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Legislative Regions after Lisbon: A New Role for Regional Assemblies?

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Introduction: A new opportunity for parliamentary involvement

The existence of regional parliaments with legislative competences is an important element of federal states. In addition, a number of regionalized states have devolved legislative competences to all or part of their regions to allow for expressions of regional diversity. Eight EU member states have regions with legislative competences: Germany, Austria, Belgium, the United Kingdom, Spain, Italy, Portugal and Finland. In practice, however, many of the assemblies of these regions play only a weak legislative role compared to national parliaments. Bußjäger estimates that 85–90 per cent of all legislation was passed at the national level in Austria in 2005 (Bußjäger, 2010, p. 106). Sturm and Zimmermann-Steinhart estimate that this was the case for 75 per cent of all legislation in Germany (2005, p. 53, cited in Bußjäger, 2010, p. 106). In addition, the growing number of EU competences has further restricted this limited lawmaking function over time. Thus, Bußjäger estimates that about a quarter of laws passed by the Landtag of Vorarlberg between 2000 and 2004 were purely transposing European Union (EU) legislation, and that other laws were at least in part transposition laws.

These restrictions could potentially be compensated for by an ability to shape EU law.¹ However, the ability of parliaments to shape EU legislation is generally perceived to be limited. Bußjäger (2010, p. 107; see also Hummrich, 2009, p. 157) concludes that de-parliamentarization is even more obvious at the regional level than the national level. Hrbek states that ‘within EU Multi-Level Governance, national and – to a lesser extent – regional parliaments have to be taken into account as well’ (Hrbek, 2010, p. 149), but the ‘lesser extent’ reflects the fact that regional parliaments have less power in EU policymaking. While EU integration has posed challenges for regions in general, regional governments have been at the forefront of efforts to regain control (Hrbek, 2010, p. 148). Much of the multi-level governance literature has therefore focused

on regional governments and mentioned regional parliaments at best in passing, in the form of organizations such as the Conference of European Regional Legislative Assemblies (CALRE).²

Despite the relatively pessimistic assessments of the role of regional parliaments in EU policymaking, the Lisbon Treaty has introduced several changes that open up opportunities for improved participation, especially on the part of legislative assemblies. First, the Treaty on European Union (TEU) recognizes the principle of regional and local autonomy in its Article 4. The principle of subsidiarity is strengthened in Article 5, TEU, and the Early Warning Mechanism (EWM) is introduced in the Treaty's Protocol on the Application of the Principles of Subsidiarity and Proportionality. While regional parliaments cannot participate in the EWM directly (with the exception of the Belgian regions, for which special rules apply), Article 6 of the Protocol calls on national parliaments to consult with regional parliaments with legislative powers 'where appropriate'. The precise form of the consultation is left to the member states to decide. Finally, the Committee of the Regions (CoR) has gained the right to appeal to the Court of Justice of the European Union (CJEU) for the annulment of an act on the grounds of subsidiarity.

Overall, regional parliaments with legislative powers have gained new opportunities for direct involvement in EU policymaking, especially in the policy-shaping function that is so important for parliaments. At the same time, the new powers are only vaguely defined and the precise modalities of parliamentary involvement are left to member states to decide. However, as they generally require a collective approach to be successful, and as regional parliaments were generally seen to have limited European capacity to begin with, the Lisbon Treaty will probably lead to an increase in networking among regional parliaments.

This chapter analyses the extent to which regional parliaments with legislative powers have been able to use these new opportunities to increase their presence and influence in Brussels. The chapter examines the current conceptual literature on regional parliaments, which highlights the need for and desirability of cooperation and networking. It analyses the role of regional parliaments in the EWM and the main challenges for effective participation. Finally, it discusses the extent to which regional parliaments with legislative powers engage in networking at the EU level and make use of arenas such as the CoR or the CALRE.

Towards multi-level parliamentarism?

The EU is a complex system of multi-level governance with decision-making across multiple levels (Marks et al., 1996, p. 41) which challenges the ability of parliaments – regional or national – to control EU policymaking. In the past,

in the absence of a formal role in EU policymaking, parliaments largely became reactive institutions that tried to control the activities of their executives (Raunio and Wright, 2006, pp. 281–282; Rittberger, 2010, p. 239). However, even the control function is restricted by the informational imbalance between executives and legislatures in the EU (O’ Brennan and Raunio, 2007, p. 4; Benz, 2011, p. 1). For regional parliaments, the dual challenge consisted in the fact that even their executive was once removed from EU policymaking while, at the same time, their options for direct participation in EU policymaking were limited to the CoR (Raunio and Wright, 2006, p. 282).

As a result, the roles of regional parliaments risk shifting away from positive, constructive policy-initiating and policy-shaping roles towards a negative or restrictive control function (Abels and Eppler, 2011, pp. 20–21; Sprungk, 2011b, p. 213). Regional parliaments have two options in response to this trend: they can use the CoR to formulate consultative positions or they can use the EWM to present their views to EU actors – either by focusing narrowly on the legal implications of subsidiarity or by including policy recommendations in a broader opinion. For both types of activities, networking with other parliaments and actors is important in order to gain the information required to produce solid opinions (Abels and Eppler, 2011, p. 27; Eppler, 2011).

Various authors have begun to try and conceptually capture interparliamentary relations and networks between parliaments and EU institutions in the context of national parliaments. These concepts are easily transferable to regional parliaments. Maurer’s concept of ‘*Mehrebenenparlamentarismus*’ (multi-level parliamentarism) emphasizes the roles of individual parliaments and the interplay between parliaments (Maurer, 2002). Crum and Fossum (2009, p. 250) advance the idea of a multi-level parliamentary field, which is not just the sum of the activities of individual parliaments but also about processes of learning as a result of interaction and the emergence of norms and institutions. Benz (2011) argues that the EU has not one demos but multiple demoi, and that the democratic deficit could be alleviated through compound representation in the form of a multi-level representative democracy. However, if this system of representation is to function, national parliaments must not only represent national interests but also consider ‘national interests in the light of interests of other member states and with a concern for a common European public interest’. It therefore requires a certain amount of socialization.

The Lisbon Treaty offers regional parliaments an opportunity to become an active part of this multi-level network of parliaments. At the same time, the use of the EWM is likely to require adaptation if regional parliaments are to meet its tight deadlines. If national parliaments have to submit their reasoned opinions within eight weeks and include the regional view, then regional parliaments need to work even faster to define their position. In addition, the position has to be of sufficient quality to convince the national parliament to take it on

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board. Nonetheless, Benz (2011, p. 5) argues that the EWM could stimulate parliamentary cooperation and thus multi-level representative democracy in the EU. To what extent have regional parliaments tried to adapt and make use of the EWM? What are the factors limiting regional participation and influence? To what extent has the Lisbon Treaty led to increased networking between regional parliaments?

Regional and the national parliaments in the EWM

The introduction of the EWM by the Lisbon Treaty has for the first time placed a formal obligation on national and regional parliaments to confront subsidiarity considerations. Under the EWM, national parliaments are the national actor with the formal right to raise concerns with the EU institutions on subsidiarity grounds. In so doing, however, they must raise the specific concerns of their regional parliaments. Indeed, under this new system, regional parliaments are indirectly asked to contribute their specific political appraisal of subsidiarity concerns and send their opinions to their national parliament. The national parliament would ideally then take the regional view into account in its final opinion. The EWM defines subsidiarity as a political judgement formed by considering the opinions of all levels of governance, a reform which aims to better legitimize the exercise of competence by the EU.

The exercise of competence in the EU resides in the institutions that have the right of initiative, mainly – but not exclusively – the European Commission. In the EU, competence development has been rather expansionist and, even after the recent efforts to legislate less and better, public opinion still perceives EU action as quite invasive. Further, the questions of whether the treaties confer competence to act and the extent to which the subsidiarity principle has been respected are political judgements that before the Lisbon Treaty formally rested with the EU institutions participating in the legislative process. Under the Lisbon Treaty, national and the regional parliaments have formally become subsidiarity guardians and are expected to control *ex ante* the different institutions empowered to submit legislative proposals to the legislators of the EU member states.

How do regional parliaments exercise this control? Historically, through the doctrine of unity in the representation of the nation state *vis-à-vis* the EU, the national executives were given control over the competences that had previously been devolved. The regions could not count on any EU judicial remedy for encroachment on regional competences. Under the Lisbon Treaty, the EWM, although of a rather limited nature, forms part of a larger package that reinforces the position of the regional level of governance. Different Treaty articles contain signs of a better recognition of the role of the regional and local authorities in a multi-level EU governance system. The Lisbon Treaty explicitly

recognizes 'territorial cohesion' as a fundamental objective of the EU in addition to economic and social cohesion (Article 3, TEU; Article 174 and Article 326 of the Treaty on the Functioning of the European Union, TFEU, and Protocol 28 on economic, social and territorial cohesion). It provides for an explicit duty to respect minorities and protect linguistic and cultural diversity and, for the first time, for 'respect for local and regional self-government' (Articles 3 and 4, TEU). In addition, the CoR has gained the right to appeal to the European Court of Justice (ECJ) for the annulment of legislation on the grounds of a breach of subsidiarity.

Subsidiarity and the EWM have a role in this context since decisions are now to be made as close as possible to the citizens. In addition, decisions on the right level for action should – according to the treaties – be taken more democratically after consultation with different levels. Questions about the 'necessity' and 'added value' of a new legislative proposal will also indicate a certain degree of concern about the content of the proposal itself, and these concerns will reflect individual domestic and socio-economic as well as political considerations. Institutional loyalty will demand from all actors involved a clear and careful consideration of all subsidiarity concerns in a multi-level system of opinion building.

According to data from 2012, since the entry into force of the Lisbon Treaty, 991 reasoned opinions and contributions had been submitted by national parliaments under Protocol 2 of the Lisbon Treaty. Of these, 147 were reasoned opinions while the remaining 844 were contributions. According to the European Parliament,³

reasoned opinions are submissions which indicate the non-compliance of a draft legislative act with the principle of subsidiarity and have been communicated to the European Parliament within the eight weeks deadline referred to in article 6 of protocol 2 of the Treaty of Lisbon. Contributions indicate any other submissions which do not fulfil the criteria listed above for a reasoned opinion.

Thus, in the majority of cases, submissions from national parliaments go well beyond the issue of subsidiarity and discuss the substantive merits of the proposals. The European Parliament does not discard what is not strictly a reasoned opinion but refers these to the Committee responsible for the draft legislative act (Rule 130 (4) of the Rules of Procedure). Unfortunately, there is no legal obligation on national parliaments to clearly identify contributions from the regional level, and, even if they do, data on the input of regional assemblies into the reasoned opinion or contribution are not recorded (following the distinction established by the European Parliament Rules of Procedure).

It is therefore important to ensure that the opinions and contributions submitted by regional parliaments to national parliaments are passed on to the EU institutions by the national parliament when preparing the reasoned opinion or contribution. This may be unproblematic in federal states, but it becomes a major issue in decentralized or regionalized states such as Spain and Italy. Some concerns have been raised about the costs of the EWM for the regions, since the efforts made by the regional parliament to draft specific considerations on subsidiarity and proportionality are not guaranteed to result in a reasoned opinion or contribution if the national parliament disagrees. Even if there is a reasoned opinion, there is no guarantee that the *regional* considerations will be presented to Brussels. What happens in the case of subsidiarity concerns that are not backed by the national parliament? Some regional parliaments, for example in Italy, have used direct communication mechanisms to forward their position to the European Commission.⁴ This is now facilitated by the REGPEX network, which is discussed below.

In seeking practical evidence of the potential of the system, for example, to find the number of times national parliaments have made use of the yellow or orange card procedure to persuade the European Commission to reconsider a proposal, it is possible to find only one case. The proposed Monti II regulation raised concerns in 12 parliaments that the European Commission had overstepped its powers. Of these 12, four have regions with legislative powers: the United Kingdom, Belgium, Finland and Portugal. The reasons provided by the 12 parliaments and chambers varied, reflecting their own domestic realities. There is, however, no evidence in the reasoned opinions and contributions of specific input from any regional parliament. Nonetheless, this case shed light on how national and regional parliaments can use the system, and alerted them of the need to concentrate on specific dossiers and reinforce their cooperation mechanisms. This case also disproved doctrinal arguments that the system could not be used successfully, and contradicted claims that it would be impossible to submit views on issues not strictly related to subsidiarity, which would prevent parliaments from entering into proportionality questions.

To recapitulate, yellow and orange cards and the two types of opinion possess political teeth due to their capacity to bring to the surface conflicts over subsidiarity and put pressure on national, regional and EU institutions to confront subsidiarity concerns (Vergés Bausili, 2002). These concerns could encourage cooperation, both horizontal and vertical, among national and regional parliaments and promote a kind of partnership in the scrutiny of competence and subsidiarity concerns. The extent to which this has happened in practice is analysed below.

After four years, the EWM has overcome some of the limitations in the wording of its articles, and it could well serve as a valid mechanism to reinforce the role of national and regional parliaments in the EU integration process.

It is possible that, in the case of concerns about competence-sharing and subsidiarity considerations, clarification of the competence sharing in Article 4 of the TFEU could be achieved by the use of partnerships between national and regional parliaments. There have already been some examples of regional and national parliaments gathering opinions within the eight-week deadline under the EWM to consider the need for a reasoned opinion or a contribution, such as on the European Commission's initiative on electronic invoicing in public procurement discussed below. Partnership and collaboration between parliaments seem to be the chosen path in some countries. They offer better prospects than a strict interpretation of the wording of the protocol on the principles of subsidiarity and proportionality in the Lisbon Treaty, where the final decision to submit and how to submit reasoned opinions formally lies with the national parliament alone.

Following the initiative of the European Parliament to consider both reasoned opinions and contributions, and in the light of the European Commission's willingness to take into consideration the input of national parliaments even if the threshold for a card has not been reached, as well as its request that national parliaments highlight those contributions which come from the regional level, it might be expected that national parliaments, especially in decentralized or regionalized countries, will take greater account of inputs from the regional level when drafting their reasoned opinions. They should certainly submit both those considerations which meet the requirements of a reasoned opinion and the political considerations that fall under the concept of contributions when a subsidiarity concern is at stake. In an ideal world, this would encourage and reinforce the common work of all the parliaments of EU member states at all levels of governance. The different political appraisals will demonstrate political heterogeneity, in some cases within the same member state, and the debate generated should reinforce the legitimacy of any given EU draft legislative act.

Regional parliaments and their oversight of subsidiarity

Most regional parliaments are still in the process of reform and adaptation, but four years of experience allows us to analyse the initial impacts of the EWM, especially on regional parliaments. Protocol 2 establishes a formal right of regional parliaments to be consulted *where appropriate* by national parliaments and to submit their views within the given deadline for a national parliament reasoned opinion, that is, less than eight weeks. The decision to consult lies with national parliaments on a case-by-case basis. If consulted, the time given to a regional parliament to contribute is also decided by each member state. In practice, all legislative proposals have been passed to regional parliaments by either the executive or the legislature, leaving it to the regional level to decide

whether a given proposal touches on its devolved competences. The ability to take this decision, which is necessary to ensure regional autonomy, has its costs. Regional parliaments have had to – or are having to – build the capacity to be selective and to filter a huge number of EU documents.

All national parliaments have interpreted the optional tool of consulting regional parliaments where appropriate as a requirement to give them the opportunity to participate. However, the system has not evolved in such a way that regional parliaments can wait passively to be consulted on specific proposals by their national parliament. Instead, they are de facto expected to be alert to and actively identify problematic proposals and to take an independent decision on whether a reasoned opinion is required.

As a consequence there need to be channels of communication and cooperation to ensure that complete information is received in time by regional parliaments, as well as a procedure on consideration of the contributions provided by them to national parliaments within the given time frame. In cases where a reasoned opinion is issued, the system should also ensure that this opinion contains reference to the inputs provided by regional parliaments.

More importantly, the decision by national parliaments to transfer all legislative proposals without filtering has resulted in a heterogeneous set of mechanisms created by the regional parliaments to enable them to select at a very early stage the legislative proposals that might be of interest to them. For example, most regional parliaments with legislative powers now work with the Work Programme of the European Commission to preselect the dossiers of relevance to them. Different systems have been established for exchange of information and cooperation with the executive. For instance, in Austria (Vara Arribas and Bourdin, 2011), the competent ministry is obliged to provide both chambers with all the relevant information on every EU legislative proposal, ‘including a subsidiarity analysis’. In addition, every calendar year the competent ministry makes available to parliament a list of envisaged legislative initiatives arising from the European Commission’s work programme. The responsible federal ministries also forward to the regions information about the legislative forward planning of the European Commission in their given policy sector. The *Verbindungsstelle der Bundesländer* (national contact point) coordinates distribution of this information to the regions. The main tasks of the national contact point are to support the regions in coordinating their views and to circulate information for the purposes of national regulation and decision-making. It facilitates the exchange and circulation of documents, information and views and in this way contributes to better preparation and coordination of the work within the Bundesrat.

Different examples illustrate the established mechanisms for cooperation on the early selection of dossiers. In the United Kingdom (Vara Arribas and Bourdin, 2011), neither of the Houses of Parliament has an established

procedure for filtering EU draft legislative acts in order to decide whether it is appropriate to forward them to the regional parliaments. The House of Lords, the second chamber, has stated that it will not submit proposals to regional parliaments as it is up to the regional parliaments to identify which proposals concern them and to draw their concerns to its attention. However, staff members maintain informal contact and can draw particular dossiers to the attention of regional parliaments. The three devolved legislatures receive the EU draft legislative acts to be evaluated within the EWM through a filtering procedure established at the regional level to decide on their relevance to their respective regions. In Scotland, there is a formal procedure carried out by officials within the Committee Office, the Research Service, the EU Office and the Legal Service in the Scottish Parliament. In addition, the Scottish Government has agreed to inform the Scottish Parliament of any proposals on which it has subsidiarity concerns. In Wales, this task is carried out by officials within the Members Research Service, the EU Office and the Legal Service. A report is prepared for each meeting of the European and External Affairs Committee. The Welsh Government has also agreed to inform the Welsh Assembly of any proposals on which it has subsidiarity concerns. In Northern Ireland, the tasks are carried out by officials in the Assembly's Research and Library Service.

There is a similar system in Germany (Vara Arribas and Bourdin, 2011). There are no mechanisms for filtering documents between the federal level and the regions. All documents meant for debate in the Bundesrat, including EU legislative proposals, must be forwarded to the regional executives, but there are no mechanisms for filtering at the regional level either. Regional parliaments receive information on EU matters and documents related to EU legislative proposals from the regional governments. In most cases this cooperation is formally set out in inter-institutional agreements or legislative acts on the right to information at the regional level. However, in practice, regional governments provide their parliament's ministry with EU draft legislative proposals together with opinions concerning subsidiarity through the relevant Land. In some cases, such as in Bremen, the regional government highlights issues that are potentially relevant in an attempt to provide an early warning, but it has no formal powers of agenda-setting or document selection vis-à-vis its parliament. With access to all this information, regional parliaments have the discretion to decide which of the EU legislative proposals they wish to submit to scrutiny and may adopt a resolution asking the government to apply to the Bundesrat to issue a reasoned opinion. If the government of a Land intends to present a motion for a reasoned opinion in the Bundesrat, it must inform its parliament of its grounds for presenting this motion. The regional parliaments have the right to express their disagreement with the government's opinion, but the parliamentary recommendations are not legally binding on regional governments by virtue of the constitutional rule on the political responsibility of executives

(*Prinzip der Eigenverantwortung der Regierung*). However, the government must explain its position if it decides not to follow the parliament's recommendation.

The Bundesrat takes decisions by a simple majority of votes cast. Individual regions are not allowed to split votes. There is no requirement for the support of a minimum number of regions in order for a motion to pass. The opinions of dissenting regions are not considered, but if a formal vote has taken place, a minimum of two regions may request that the vote be taken again. EU law offers no solution to a Land parliament in the event of its position being overridden by the Bundesrat or not considered sufficiently by its own government. Regional authorities (whether governments or parliaments) have no standing before the CJEU. Only the Bundesrat, as a federal institution with legislative competences, can apply to the CJEU, represented by the federal government of Germany, on the grounds of an infringement of subsidiarity.

In Spain (Vara Arribas and Bourdin, 2011), no filtering procedure has been established at the regional level to decide on the relevance of EU draft legislative acts or the regions' competences once they have been transmitted by the national parliament through the Joint Committee for the European Union. The procedures followed in the different Spanish regions are highly heterogeneous. Some parliamentary groups in regional parliaments (Galicia, Catalonia, the Basque Country) began by making assessments of EU draft legislative acts, which could be seen as a 'political filter' rather than a technical filter. These parliaments initially decided to send a reasoned opinion to the national parliament in every case, even if the issue was one of compliance. There was initially the political will to prove their capacity to monitor and interest in monitoring subsidiarity compliance in respect of all their regional areas of competence. Now, amid a wave of disenchantment, they have changed their approach. In some cases, such as Catalonia, scepticism has caused a downward spiral towards bureaucratization of the procedure without any political debate. The Madrid region, which has a different system, had sent the Spanish national parliament only one opinion as of 2012. In the Canary Islands, the regional government's Secretary for the EU sends details of EU initiatives to the relevant government departments in the region with a request to examine them and make comments within one week. The secretariat then has a further week to prepare a report to be submitted to the specific parliamentary committee in charge of monitoring subsidiarity. Special attention is paid to the questions affecting the Islands' special status as an outermost region.

National and regional parliaments across the EU have been pushed into a process of reform, resulting in a heterogeneous set of solutions and reactions to the Lisbon provisions at different speeds. Regional parliaments range from the most passionate parliaments – the Basque region and Aragon in Spain, for example – to the more cautious, such as the German Landtage which took their time to analyse the scope and impact of the reform.

A clear example of the efforts pursued by regional parliaments and the CoR to coordinate, inform and transfer the voices of the regional assemblies can be illustrated by the European Commission's 2013 initiative to use electronic invoicing in public procurement.⁵ The purpose of the directive was to develop a new EU e-invoicing standard and place an obligation on member states to accept those e-invoices which comply with the new EU standard. The legislative initiative on e-invoicing was one of the priorities identified by the CoR for subsidiarity monitoring in 2013. In order to assist the regional parliaments during the eight-week period of the EWM, the CoR launched a consultation through its REGPEX website to facilitate the exchange of information between the regions with legislative powers and to ensure that the observations of the regions were drawn to the attention of the CoR rapporteur preparing the CoR opinion.

At the same time, the 16th Plenary Assembly of the Conference of European Regional Legislative Assemblies, held in Mérida, Spain, in 2012, set up a working group on subsidiarity to encourage cooperation between the committees of the individual CALRE regional legislative assemblies responsible for EU affairs, along the lines of the Conference of Parliamentary Committees for Union Affairs (COSAC) for national parliaments. The objective of this group was to monitor subsidiarity compliance on the initiatives identified by the CoR, one of them being electronic invoicing in public procurement.

The replies to the consultation⁶ on the e-invoicing directive included contributions from the Austrian Lander, the legislative Assembly of Emilia Romagna, the Abruzzo regional government and the government of the Basque Country. Most concerns were related to issues of proportionality and the contributions analysed the scope and reach of the new proposal.

The Basque executive does not analyse the content of a Directive but only states its opinion on whether it conforms with the issue of subsidiarity. Other regions provide a detailed analysis on the content of the proposal. The degree of activity of the Assembly of Emilia Romagna is notable, in that to achieve maximum visibility it refers its position to a wide range of actors: the Italian Senate and Chamber of deputies, the regional government, the Conference of Presidents of the Legislative Assemblies of the Regions and Autonomous Provinces, the Subsidiarity Monitoring Network (SMN) of the CoR, European, Italian regional assemblies, Members of the European Parliament and the members of the CoR from Emilia Romagna.

Our analysis of regional contributions on the Directive on electronic invoicing in public procurement shows that Italy and Austria did not present a reasoned opinion but wider concerns. Only the Basque Country discussed a possible breach of the principle of subsidiarity.⁷ All national parliaments have established procedures to deal with the contributions of the regional parliaments related to the EWM. Regional parliaments have also set up their

own internal structures for subsidiarity scrutiny. Laws have been prepared or revised and procedures established to facilitate compliance by regional parliaments with their newly assigned obligations. Some regional parliaments, such as in Germany and Spain, have embedded the EWM in their regional constitution, and concluded, or amended existing, cooperation agreements between the executive and the legislature. In their internal procedures, some have opted to assign the task of scrutiny to one committee while others have chosen a multi-committee approach. Deadlines have been imposed and general awareness-raising has resulted from the inclusion of the EWM and the possibility of regional involvement in the Lisbon Treaty. This is especially evident in those regional parliaments with little or no culture of dealing with EU-related issues, such as those in some regions of Spain and Italy. In the less Europeanized parliaments, the introduction of the EWM has acted as a catalyst for discussions on how effective participation in the monitoring of EU legislation could be achieved. It has also led to a need for better and reinforced channels of communication and information provision between the executive and the legislature to cope with subsidiarity control in a timely fashion.

This general level of interest and commitment has often been confronted with the limitations of the EWM itself. It is only concerned with control of the subsidiarity principle – not proportionality or substantive issues. Non-legislative acts are beyond its scope. Its time limits are very short – within the overall eight weeks, making a genuine political debate highly unlikely. The reality of relations with the executive is extremely variable. Some parliaments enjoy a smooth path of information flow, and knowledge- and position-sharing, while in others these are completely lacking. Last but not least, there is a lack of incentives. Parliaments mobilize for their electorate. Whether it is profitable for a regional parliament to embark on political discussions which might not be properly reflected by the national parliament – and in the end be totally invisible to Brussels and its own electorate – is highly questionable.

Nonetheless, as is noted above, some of these shortcomings have been softened by institutional practice: the EP is receptive to proportionality concerns, which it is willing to consider; and the time limit is being addressed through pre-selection mechanisms and interparliamentary cooperation, fostered not only by regional parliaments but also by the CoR.

The potentially desirable side effect that the EWM might bring competence matters to the attention of wider public opinion is much less evident. This remains wishful thinking across the EU, but will have to be addressed sooner rather than later. Public opinion still perceives competence attribution to the EU level to be an expanding and unstoppable practice, and this is used by Eurosceptics in a populist way to attack the very existence of the EU. The lack of open public debate and adequate knowledge-sharing paves the path for such populist discourses.

Regional parliaments in the multi-level system

Regional parliaments are de facto expected to look after their own competences, that is, to identify problematic cases on their own, conduct their own scrutiny of EU proposals and report their concerns to national parliaments. If they do not send something to their parliament, it is unlikely that the national parliament will develop a 'regional perspective' for them. At the same time, they are under even greater time pressure than national parliaments, as they have to communicate their view to the national parliament well before the eight-week deadline to enable the national parliament to incorporate it into its final opinion. One of the coping strategies of regional parliaments to deal with the time pressure is cooperation: to alert each other, exchange arguments and tackle pressures for reform.

The most 'institutionalized' European channel for sub-national actors is, of course, the CoR (Sloat, 2002, p. 46). Established in 1994 by the Treaty of Maastricht, the CoR is an advisory organ consisting of representatives of the regional and local levels. Its strengths are that it has to be consulted on a range of issues by the European Commission, the Council of Ministers and the European Parliament, and that it can adopt motions on its own initiative (Loughlin, 1997; Sloat, 2002; Nergelius, 2005). It is seen as providing an important setting for coalition-building among sub-national actors (Müller-Graff, 2005, p. 109).

However, some analyses of the CoR are sceptical. Membership of the CoR is highly diverse, and regressive proportionality means that the larger member states, which are more likely to have legislative regions, are underrepresented. This makes it difficult for legislative regions to build majorities (Nergelius, 2005, p. 126; Müller-Graff, 2005, p. 110). In particular, analysis reveals that only about 10 per cent of all members of the CoR represented legislative assemblies as of May 2013. A further challenge is that only the European Commission – not the Council or the EP – regularly reports on how it incorporates the Opinions of the CoR (Domorenok, 2009, p. 154). While Carroll interprets this as meaning that the Commission takes the position of the CoR seriously, Domorenok contends that a close analysis of the Commission's reports often reveals that engagement with the CoR positions is superficial (Domorenok, 2009, p. 154; Carroll, 2011). Thus, it is often attributed only 'peripheral importance' (Sturm, 2009, p. 17).

That said, the changes introduced by the Lisbon Treaty have strengthened the CoR, in particular by making it one of the guardians of subsidiarity and by giving it the power to appeal to the ECJ in the case of a breach of subsidiarity. The CoR has fully embraced its new role, and has focused strongly on subsidiarity in its work since the mid-2000s. It is seen as benefitting from the support of its members (Domorenok, 2009, p. 160) and can thus be said to have found an

additional role in the EU system on the basis of its new right to appeal to the ECJ and its role in facilitating the use of the EWM.

Although parliaments with legislative powers are in a clear minority in the CoR, it has developed important tools to facilitate the use of the EWM that are similar to the IPEX system used by national parliaments. In 2005, the CoR created a Subsidiarity Monitoring Network which has run a number of subsidiarity tests since 2006. Like the COSAC tests for national parliaments, the SMN tests have allowed regional actors to build capacity and expertise and start a process of reform and adaptation. The work of the SMN is directed by a political coordinator from among the members of the CoR. As of June 2013 it had 146 partners, including regional parliaments and governments, and local authorities and associations. It is supported by a special unit in the General Secretariat of the CoR.⁸

As part of its subsidiarity monitoring activities the CoR developed REGPEX as a regional version of IPEX. It is a database of EU documents and reactions by national parliaments in support of regional activities under the EWM. It is also connected to the EU's legislative databases OEIL and PreLex, allowing its members to check the current state of legislation (Stahl, 2009, pp. 139–140). Regional parliaments can upload their own documents. Documents are listed thematically to help regional officials keep up to date and manage information flow, and members can sign up for thematic updates. According to its website, REGPEX currently has 71 members, including 43 regional parliaments, which means that more than half the regional parliaments with legislative competences in the EU participate in these activities.⁹

In addition to the CoR, CALRE brings together the chairs of regional parliaments with legislative powers. Its aims are to protect the subsidiarity principle, foster cooperation between regional and national parliaments and the EP, and stimulate and represent regional parliamentarianism and parliamentary control. It currently represents 74 regions from all the eight member states with legislative regions.¹⁰ The presidency rotates annually, and the work is done during the annual two-day plenary meeting of the chairs and in the six working groups. Like the CoR, one of its core concerns is monitoring subsidiarity, which is the task of one of the six working groups. Its current focus is on the possibility of participating in the Political Dialogue with the European Commission, as well as cooperation with the CoR in efforts to establish a database on subsidiarity and the EWM for regional parliaments.¹¹ Thus, while Hrbek (2010, p. 149) judges that 'the resonance in other institutions has remained very modest', there might now be an opportunity for CALRE to define a role for itself in subsidiarity monitoring.

Other attempts at interparliamentary networking have been less successful. The Scottish Parliament tried to set up a network between its European Affairs

Committee and its Catalan and Flemish counterparts (NORPEC) (Heggie, 2006, p. 36). The Basque Parliament and the Parliament of Saxony-Anhalt later joined and NORPEC was active in the negotiations on the Draft European constitution, pushing for a role for the regions in the EWM. Scotland, for example, used it to gain backing from Catalonia for one of its submissions to the Constitutional Convention (Hazell and Paun, 2010, p. 166). However, the Scottish European Affairs Committee withdrew from NORPEC in September 2007 and there is no further information available on the network.¹²

Another way to help shape EU policy and obtain information is to have an office or representative in Brussels. However, few regional parliaments are able to emulate the practice of national parliaments and station a representative there. The responses to a recent survey showed that of 22 regional parliaments with legislative powers from six EU member states, only three had a representative or office in Brussels.¹³ However, even when such a representative exists, the main tasks appear to be information gathering. The Scottish officer, for example, is responsible for identifying potentially important issues at an early stage and for providing information to the relevant Scottish committees, for example, by means of a newsletter (Högenauer, 2014).

In sum, it seems that anticipation and implementation of the Lisbon Treaty have led to a revival of regional networks and given a new sense of purpose to the CoR. The networks have not only contributed to the discussion on the concept of subsidiarity among regions, but also resulted in a support system for regions and regional parliaments. Especially for the regional parliaments, with their relatively limited staff, a central database and systematic information flows are important resources that facilitate the selection and discussion of proposals. Although not all regional parliaments are members of these networks, other regional parliaments probably benefit from the subsidiarity alerts to their regional governments.

Conclusions

The Treaty of Lisbon has, for the first time, given national parliaments a formal role in everyday EU policymaking. In the process, it has also given regional parliaments with legislative powers a new means to influence EU legislation, albeit only in the form of a vague expectation that the national parliaments of federal and devolved states will consult their regional counterparts. The dilution of regional influence might lead pessimists to doubt the impact of the EWM on regional parliaments, especially if they already think the thresholds too high, national parliaments too unmotivated or the focus on subsidiarity too narrow for the system to be effective. Indeed, the limited capacity of regional parliaments to select and scrutinize proposals combined with the lack of clarity

about how and to what extent national parliaments include the regional voice in their opinions raises the question of whether regional parliaments have really been able to gain influence in practice.

However, while regional parliaments may not have much more influence than before the entry into force of the Lisbon Treaty, Lisbon has certainly had an impact on regional parliaments. Not only have many regional parliaments implemented internal reforms to establish systems for early identification of EU proposals, and a scrutiny system that allows them to react within four to six weeks, they have also established closer cooperation with their regional governments, national parliaments and other regional parliaments in order to cope with the challenges. It is therefore possible to observe an increase in regional cooperation since the Constitutional debate and the establishment of more collaborative and systematic forms of information exchange on the part of the CoR and the CALRE. Regional parliaments have therefore become more aware of the importance of EU issues and better prepared to discuss them. This development is not unimportant. Formal powers are not enough if actors are either unable or unwilling to use them. The EWM and the case of national parliaments is a good illustration of a situation in which some actors have remained passive despite the advent of new opportunities. By giving regional parliaments limited new powers, the Treaty of Lisbon has created a wake-up call that has raised regional interest and triggered reform and adaptation. Thus, despite their limited influence now, in the long term regional parliaments may well benefit from this wave of Europeanization in the form of an increased capacity to engage with EU issues through the EWM and in national debates.

Notes

1. Regional parliaments could also compensate by focusing on control of their executives. However, this would produce a shift in the nature of their work from policy-shapers to watchdogs. In addition, party political practices limit the ability of parliaments to effectively control executives, as party loyalties tend to prevent parliamentary majorities from challenging the government (Bußjäger, 2010, p. 107).
2. Calre, www.calre.net/irisnet.be/index.php/what-is-calre/history, accessed 6 February 2014.
3. European Parliament letter dated 30 August 2012 from DG for the Presidency, Directorate for Relations with National Parliaments, last retrieved on 6 February 2014 at <http://www.europarl.europa.eu/webnp/webdav/site/myjahiasite/shared/subsidiarity/State%20of%20play%20notes/2012/State%20of%20play%2030%20August%202012.pdf>.
4. Speech by Carmen Preissing, European Commission, to the Parliament of Catalonia, September 2012.
5. Proposal for a Directive of the European Parliament and of the Council on electronic invoicing in public procurement COM (2013) p. 449.
6. Committee of Regions, *E-invoicing in public procurement*, <https://portal.cor.europa.eu/subsidiarity/regpex/Pages/E-invoicing-in-public-procurement-.aspx>.

7. IPEX (ND), *Proposal for a Regulation of the European Parliament and of the Council*, COM/2013/0627, <http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20130627.do>.
8. See Committee of Regions, *The SMN Partners*, portal.cor.europa.eu/subsidiarity/thesmnmn/Pages/The-SMN-Partners.aspx.
9. See Committee of Regions, *REGPEX Partners*, extranet.cor.europa.eu/subsidiarity/regpex/Pages/partners.aspx.
10. See www.calre.net/irisnet.be/index.php/what-is-calre/history.
11. Calre (2011) *Working Group on the Principle of Subsidiarity: Working Plan 2010*, <http://archive.scottish.parliament.uk/business/committees/europe/norpec.htm>, accessed 1 November 2012.
12. See Scottish Parliament, archive, archive.scottish.parliament.uk/business/committees/europe/norpec.htm.
13. The European affairs staff of the regional parliaments with legislative powers were contacted in writing with a request for information.

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Chapter 6

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