

But let us take a look at the instances when the national parliaments indeed invested their time an effort into issuing reasoned opinions and agitated their peers to do

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[32] COOPER, Ian. A yellow card for the striker: national parliaments and the defeat of EU legislation on the right to strike. *Journal of European Public Policy* [online]. 2015, vol. 22, no. 10, p. 1410. [ref. 2017-11-27]. DOI: 10.1080/13501763.2015.1022569. Avaliable at: http://dx.doi.org/10.1080/13501763.2015.1022569.

[33] Protocol (No 2) on the application of the principles of subsidiarity and proportionality. *Consolidated Version of the Treaty on European Union.*

so as well. The next section will take a close look at each of the three Yellow Cards drawn up to date.

2.2. Case I – the Monti II Regulation

The first ever case when a motion for a Yellow Card was triggered occurred in May 2012. At that point 19 votes were cast to trigger the procedure and only 18 were necessary (back then it was still EU-27, therefore for one third of votes, meaning 18 reasoned opinions, would suffice). The "Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services" from 9 May 2010, informally known as the "Monti II" regulation (referring to Commissioner Mario Monti) suggested creating a clear definition of rules for collective action (such as strikes) which would be applicable at the Union level.[34] The Danish Folketing was the first chamber of a Member States to issue a reasoned opinion criticising the draft legislation, therefore becoming the initiator of the process. The actions of the Danes were intentionally rapid as they were following a conscious decision by Danish European Affairs Committee Chair Mrs. Eva Kjer Hansen to rally enough support among other national parliaments to trigger the Yellow Card procedure.[35] By coincidence, just after one month after Denmark passed a reasoned opinion and after it was joined by five other traditionally "active" NP chambers (French Senat, UK House of Commons, Polish Sejm, Swedish and Finnish parliaments)[36] it was to host a COSAC meeting, which proved to be a great opportunity to persuade other national parliaments to support the cause. The effort of the Danish NP representatives on the meeting resulted, for example, in persuading Latvian Saeima to pass its first ever reasoned opinion, as well as getting many others on board.[37] Even though the process of issuing a RO was started in many countries, it was not clear whether these countries would be in time to submit it before the deadline. As it was mentioned before, the procedures for passing a reasoned opinion in different Member State parliaments are different and in some of them they are quite bulky and

[34] FABBRINI, Federico and Katarzyna GRANAT. "Yellow Card, But No Foul": The Role of the National Parliaments Under the Subsidiarity Protocol and the Commission Proposal For an EU Regulation On The Right To Strike. *Common Market Law Review* [online]. 2013, no. 50, p. 131. [ref. 2017-04-20]. ISSN: 0165-0750. Available at: https://pure.uvt.nl/ws/files/1553770/Fabbrini_BCICLR.pdf.
[35] COOPER, ref. 3, p. 1412.
[36] Ibid., p. 1415.
[37] Ibid, p.1416.

slow.[38] But nevertheless, in a nail-biting moment, as Cooper characterized it[39], the last two ROs were adopted narrowly in the evening of the day of the deadline. Some reasoned opinions were even adopted after the deadline and therefore were not counted, as the one of the Czech Republic's Senate.[40]

Why were the parliamentarians and the European Affairs Committees' representatives so eager to hamper the legislation? The analysis of the reasoned opinions, provided by Fabbrini and Granat,[41] showed that despite the theory behind the EWM, the states often expressed their concerns not only about the subsidiarity issue, but also regarding the content of the proposal itself. The main point of concern was whether the legal basis behind the proposal was proper and whether it did not allow the EU to bypass some of the previous arrangements with the Member States.

After the Yellow Card process was successfully triggered in May, it took the Commission until September to take the decision to withdraw their proposal. In their answers to the raised reasoned opinions, the Commission proclaimed it saw no subsidiarity breeches it its proposal. Nevertheless, the decision to withdraw the draft legislative act was taken, as it became clear to the Commission that there is a sound opposition against it in several Member States governments as well as in the parliaments. The proposal would clearly not gain necessary support to pass.[42]

2.3. Case II – the EPPO Proposal

On October 2013 the time came for the second Yellow Card to be triggered. This time, the proposal concerned the establishment of the European Public Prosecutor's Office. [43] What was special about this case is that it was a first Yellow Card passed for an issue regarding the area of Freedom, Security and Justice, which therefore required

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[38] BUZOGANY, Aron, Learning from the best? Interparliamentary networks and the parliamentary scrutiny of EU decision-making. In: CRUM, Ben and John Erik FOSSUM. *Practices of Inter-Parliamentary Coordination in International Politics: The European Union and Beyond*. ECPR Press, 2013, p. 18-20. ISBN 1910259306.
[39] COOPER, ref. 3, p. 1407.
[40] Ibid., p. 1418.
[41] FABBRINI and GRANAT, ref. 1, p. 135-139.
[42] The answer of the European Commission to the reasoned opinions on Collective action proposal. In: *www.ipex.eu* [online]. 2013. [ref. 2018-04-17], Available at: http://www.ipex.eu/IPEXL-WEB/scrutiny/APP20120064/dkfol.do.
[43] The full name of the proposed legislation is "The Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office".

only a fourth of the member States' national parliaments to issue reasoned opinions for the Mechanism to be triggered. Such conditions were provided by the Lisbon treaty for this exact specific area because of its extreme sensitivity for the Member States.[44] The motion to trigger the Yellow Card Mechanism received 18 votes in support, which would be 1 vote short to initiate the process in case it was another legislative area, but for the Justice and Home Affairs policy domain even 14 passed reasoned opinions sufficed.

The analysis of the reasoned opinions in this case showed that the national parliaments again did not limit themselves with comments regarding just the subsidiarity clause and raised various issues they had with this proposal. One of them was an often mentioned in ROs very vague and unclear justification of the motion to establish the European Public Prosecutor's Office. This new office was supposed to centralize the Union's effort to tackle financial crime within its structures. The Commission proclaimed that this issue cannot be resolved effectively just on the level of the Member States because of lack of coordination and information exchange among them. Many countries raised questions on why was it necessary to create a new institution whereas such structures as Judicial Cooperation Unit (Eurojust) and the European anti-fraud Office (OLAF) were already in place to tackle such crimes. Moreover, considering the fact that both institutions had recently undergone substantial reforms and these reforms time did not have an opportunity to show results yet, the introduction of such draft legislation was perceived by the national parliaments' representatives as a highly unnecessary step.[45]

Another criticism regarded the provisions on the management of this potential new office. The Article 86 of the Treaty on Functioning of the European Union (TFEU), according to some states, suggested that such an office would be managed on a collegial basis with equal representation of all Member States. What the Commission's proposal suggested instead is that the Public Prosecutor and his four Deputies would be appointed by the Council and that the Member States would only have at least one Delegated Public Prosecutor.[46] This provision of the draft legislation left several countries' parliaments and chambers, like French Chambers, the Polish Senate as well

[44] FROMAGE, Diane. The Second Yellow Card on the EPPO Proposal: An Encouraging Development for Member State Parliaments? *Yearbook of European Law* [online], 2015, p. 1-3. [ref. 2017-04-20]. DOI:10.1093/yel/yev024. Available at: https://doi.org/10.1093/yel/yev024.
[45] Ibid., p. 14.
[46] Ibid., p. 7.

as Lithuanian, Maltese and Romanian parliaments unsatisfied.[47] The proposal in general was criticized for having very vague formulations at some places and leaving many passages too ambiguous for interpretation.[48]

Nevertheless, there were several NPs that presumably were strongly in favour of the proposal, for instance the Spanish Joint Committee.[49] Others indicated that they were not entirely against the idea, but rather against some problematic parts of it. That led to a very interesting development: just in three weeks after the Yellow Card procedure was triggered, the Commission proclaimed again that it sees no subsidiarity breeches in its proposal and that it was going to leave the text of the proposal as it is, implementing no changes.[50] They justified their decision by the fact that there were actually nine national parliaments in favour of the draft piece of legislation, which would not ensure the adoption of this legislative, but which could lead to a triggering of the Enhanced Cooperation Mechanism.[51] This Mechanism, provisions regarding which can be found, again, in the Article 86 of the TFEU, allows several Member States to adopt a piece of legislation among a smaller circle, therefore potentially pushing the rest to join at some point. The Commission did not want to lose an opportunity to keep this issue high on the agenda of the EU politics. It is important to note that the potential possibility of the resolution adoption with the framework of the Enhanced cooperation was included in the draft text of the act itself.

This time, as Fromage suggests, the answers of the European Commission to the reasoned opinions were much more detailed. In its answers the Commission first addressed the subsidiarity breach complaints in a joint letter, as these should be the principle subject of all ROs, but then a bit later in time, in March 2014, it took courtesy to address the rest of the issues as well, such as proportionality, justification problems, etc, that in a personalised letter to each of the parliaments.[52]

To the current date the commitment to create the European Public Prosecutor's office indeed, as Fromage suggested, remains a matter of enhanced cooperation and therefore would be effective only in a number of the EU Member States. There have been several discussions on the matter in the Council and also as many as thirteen

[47] Ibid., p. 15.
[48] Ibid., p. 15.
[49] Ibid., 4.
[50] Ibid., 11.
[51] Ibid., 15.
[52] Ibid., 14.

NPs/chambers signed a declaration advocating the commitment to a collegial structure of the future EPPO and the need to ensure its competences will be shared with all Member States and that the office will be independent and efficient.[53] Other Member states remain in a strong opposition to the proposal, such as Sweden. On October 2017 the Regulation has been signed expressing the commitment to establish the office with the participation of the signature states – the participants under the Enhanced Cooperation – within three years from the Regulation's entry into force.[54]

2.4. Case III – The Posted Workers Directive

Three years later the third Yellow Card case emerged. This time, though, was different, since there was a clear pattern in which countries' parliaments raised their objections. Except for Denmark, these were exclusively the Eastern European Members of the EU such as Bulgaria, Poland, the Czech Republic, Romania, Lithuania, Croatia, Hungary, Latvia, Estonia and Slovakia, or, to be precise, their chambers of parliaments respectively. [55] Fourteen chambers of eleven Member States issued their reasoned opinions, comprising thus record 22 votes in total, which triggered the Yellow Card process for the Posted Workers Directive.[56] The main concern raised in the reasoned opinions was that, in their opinion, the European Commission meddled into the sphere of jurisdiction of the national governments, concretely into their right to set the rules for the remuneration of workers in their countries as they see fit. These countries spoke radically against any attempt to harmonise remuneration schemes across the Union and saw a subsidiarity breach in the mere existence such a proposal from the Commission.

Indeed, it should be borne in mind that the salary levels across the Union differ significantly. According to Eurostat, whereas most of the Eastern European countries – members of the European Union can "boast" with median hourly earnings of less that

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[53] Ibid., 5.
[54] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'). In *eur-lex.europa.eu*. [online]. Available at: http://eur-lex.europa.eu/eli/reg/2017/1939/oj.
[55] Communication from the Commission to the European Parliament , the Council and the National Parliaments on the proposal for a Directive amending the Posting of Workers Directive, with regard to the principle of subsidiarity, in accordance with Protocol No 2. In *ec.europa.eu*. [online] 2016, p, 3. Available at: ec.europa.eu/social/BlobServlet?docId=15964&langId=en.
[56] The full name of the proposal is "Proposal for a Directive Of The European Parliament And Of The Council amending Directive 96/71/EC of The European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services".

EUR 5, eight Western European EU members have the median above EUR 15 (and, peculiar enough, in case of Denmark, whose parliament issued a RO on the matter alongside its Eastern European counterparts, even above EUR 25).[57]

Under current rules workers posted to other EU member states can be paid according to the wage policy of the seconding country. Needless to say that the wage policy in a seconding country can significantly differ from the policy and wage expectations in the hosting country. The European Commission decided to amend the Posted Workers directive, the original version of which dated back to as far as 1996, in the way that would oblige companies pay seconded workers wages comparable to the wages they pay to their local workers and in accordance to their country's wage policy. In addition, other aspects of the remuneration, such as, for instance, the number of holidays, would need to be adjusted to comply with the law of the hosting country, in case the posting is planned to exceed 24 months.[58]

The Eastern European EU member states opposed such a regulation regardless of the apparent social benefits of it to their seconded citizens. The representatives of these countries explained their stance, arguing that such a regulation would diminish the advantage of their countrymen in the European job market as a lower-paid and thus more prone to be employed.[59] Absence of this advantage may mean that the companies located in Western Europe would lose incentive to hire people from the East of the Union. Not only that might mean a further rise of unemployment in the Eastern Member states, it could also mean that instead of seconded tax-payers, Eastern European Member States would get more unemployed citizens in need of social aid.

As for Denmark, the only Western European state that opposed the directive, its concerns were as well regarding the alleged meddling of the EU into the right of the sovereign Member States to determine their own wage policy. The Danish Folketing found that the presence of the mention of the exclusive competences of the Member

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[57] Median gross hourly earnings. In *ec.europa.eu*. [online]. 2014. Available at: http://ec.europa.eu/eurostat/statistics-explained/images/0/03/Median_gross_hourly_earnings%2C_EUR_and_PPS%2C_2014_V3.png.

[58] Proposal for a Directive Of The European Parliament And Of The Council amending Directive 96/71/EC of The European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. In *www.ipex.eu* [online]. 2016. Available at: http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20160128.do.

[59] GOTEV, Georgi. National parliaments invoke 'yellow card' in response to revised Posted Workers Directive. *Euractive*. [online]. 2016. [ref. 2017-04-20]. Available at: https://www.euractiv.com/section/social-europe-jobs/news/national-parliaments-invoke-yellow-card-in-response-to-revised-posted-workers-directive/.

States in the area of setting the remuneration regulating laws only in the accompanying memorandum and not in the text of the proposed directive itself was an insufficient guarantee of the Member States' rights.

All in all, the criticisms of the Member States regarding the subsidiarity concerns can be put into four categories. First, some Member States (specifically Estonia) [60] deemed the amendment as unnecessary, as they argued that sufficient regulation was already in place. Secondly, several countries (for instance, the Czech Republic) argued that the Union level is not an adequate platform for resolving the issue at hand and that the corresponding legislation should be rather adopted on the national level. Many Member States expressed concerns that the proposal of the Commission interfered into the exclusive competences of the Member States, such as the right to establish wages policy and design its labour code according to the local demands. Lastly, the justification of the necessity of the legislation amendment, accompanying the text of the proposal, was deemed as too brief and insufficient by many.

In its answer the European Commission tackled all four types of the subsidiarity concerns and concluded, again, that it would maintain the proposal intact. A promise was as well made to address the concerns not related to subsidiarity, which were again included into some of the reasoned opinions, in separate letters to each individual parliament, in the framework of the "Political Dialogue".

In its answer to the subsidiarity concerns the Commission made emphasis on the "cross-border nature" of posting of workers, which, in its opinion, would naturally mean that this issue should be tackled on the Union level. The posting of workers, the Commission officials argue, plays essential role in the Internal Market and therefore its regulation is directly in the competence of the EU level legislation. One of the Commission's tasks, as put in the Commission's answer (communiqué), is to strengthen the Internal Market, therefore the proposal falls into the scope of its competences. In addition, the Commission argues, the proposal, in contrast to what some of the reasoned opinions claim, does not interfere into the exclusive competences of the Member States. There was no attempt to harmonise wages across the Union or to dictate the Member States how their wage and labour policy should be, the Commission claimed. The aim

[60] Communication From The Commission To The European Parliament, The Council And The National Parliaments on the proposal for a Directive amending the Posting of Workers Directive, with regard to the principle of subsidiarity, in accordance with Protocol No 2. In *www.ipex.eu*. [online]. Available at: http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20160070/huors.do.

was to merely ensure that the rules that apply to the local employees non-discriminatively apply to the seconded workers performing their job in the same country. The aim of the amendment was, according to the abovementioned communiqué, to make "*the service recipient jointly liable for the labour conditions of the posted workers*". Creating such a legal framework, it is argued, is impossible on the national level as it would inevitably lead to the absence of legal consistency in this regulation.

The previous version of the Directive from 1996 set the similar set of rules, but they would nevertheless be solely attributed to construction workers.[61] For this reason and taking into account the changing cross-border nature of the employment in the EU and the bases of the Internal Market, the Commission saw the amendment as necessary and timely. As for the alleged poor justification of the necessity of the change, the communiqué mentions the Assessment report that accompanied the proposal, which in depth studied the subsidiarity and proportionality compliance of the new legislation. On the basis of these arguments the Commission decided to maintain the proposal.

[61] Communication From The Commission To The European Parliament, The Council And The National Parliaments on the proposal for a Directive amending the Posting of Workers Directive, with regard to the principle of subsidiarity, in accordance with Protocol No 2.

3. Practical application of the Early Warning Mechanism, analysis and comparison of the three Yellow Card cases

3.1. Practical issues with the Mechanism and the counterarguments in favour of its usability

3.1.1. Time constraint

It has been mentioned several times, by both the national parliament representatives and the scholars, that the timeframe of eight weeks is too narrow for conducting the ex-ante subsidiarity review properly. It should be noted though that we are speaking of an already extended timeframe, as in the Lisbon Treaty's predecessor, the Constitution treaty, the timeframe proposed was even shorter – six weeks – derived from the previous position on ex-ante review entailed in the Amsterdam treaty.[62] Of course, whether this period is sufficient or too short depends a great deal on the internal procedures of each national parliament followed for issuing a reasoned opinion. As we know, in some the whole plenum is needed to agree upon the text of the RO, in others - its issuance is delegated solely either to the European Affairs Committee within the parliament or other issue-specific committee specialising on the field of the legislative proposal. Some parliaments, notably, the Spanish Congress of Deputies, engage the regional parliaments as well in the reasoned opinion adoption, granting them four weeks out of eight for presenting their proposals for RO's issuance.[63] Considering the narrow timeframe, the absence of needed expertise, or even political motivation to engage, many regional parliaments though prefer to delegate the task of subsidiarity review of the EU-originating legislative acts to the regional governments. That means that instead of mobilising the EWM, the regional governments communicate any issues they discovered to the national government, which, in its turn, influences the position of this government in the Council. Such a way of scrutiny allows for a less restraint timeframe for decision-making, but on the other hand does not help to the "parliamentarisation" and its more direct electorate participation to the EU legislative process.

But anyways, many European Member States are parliamentary regimes (the government is chosen by a favourable majority in its parliament). Therefore, the EWM

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[62] KIIVER, ref. 1, p. 156.

[63] VARA ARRIBAS and HOGENAUER. Legislative Regions after Lisbon: A New Role for Regional Assemblies? In NEUHOLD, C., O, ROZENBERG, J. SMITH and C. HEFFTLER. (Eds.) *The Palgrave Handbook of National Parliaments and the European Union*. Palgrave Macmillan UK, 2015, p 142. ISBN 9781137289124.; KIIVER, ref. 2, p. 41.

can be used by those parliaments´ political majorities as a form of pre-work for its government´s future vote in the Council. This would mean that the parliaments can participate in the EU legislative process even if they do not provide a RO (or if they do not finish it on time). This switch of the parliament focus, from influencing the European Commission to influencing their own government, may be even understood not as a watered-down use of the EWS but as a perfectly valid (though unexpected) use of these MP´s time.

3.1.2. Lack of incentive, technical character of the proposed legislative acts

As outlined earlier, the second issue is the lack of incentive of the parliaments to devote their time and effort to European questions due to the belief that such engagement cannot bring them much political capital and help their re-election. Instead, the parliamentarians prefer to concentrate on domestically relevant issues. Moreover, many of the proposals of the Commission of the EU bare a very technical character; therefore all MPs as such cannot participate in their evaluation, whereas on many instances the specialists in the field are not available or overloaded with other work.

Nevertheless, it would be unfair to dismiss the EWM as impractical, due to its level of technical complexity, without dismissing any national regulations that are equally technical or equally distant from the concerns of the "average citizen". A highly technical and "out of the media radar" regulation can nevertheless be a highly salient issue for small organized pressure groups (such as unions or industrial associations) with real influence over specific political parties. In any case, the decision of each MP on whether to devote time to the EWM or not cannot be solely attributed to flaws in the mechanism itself. I would find it hard to argue that the MP´s free choice of not getting involved in one issue is, for some reason, less democratically valid than the choice of doing so. We should not confuse the (serious) issue of lack of interest in the EU affairs of some MP and their constituencies with the (separate) debate on whether that MP has a real chance of influencing the European decision-making process.

3.1.3. Issues of the interparliamentary cooperation

Another discouraging factor for the parliaments against using the EWM and attempting to trigger a Yellow or Orange Card Mechanism may be the little influence

that just one Member State parliament or its chamber has. In order to use the tool successfully, the parliaments need to coordinate among each other to issue a sufficient number of the reasoned opinions that would amount to threshold sufficient for a Yellow or Orange Card. Interparliamentary coordination is in many instances a tricky business, that due to the language barriers, mistrust, lack of initiative from the parliamentarians or even the absence of means. One may argue that the IPEX platform was created exactly for the purpose to facilitate the interparliamentary cooperation. Unfortunately, in practice it proved to be underused since many parliaments simply do not upload the texts of their reasoned opinions there. Some parliaments do upload the texts, but in their native language, without the translation and with a brief summary in English at best, which is another barrier for successful coordination.[64] As the previous section notes, in many instances the interparliamentary cooperation, despite these difficulties, proved to bring fruit, but on the other hand one cannot deny that there is still a quite uneven level of involvement featured by different parliaments and therefore the state of the matter is far from being ideal.

So far, the cooperation via the network of the permanent representatives of the national parliaments to the European Parliament, located in Brussels, proved to be the most effective.[65] These representatives have the function of not only coordinating bodies for the national parliaments themselves regarding the EU matters, but as well of the primary source of the information regarding the developments on each Member State for the rest of the EU officials. These representatives can brief the EU officials and other national parliaments' representatives regarding the situation in their country, political developments and so on, especially in critical and turbulent situations.

These representatives proved to be very handy once one parliament decided to agitate their peers for accumulating votes for the Yellow Card triggering. On sight networking proved to be a much more efficient way of coordination than an online platform.[66] One should as well not forget that when we speak of the officials finding themselves on the daily basis in the middle of the EU processes, it is assumed that they come through a certain process of "EU socialisation" and therefore become more prone

[64] KNUTELSKÁ, Viera. Cooperation among national Parliaments: an effective contribution to EU legitimation? In: CRUM, Ben and John Erik FOSSUM. *Practices of Inter-Parliamentary Coordination in International Politics: The European Union and Beyond.* ECPR Press, 2013, p. 41-43. ISBN 1910259306.
[65] Cycle of lectures "Interinstitutional Relations: European vs. Domestic Institutions [ES] (EU)" by Mgr. Viera Knutelská, Ph.D. held in the Faculty of Social Sciences of Charles University in Summer Semester 2016.
[66] Cycle of lectures "Interinstitutional Relations: European vs. Domestic Institutions [ES] (EU)".

to take European agenda more seriously and be more involved and engaged in it. This phenomenon is also said to emerge frequently among the Members of the European Parliament. The assumption is made based on the assessment of their engagement and behaviour after they return to domestic politics.[67] [68]

3.1.4. The alleged weakness of the Mechanism

Lastly, the lack of the initiative of the national parliaments to execute the EWM may be also justified by the alleged relative weakness of the Mechanism.[69] As scholars point out, "there is no such thing as a Red Card"[70], meaning that the national parliaments cannot veto any proposal. Moreover, the Yellow and the Orange Cards can be as well seen as quite weak: the Yellow Card's impact is limited to the EU Commission just needing to justify the subsidiarity compliance and appropriateness more thoroughly (one may even suggest that merely more wordy), after which it can return the piece of the legislation back to the circles of the ordinary legislative procedure. The Orange Card in its turn forces the EU Council and the EP to vote and *"...if a simple majority of members of the EU Parliament, or 55% of Council members, find that the proposal breaches the principle of subsidiarity, the proposal will not be given further consideration".*[71] In case the proposal is supported by the Council and the EP, the concerns of the national parliaments risk to stay not addressed. It is important to bear in mind that in the case of the Orange Card the procedure is only applicable to the legislation initiated by the Commission and thus falling under the ordinary legislative procedure.[72]

As it has been argued, supposedly the influence of national parliaments on their governments represented in the EU Council should be anyways able to curb the legislation that is not supported by a NP. On the other hand, it was observed that

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[67] CRUM, Ben and John Erik FOSSUM. Conclusion. Towards a Democratic Milti-Level Parliamentary field?. In: CRUM, Ben and John Erik FOSSUM. *Practices of Inter-Parliamentary Coordination in International Politics: The European Union and Beyond.* ECPR Press, 2013, p. 251-268. ISBN 1910259306.

[68] Peculiarly enough, the European institutions frequently provide better opportunities for career development for female politicians, which might face difficulties in access to promotion and training within the framework of their domestic institutions. (Ibid.)

[69] KIIVER ref. 2, p. 132-133.

[70] BOKHORST, SCHOUT and WIERSMA, ref. 1., p. 104.

[71] Subsidiarity control mechanism. In *ec.europa.eu*. [online]. Available at: https://ec.europa.eu/info/law-making-process/how-eu-laws-are-adopted/relations-national-parliaments/subsidiarity-control_en.

[72] KIIVER, ref. 2, p. 28-31.

especially the parliaments that feel weakened in the tackling of the EU issues on the domestic level are more active in the EWM and RO issuing. The Mechanism represents for them unique opportunities to make their voice heard and act as sound opposition to their respective governments in the EU affairs.[73] In many instances this concerns the parliaments that may be located on a different place in the political spectrum in contrast to their respective government (that is quite frequent for the parliaments in presidential regimes or where a broad coalition is loosely supporting a minority government).

Nevertheless, despite all these difficulties, the Mechanism was triggered a number of times already; therefore, it is not outside the capabilities of the NPs to overcome the difficulties listed above. The argument regarding the rarity of the Mechanism triggering is debunked by optimistic scholars, e.g. Cooper, as he claims that the whole purpose of the Mechanism is to be an ad hoc "alert" measure that should be needed rarely.[74] After all one would assume that mostly the Commission makes proposals on the fields that fall into its jurisdiction. Furthermore, one may argue that, in the European political system, with its non-written principles favouring inter-party compromises and regional power balances, a minority group of countries with high stakes on a particular issue can have a de facto veto power. This veto is not due to fear of the EC of a later contrary vote in the Council, but to the fear of alienating a whole country or political family from the European project. In this context, an early sign of a strong opposition may be enough for the European Commission to redirect the proposal to a less confrontational solution, such as the Enhanced Cooperation Mechanism or a watered-down formula of the same idea.

3.1.5. The positive influence of the Mechanism

The next indirect impact of the EWM was touched upon already in the previous section, it being the increased salience of the interparliamentary cooperation for the actors involved. The COSAC platform gained in significance as it proved to be the socialisation and consensus building sight not only among the NPs, but with the Commission representatives as well.

The impact of this socialisation, also touched upon previously, is explained quite well in Crum and Fossum. The interparliamentary cooperation encourages the processes

[73] CRUM and FOSSUM, ref. 1, p. 259-262.
[74] COOPER, ref. 3, p. 451.

of mutual learning, sharing of ideas and policy models.[75] Even for the parliaments that are more sceptical towards the (deeper) European integration idea there is a natural incentive to participate in the interparliamentary exchange and in the EWM as that provides them with a platform for their deliberation and their opinion. In general, as Crum and Fossum put it, there is very little coercion when it comes to the participation in the parliamentary exchange. They as well see it as a virtue since a more institutionalised system could, perhaps, be too intrusive and amplify the democratic accountability problems.[76]

The tensions and competition, frequently seen in the mode of interparliamentary cooperation, are inherent to the behaviour of national parliaments, as Crum and Fossum argue, but that is not necessarily a problem. In cases of crisis the parliaments tend to disassociate themselves from the cooperation, and within the framework discussed they have this option.

That does not debunk the unquestioned virtue of the Early Warning Mechanism - the so-called "awakening" of the parliaments. From the "losers of the instigation process" they got their power of influence institutionalised in the form of EWM and with every new case, the parliaments seem to become more accustomed to the process and to implementing it in their practice. A great deal of help came from the Commission itself when, prior to EWM' introduction into practice, it ran the so-called subsidiarity tests involving the national parliaments. Back then, in the period when the Constitutional treaty was being prepared, the parliaments, as it was mentioned before, were to have six weeks to react on the legislative proposal and issue their reasoned opinions.[77] Arguably, these tests helped envisage the subsequent EWM as a more usable and approachable tool.

As it was touched upon before, both the national parliaments of the Member States active in the European project and those that are generally more sceptical about the EU found use in the newly introduced Mechanism. Whereas for the former the EWM is a chance for the development of an "ever-closer Union" with more integration happening on each level, including the level of national parliaments, for the latter it is an opportunity to express their sound "no" in case the issue entails further "undesirable"

[75] CRUM and FOSSUM, ref. 1, p. 253-254.
[76] Ibid., p. 265-268.
[77] KNITELSKÁ, ref. 1, p. 40.

integration. The Mechanism gave a great deal of control to the national parliaments, albeit "soft", but nevertheless functional and informative.

All in all, despite the fact that the Mechanism still has its flaws and "falls well short from ideal requirements"[78], the European Union remains a well-deserved flagman regarding the legitimating question in international institutions. Combining both a directly elected supranational Parliament (EP) and the accountability system to the Member States' parliaments is unique and cannot be found in any international organisation. The EU thus confirms its classification as a *sui-generis* institution, pioneering in its way to a more profound supranational legitimacy.

3.2. The analysis and comparison of the three Yellow Card cases

The theory presented in the first part of the thesis suggests several features to be innate to the EWM and to the Yellow Card Mechanism:

- The ROs should be tacking subsidiarity issues exclusively. The Commission is not supposed to react to NPs criticisms not connected to the subsidiarity compliance issue;

The following theoretical assumption roots itself in the text of the Lisbon treaty itself. As the outlines of the three Yellow Card cases in the previous section suggested, it is though not always the case. So the question is why the NPs chose to include the non-subsidiarity concerns into their ROs and why the Commission chose to address these concerns.

- The EWM implies interparliamenatry coordination when issuing ROs and when there is an aim to reach a threshold for a Yellow Card. Such deepening cooperation creates a sort of a *Virtual Third Chamber* (Cooper) or a *Multilevel Parliamentary Field* (Crum and Fossum);

Can we observe this being true for the interparliamentary cooperation in the three Yellow Card instances? It is quite obvious that one NP cannot influence the legislative process much, but one national parliament can persuade other NPs to follow suit and to issue a reasoned opinions; it can persuade other NPs that the issues raised are

[78] CRUM and FOSSUM, ref. 1, p. 262-265.

acute for other Member States as well and thus create a situation when Yellow Card is more likely. Whereas the interparliamentary cooperation is always a necessary "ingredient" of the Yellow Card triggering is to be accessed via the subsequent comparison.

Whether the coordination in the three cases was stable and consistent enough answers the question whether we can speak of a Virtual Third Chamber (Cooper) or a Multilevel Parliamentary Field (Crum and Fossum) emerging. The observation of how this coordination worked in every of the three cases and whether any dynamic can be detected from case to case is to be discussed further on.

- The instances of the Yellow Card resulted in subsequent increase of the accountability and we may speak of the democratic deficit being curbed via the Mechanism.

The outcomes of the Yellow Card triggering should shed light on the question above. The extent to which the voice of the NPs had influence on the Commission and made it amend the legislation or otherwise take into consideration the criticisms made in the reasoned opinions may be seen as a criterion of whether another accountability dimension was added to the judicial procedure.

In the very first case of the Yellow Card triggering, as it was already mentioned, there was seen a clear influence of one of the parliaments (Danish Folketing) on the process. The Danish parliament made conscious effort to persuade other Member States' parliaments to issue reasoned opinions in order to reach the threshold for the Yellow Card triggering, using the platform of the COSAC meeting that happened to be scheduled to occur right in the beginning of the scrutiny process timeframe in Denmark (the sight of the meeting corresponds to the country currently holding the semi-annual presidential position in the EU). The pattern may be obvious even if one takes a look at the reasoned opinions of the NPs, available on the IPEX website. The parliaments' representatives express very similar concerns in the wording of their ROs in comparison to those featured in the Denmark's opinion, authored by Eva Kier Hansen, the Minister of Social Affairs of Denmark at that moment. Only the RO by the UK varies in length from the rest, as it gives the detailed references to the passages of the proposal, item by item expressing their opinion on why these passages are a proof of the insufficient justification of the necessity of the proposal and its compliance with the subsidiarity principle. But all in all the criticisms expressed by the UK House of Commons were the

same as of the other NPs: shortly saying, the Commission was getting into the area of the exclusive competences of the Member States, the justification was insufficient and the proposal itself did not bring any added value to the currently existing legislation. Instead of creating a harmonised approach, the UK's RO claimed, the piece of legislation would rather disharmonise the already existing systems of collective action regulation existing in Member States.

As one can see, all these criticisms indeed tackled the subsidiarity dimension of the proposed legislative act, fitting the theoretical description of the subsidiarity principle as proposed by Kiiver. The Commission's responses in their turn upon the reading proved to be not very different from one another (literally, the same text was used). Even the lengthy RO issued by the UK House of Commons received the same answer. One may say that was due to the fact that by the time the answer of the Commission were issued, the decision to withdraw the legislation had been made already, which was explicitly mentioned in the answers' texts. Despite the withdrawal the Commission addressed the issues raised, stating that it saw no breach of the subsidiarity principle by the legislation and that it indeed deemed the legislation necessary on the EU level. The Commission's argument was that the respective provisions were absent from the Treaties' texts, but the authority of the EU in this regard was de facto established by the European Court of Justice ruling (Viking and Laval case). Therefore the aim of the legislation was to confirm an already established precedence.[79]

The second case saw a more elaborated and lengthy reasoned opinions submitted by the national parliaments. As in the previous case, the general necessity of the measure was questioned as there were already coordinating bodies established to help the Member States coordinate in curbing crime (OLAF, Eurojust). Again, these criticisms fall into the frawework of subsidiarity concerns. But also this time, and the Commission notes that itself in its answer to the parliaments, the reasoned opinions to a great extent contained objections not necessarily connected to subsidiarity, alongside those that did. The Commission, as it was mentioned before, admitted that in some cases the line between subsidiarity and policy concerns is thin, therefore it pledged to consider the remarks of the NP as connected to subsidiarity to the extent that was possible. The rest of the objections, which clearly had nothing in common with

[79] The answer of the European Commission to the reasoned opinions on Collective action proposal.

subsidiarity, were addressed separately, in the framework of the Political Dialogue procedure.

It seemed that this time there was no clear pattern of which states' parliaments decided to issue a RO. Many states expressed concerns in the EU intervention meddling too much with their home criminal law and therefore making the process less effective, slow and not transparent (for instance, Czech Senate). Others were more concerned that the piece of legislation seemed to omit important provisions connected to criminal law, such as the suspects' rights (Cyprus), thus making the provisions of the legislation weaker than those established in the Member States. Finally, to some the fact that the piece of legislation was framed as a resolution, therefore the "strongest" type of a EU legislation, and not as a directive, allowing the Member States flexibility in the implementation of the provision, was a deal-breaker. The latter concern deserves especially close attention, as it deals with the notion of proportionality, connected to subsidiarity as they are outlined in the same Protocol, a part of the Lisbon treaty.[80] Whereas some scholars see the notions as connected, they do not literally coincide and the wording of the EWM as outlined in the Lisbon treaty suggests that the reasoned opinions should be used only for expressing the subsidiarity concerns, not the proportionality ones.[81] In this particular case the criticism of the scale of the legislation impact indeed seems to be rather political as it defies the proposed policy type by the Commission. On the other hand it can be seen as connected to subsidiarity as it meddles into the right of the Member States to design their laws as they see fit. The distinction is indeed rather hard to grasp and thus it is not a surprise NPs include such criticisms in their ROs. Then again, the pledge of the Commission to assess the criticisms in the framework of the subsidiarity as much as possible in kind encourages NPs not to avoid them.

The peculiarity of the second Yellow Card case is no doubt in the fact that some national parliaments on the contrary decided to use their ex-ante scrutiny right to support the legislation, voicing the opinion regarding its necessity and proportionality. An important note was made by several NPs, among them the Slovenian one: the mere fact of the establishment of the EPPO cannot be considered a subsidiarity breach as the provision presupposing the office's establishment was a part of the Treaty of

[80] Protocol (No 2) on the application of the principles of subsidiarity and proportionality. *Consolidated Version of the Treaty on European Union.*
[81] Protocol (No 1) on the role of National Parliaments in the European Union. *Consolidated Version of the Treaty on European Union*.

Functioning of the European Union, ratified by all Member States. Such a use of the EWM (support of the legislation instead of criticism) was not expected neither by the scholars nor by the wording of the EU Treaties themselves. This may be deemed as a clear sign that the national parliaments used the tool not just as "emergency breaks"[82] for a piece of legislation, but they were eager to conduct constructive dialogue with the Commission as a full-fledged (new) European institution.[83] That may be an argument in support of the notion that slowly but steadily the "Virtual Third Chamber" or "Multilevel Parliamentary Field" is emerging.

The fact that some NPs expressed their support for the legislation probably helped the Commission to take the decision to maintain the Resolution's text, though as it pledged, considering all the comments made by the national parliaments. Even before the ex-ante review the draft legislation contained the provision that, even in the case of lack of the approvals from all Member States, the Resolution may start functioning in the framework of the Enhanced Cooperation. Just eight Member States needed to opt for the adoption so that the process could be triggered, which was the case.[84] At the end the proposal, after gaining several amendments, got some states on board among those that previously voiced their concerns in the form of ROs (e.g. France, Slovenia, Romania, the Czech Republic, and Cyprus).[85]

Concerning the case of the third Yellow Card, the amendment of the Posted Workers Directive proposed by the Commission in 2016 invoked a new extensive ex-ante review, gaining a record of 22 votes by the NPs and their respective chambers.[86] In this case for the first time a clear pattern was seen regarding which countries decided to issue a RO: except for Denmark, they all were the Eastern states of the Union.

The presence of the pattern is not surprising, as it was already mentioned, as these countries felt that the legislation might negatively influence their competitive

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[82] POLLACK, Johannes and Peter SLOMINSKI. EU parliaments after the Treaty of Lisbon: towards a parliamentary field? In: CRUM, Ben and John Erik FOSSUM. *Practices of Inter-Parliamentary Coordination in International Politics: The European Union and Beyond*. ECPR Press, 2013, p. 145-148. ISBN 1910259306.

[83] CRUM and FOSSUM, ref. 1, p. 262-266, COOPER, ref. 1, p. 456-458.

[84] Communication from the Commission to the European Parliament, The Council And The National Parliaments on the review of the proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office with regard to the principle of subsidiarity, in accordance with Protocol No 2. In. *www.ipex.eu*. Available at: http://www.ipex.eu/IPEXL-WEB/scrutiny/APP20130255/huors.do.

[85] 20 member states confirm the creation of an European Public Prosecutor's Office. In *www.consilium.europa.eu.* [online.] 2017.[ref 2018-03-27]. Available at: http://www.consilium.europa.eu/en/press/press-releases/2017/10/12/eppo-20-ms-confirms/.

[86] www.ipex.eu [online]. Available at: http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20160128.do.

advantage as the lower labour cost countries of the Union. Many, if not all, expressed their reservations regarding the piece of legislation being potentially capable of negatively affecting the basics of the Free Movement of goods, services and people. For many the EU stepping into the sensitive field of remuneration with an initiative that, although slightly, resembled an attempt to harmonise wages and taxes and therefore meddle into an exclusive competence field of the Member States was a red flag.

As in the case of the second Yellow Card, the Commission responded to all concerns of the Member States' national parliaments, making a distinction between the concerns related to subsidiarity and those that regard rather the policy itself. The first were addressed in a common letter to all the NPs that issued a reasoned opinion, as many have expressed similar subsidiarity concerns. The Commission, although not obliged, responded as well individually to each parliament, commenting on the issues not related to subsidiarity.

The Commission officials emphasized that the legislation regarded only the rights of the posted workers and by no means regulated the wages policy of any Member State. It advocated that the action on the Union level is the only capable of resolving the issue as the problem is by its nature a trans-border one. The Commission made effort to "*consult widely*" with the Member States on COSAC meetings in June and July 2016 to ensure that all the questions and concerns were addressed and that the alleged absence of consultations prior to the proposal issuance would be compensated for (although the Commission did not admit the lack of consultation in its response to the NPs concerns).[87]

It may be said that broad consultations and active engagement in the framework of the political dialogue gave its fruit: to date, the piece of legislation was ratified by both the European Parliament and the Council and is due to be approved by COREPER and adopted in the European Parliament's Employment and Social Affairs Committee.[88]

After analysing closely all the three cases of the Yellow Card triggering we may conclude that contrary to what many scholars previously suggested, only in the first

[87] Communication from the Commission to the European Parliament, The Council And The National Parliaments on the review of the proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office with regard to the principle of subsidiarity, in accordance with Protocol No 2.
[88] Posting of workers: MEPs and Council strike a deal on pay and working conditions. In www.europarl.europa.eu. [online]. 2018. Available at: http://www.europarl.europa.eu/news/en/press-room/20180319IPR00014/posting-of-workers-meps-and-council-strike-a-deal-on-pay-and-working-conditions.

case the active engagement of one actor (Danish Folketing) was actually needed to trigger the Mechanism. This is understandable since in the very first case there was little experience with using the Mechanism, especially from the side of the newer EU Member States. Later on we see that the NPs seem to engage in the ex-ante scrutiny process by their own initiative, especially once they feel that the EU is stepping into the area of the exclusive Member States' competences and in case the issue is salient to these Members. That was explicitly seen in the third case, when the Commission stepped into the field of wages, extremely salient to Eastern European EU Members, which persuaded the national parliaments to adopt reasoned opinions, even though for some of them that was not a very frequent practice.[89] The point is that preventing the EU from meddling into the area of MS competences coincides largely with the notion of subsidiarity; therefore, one may suggest that the Mechanism actually functions the way it should.

As for the existence of any patterns in which states issued reasoned opinions, the only clear case is the Posted Workers Directive. That can be explained, as mentioned before, by the salience of the issue to these particular Member States who were sharing common labour market characteristics. Their active engagement though is a sign of them deeming the instrument as useful.

` While studying the reasoned opinions available on the IPEX website, one may notice that in the third Yellow Card case the respective sections of the website seem to be a bit more filled by the respective NPs, signalling a slightly more active use of the platform. Not in all cases translations into EU working languages were available, but the situation in this regard seemed to improve in comparison with the previous cases.

Peculiar is as well the seemingly increased salience of the COSAC meeting with the EWM introduction.[90] This platform is now used more actively and not only as a coordination field, but as well as the sight of the direct dialogue of the NPs with the Commission, allowing getting closer to a consensus even prior to the draft legislation publication. This platform is of a great use to the Commission itself, as *"…for the Commission representatives it is also quite useful to hear opinions outside of their microcosm*".[91]

[89] COOPER, ref. 3, p. 1409-1410.
[90] POLLACK and SLOMINSKI, ref. 1, p., 159.
[91] KIIVER, ref. 2, p., 117.

All in all the outcomes of the three Yellow Card cases saw one piece of legislation withdrawn (even though as claimed by the Commission not due to the Yellow Card process) and two currently on a success track towards implementation, albeit one being implemented in the Enhanced Cooperation framework. Two opposite conclusions could be made out of this fact: either that the Mechanism was too weak to stop the legislation, as many scholars suggested, or that the Mechanism opened an entrance for the NPs to engage in the consensus building and thus making the legislation process more accountable.[92] I believe the second conclusion is closer to being true as via the wording of the reasoned opinion we saw an attempt to conduct a constructive dialogue rather than to halt the process overall. In many instances, the NPs merely suggested what should be added to the text so that they would find it acceptable. During the third Yellow Card process the Danish Folketing, for instance, proposed to add the provision that the definition of pay and terms and conditions for temporary workers explicitly to the text of the directive as this area falls under the competence of the Member States. It was not, the Danish parliament claimed, sufficient that the mentioning of the exclusivity appeared only in the explanatory memorandum to the proposal.[93] The Hungarian parliament in its turn debunked the introduction the concept of "remuneration" instead of the previously used concept of "minimum rates of pay" as confusing and having no added value.[94] The Commission answered to these criticisms providing more detailed explanation of what is proposed and thus trying to soothe the raised concerns. It should be noted that the Commission addressed in length and methodically the raised issues. The further continuation of the legislative process on the Posted Workers Directive amendment can be attributed to that.

All in all, in can be concluded, that as long as the Commission makes effort not just to engage the NPs opinions for the sake of just blindly following the rules, but for the sake of actual all-encompassing consensus building, the Mechanism seems fulfil its role in curbing the democratic deficit, at least to a limited extent.

Several factors show that some sort of deeper interparliamentary cooperation emerges (resembling the suggested by Cooper “Virtual Third Chamber”): for instance, the NPs using the COSAC meetings for consultations and debate on the proposed

[92] CRUM and FOSSUM, ref. 1, p.262-265.
[93] Reasoned opinion on the Commission proposal for a revision of the Posting of Workers Directive. In *www.ipex.eu.* [online]. Available at: http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20160070/dkfol.do.
[94] Reasoned Opinion of the Hungarian National Assembly. In *www.ipex.eu.* [online]. Available at: http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20160070/huors.do.

legislative acts and the NPs engaging their permanent representatives in Brussels in the opinion exchange an communication. The communication via the IPEX platform is also used more broadly, allowing the NPs not only to familiarise themselves with the ROs issued by other national parliaments, but also to monitor the number of the reasoned opinions issued. The state of art of the cooperation is though very different from the classic parliament chamber – the NPs indeed have more right and possibility to withdraw from negotiations and accept a defensive stance, not participating in these "parliamentary" negotiations and not to be punished for it. After all, it is assumed, that the NPs bear the interest of their state as first. But as far as the nature of the legislation allows for the emergence of the dialogue between the parliaments, they seem to be eager to engage in one.

4. Conclusion

The introduction of the Mechanism and the increasing awareness of the national parliaments of the benefits of its use became apparent with the third case of the Yellow Card triggering gaining more interest among the national parliaments (especially the "new-comers"). These benefits may include, for instance, the possibility of an early assessment of draft legislations alongside their respective governments. This also allows the NPs to have another direct communication channel with the Commission, without the necessity to use solely the Council and the EP "second-hand" channels. Lastly, an obvious positive "side-effect" is that the NPs get more acquainted the EU policy fields. The interest of the national parliaments in its turn triggers the interest of the citizens.

The relative weakness of the Mechanism is still a concern and the question whether its introduction actually helps curbing democratic deficit is still a difficult one. As the subsidiarity review presents itself as more of a technical instrument rather than a political one, to many experts it is doubtful how this review can make the Commission more accountable directly to the European citizens and "shorten" the distance between the EU and the Europeans. On the other hand, it has been apparent that despite the fact that it is not obliged to do so, the Commission still addressed all the concerns raised by the NPs, including the political ones, later on incorporating the solutions into its final proposal if it sees them just. In the second case that resulted in the "semi-adoption" of the resolution within the framework of the Enhanced cooperation, and as for the third case, although the outcome is still not known, the future of the piece legislation seems promising.

In addition, the scholars observe the increasing socialisation between the parliamentarians within the framework of the EWM. The prominence of the interparliamentary cooperation tools such as the IPEX platform and the COSAC meetings grows substantially. The informal contacts with the help of, among others, the permanent representatives of the national parliaments in the EU is hard to measure, but it seems quite active based on accounts of scholars studying the topic. The need to address the EU-level issues during the subsidiarity check procedure in its turn involves the self-education of the parliamentarians on the questions of the Union salience. The subsequent interparliamentary exchange brings along the socialisation, idea and knowledge transfer.

Whereas many scholars deem the instrument as quite weak, it nevertheless ensures 1) the voluntary "soft-control" of the legislation by the NPs, 2) early assessment of the draft acts and 3) the increase of the attention towards the EU decision-making process. This arguably brings the process, at least to some extent, from "behind the closed doors" to being under the direct influence of another directly elected institution. Whereas, of course, the European Parliament is also directly elected, the "second-order" nature of the elections prevents the scholars from relying on it entirely for the democratic legitimisation. The Early Warning Mechanism was meant to increase the legitimisation level, engaging the national parliaments as the "subsidiarity watchdogs" and even though the current state of art of the process is still far from ideal, a certain positive influence can observed.

It is important to note that despite the defined aim of the EWM as a subsidiarity ensuring process, the national parliaments often use it as a platform for expressing other concerns regarding proportionality, political desirability and so on. The Commission answers to these concerns with the use of the earlier introduced initiative called the Political Dialogue and pleads to take them into account while drafting and amending legislation.

The assessment of the three Yellow Card cases showed that the incentives for triggering the procedure under different circumstances were distinct, from the initiative and proactivity of one parliament in the first case to the defence of a salient issue for a certain group of states in the last occurrence. Arguably, the latest occasion seems to fit much more the envisaged depiction of how the Mechanism is supposed to work. Although many ROs raised encompassed non-subsidiarity concerns as well, the Commission, as stated previously, either tried to react on them taking them as close as possible to the subsidiarity issue, or addressed them in the framework of the Political Dialogue. Thus, according to the number of reasoned opinions raised, one may conclude most parliaments themselves deem the Mechanism as useful for triggering the debate, despite its incapability of vetoing a piece of legislation.

Should the Mechanism be improved in any way? The advocates of the so-called Red Card definitely think so, believing that unless the Mechanism is much stronger and provides a veto power, it is essentially symbolic and not that useful. Their opponents may fear that that would have a too far-reaching consequences, as in this case draft legislative acts would depend upon the count of letters (reasoned opinions) from the

national parliaments, that not always even contain justified remarks. Therefore, in case any change would be made in the Mechanism, one would have to assess very carefully how not to turn it into the unbearable bureaucratic burden instead of a consensus reaching platform.

Judged from the point of view of proponents of both tendencies, one for enhancing the cooperation within the EU and the other - for controlling the EU tighter and scaling back on integration where possible, we may assume that more Yellow Cards and even potentially Orange Cards are to be triggered. Whereas the next case would fit the assumptions made on the Mechanism to this point and if it could force the Commission to take action different from what we have seen so far, remain to be seen.

5. Summary

This Master thesis, by studying the three instances of the Yellow Cards, answers to the question of to which extent the national parliaments are now capable of and willing to influence the EU decision-making process. Despite the fact that while using the Early Warning Mechanism the national parliaments face certain burdens such as time constraint, technicality of the legislative proposals, difficulties in coordinating with other Member States parliaments and so on, they have been successfully capable to trigger the Yellow Card procedure thrice. The use of the Mechanism in its turn has influenced the way the national parliaments cooperate between each other and with the EU institutions. Despite the fact that the Mechanism is not free of flaws, it indeed adds a new dimension to the EU institutions accountability.

While there are no clear patterns in how the national parliaments cooperate in order to achieve the Yellow or Orange card threshold, by studying the three cases at hand one can see the progressive evolution of the national parliaments' cooperation patterns and channels. These observations empower us to make predictions on the future development of the notion.

Better understanding of the Mechanism helps us as well to answer the question of whether the involvement of the national parliaments in the EU decision-making process can indeed make the EU political system more accountable and transparent.

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