

Europäisches Zentrum für  
Föderalismus-Forschung  
Tübingen  
(EZFF)

Gabriele Abels (editor)

# From Takers to Shapers? Challenges for Regions in a Dynamic EU Polity

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## Preface

The talk about “Europe of the regions” goes back to the 1990s. Ever since then debates about what role regions could and should play in the EU multi-level systems come up whenever the future of the dynamically developing EU system is under discussion. The Committee of the Regions, established by the Maastricht Treaty in 1992 and becoming operational in 1994, is a key actor and focal point for such discussion about regional actors and activism. This is also the case in relation to the Conference on the Future of Europe, which started in May 2021, and which shall – by including citizens and citizens’ panels – bring forward reform ideas for the European integration project.

This Occasional Paper assembles three contributions first presented at the international conference “From takers to shapers? Challenges for regions in a dynamic EU polity” on 6–7 May 2021. The conference was organized by the Jean Monnet Chair at the University of Tübingen (Prof. Dr. Gabriele Abels) jointly with the REGIOPARL project (<https://www.regioparl.com>) and the Arbeitskreis Europäische Integration (AEI) with financial support from the Erasmus+ programme of the European Commission. We are grateful to all presenters and discussants to make that digital conference possible.

The articles compiled here analyse from different theoretical perspectives and with a focus on different empirical-historical developments the debates about regions, regional actors and how they shape EU affairs. Anna-Lena Högenauer analyses the involvement of regions and the Committee of the regions in discussions about treaty changes since the 1990s. The contribution by Gabriele Abels, Martin Große Hüttmann, Sarah Meyer and Simon Lenhart investigates the ongoing development in relation to the Committee of the Regions’ position towards and involvement in the Conference on the Future of Europe. Finally, the broader analytical framework provided by Paul Kindermann illuminates the role of regional parliaments and their potential democratic contribution to the EU polity. With this Occasional Paper we want to make a contribution to this important debate, and we hope to encourage further research on how regions are involved in shaping the EU polity.

Tübingen, September 2021

*Gabriele Abels*



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## Abstracts

### **Progress at Snail's Pace? Regional Involvement and Treaty Changes since 1990**

*Anna-Lena Högenauer*

From the mid-1980s, the sub-state level has become increasingly recognized as a political actor in European Union (EU) politics. Starting with the Treaty of Maastricht, a series of EU Treaty changes have recognized the democratic role of regions and local authorities and have created consultative mechanisms for them. However, the very regions that pushed for these changes – namely the strong legislative regions like the German *Länder* and the Belgian regions – became dissatisfied with the innovations of the Treaty of Maastricht almost as soon as they were implemented. As a result, their strategy focused increasingly on limiting transfers of competences to the European level in areas of importance to regions. The aim of this contribution is therefore to examine the evolution of the demands of strong legislative regions and their rights on the European level. It argues that the diversity of European regions has made it difficult to reconcile European integration with the status and functioning of strong legislative regions.

### **The Committee of the Regions and the Conference on the Future of Europe<sup>1</sup>**

*Gabriele Abels, Martin Große Hüttmann, Sarah Meyer and Simon Lenhart*

The Committee of the Regions has always been actively involved in debate over treaty reforms and changes in European governance. Thus, its strong involvement in the current Conference on the Future of Europe comes as no surprise. Drawing on the theoretical concepts of opportunity structures and institutional activism the paper illustrates and analyses the CoR activities on the CoFoE since 2019. It outlines the development of its activities and positions. Beyond activities for CoR empowerment itself, the CoR is also acting on behalf of regions and develops activities in line with its strong role as facilitator for regional engagement.

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1 We are grateful to Thomas Klöckner for his valuable support in collecting and evaluating the documents.

**Assessing the Role of Regional Parliaments in the EU:  
Parliamentary Functions and Problems of Democratic Legitimacy**

*Paul Kindermann*

It is a prevailing narrative in political and academic discourse that regional parliaments with legislative competences *should* be empowered and more involved in EU affairs because of their potential to further democratise the EU. However, it remains theoretically ambiguous how their involvement would facilitate this democratic added value. This contribution aims to address this shortcoming by outlining an analytical approach to the question: which regional parliamentary functions may serve which democratic purpose that would curb which ‘problem’ of democratic legitimacy in the EU?

## Progress at Snail's Pace? Regional Involvement and Treaty Changes since 1990

*Anna-Lena Högenauer*

### 1 Introduction

From the mid-1980s, regional politicians became increasingly interested in European policy-making. The growing regional pressures, especially from strong legislative regions like the German *Länder*, the creation of institutions for regional representation such as the Committee of Regions and the reform of domestic provisions for regional involvement in EU policy-making transformed the EU into a system of multi-level governance.

While the EU's regions have undoubtedly gained influence on the European level since the 1992 Treaty of Maastricht, the question of the correct level of regional involvement in EU affairs remains on the table. The EU's regions are very diverse and range from 'no regions' (e.g. Luxembourg) via predominantly administrative regions to strong regions in federal states (e.g. Belgium). This diversity has made it difficult to define how much influence regional actors *should* have (the answer being different depending on which member state you look at) and has hindered the emergence of strong channels of interest representation for regions. As a result, European integration is often seen as empowering constitutionally 'weak' regions, while strong legislative regions are sometimes seen to lose competences to European and national actors. Jeffery, for example, claims that the increase in regional participation rights of the 1980s and 1990s has failed to counterbalance that loss and that strong regions have become increasingly frustrated with the process of European integration.<sup>1</sup> He argues that, in the German case, the *Länder* have moved away from demands for more participation at the European level and for greater involvement in the definition of national positions towards a strategy of minimising the overlap between regional and European competences. This strategy of separating rather than sharing may be seen as an attempt to disentangle the competences of the various levels – and hence as an attempt to limit the need for multi-level interaction. However, at the same time, demands for a greater role of the Committee of Regions were consistently presented whenever the treaties were changed, pointing towards a complementing strategy of increasing regional participation in areas where competences have already been transferred to the European level.

The aim of this contribution is to examine the evolution of the rights of regions on the European level through the prism of the demands of strong legislative regions such as the German *Länder*. It argues that European integration has been difficult to reconcile with the status and functioning of strong legislative regions despite several rounds of

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1 *Jeffery, Charlie* 2007: Towards a New Understanding of Multi-Level Governance in Germany? The Federalism Reform Debate and European Integration, in: *Politische Vierteljahrszeitschrift* 48 (1), pp. 17–27.

treaty changes. The diversity of European regions is a persistent problem that prevents the emergence of effective solutions.

## 2 Treaty Changes: How Much Empowerment for Strong Regions?

The Treaty of Maastricht marked an important turning point for regions. With the creation of the Committee of the Regions (CoR), the regions were for the first time officially represented on the EU level. The German *Länder* had particularly high hopes for this channel but became quickly disenchanted: as an advisory organ consisting of representatives of the regional and local levels, the formal influence of the CoR was limited, and the diversity of its membership meant that strong legislative regions were in a minority. Over the years, the CoR has gained greater control over its own operation, obtaining its own resources and the right to establish its own rules of procedure in the Treaty of Amsterdam.<sup>2</sup> The Commission and Council of Ministers are obliged to consult it on issues such as employment, social policy, environment, transport, public health, structural funds, education and training (Art. 265 EC Treaty). It may also be consulted by the European Parliament and has the right to issue opinions of its own initiative. In addition, the CoR provides a setting for coalition-building and the debate on sub-national issues at the European level.<sup>3</sup>

While Schausberger argues that the CoR has received growing recognition as a result of its constructive work during and after the European Convention,<sup>4</sup> most academics are sceptical about the influence of the CoR. Its diverse membership is seen as leading to a lack of cohesion. In particular, the mix of representatives of strong legislative regions, weak regions and cities reduces its usefulness as a political forum for strong regions.<sup>5</sup>

The second possibility for regional engagement at the EU level created by the Treaty of Maastricht was the participation of regional representatives in the Council of Ministers. According to Art. 203 EC the Council of Ministers consists of one representative at the ministerial level from each Member State. It thus allows for representation at either the federal or the regional ministerial level. At first glance, this opportunity may seem to greatly empower regions, and Bullmann argued that strong regions may come to regard this channel as more important than a full-blown regional Third Chamber at the Europe-

2 See, for many, *Abels, Gabriele* 2021: The European Economic and Social Committee and the Committee of the Regions: Consultative Institutions in a Multichannel Democracy, in: *Hodson, Dermot/Saurugger, Sabine/Puetter, Uwe (eds.): Institutions of the European Union, 5<sup>th</sup> revised edition*, Oxford (forthcoming).

3 *Müller-Graff, Peter-Christian* 2005: The German Länder: Involvement in EC/EU Law and Policy-Making, in: *Weatherill, Stephan/Bernitz, Ulf (eds.): The Role of Regions and Sub-National Actors in Europe*, Oxford, pp. 101–118.

4 *Schausberger, Franz* 2006: Der Ausschuss der Regionen im Jahr 2005 – gefragter Partner in einer kritischen Phase der EU, in: *Europäisches Zentrum für Föderalismus-Forschung Tübingen (eds.): Jahrbuch des Föderalismus 2006. Föderalismus, Subsidiarität und Regionen in Europa*, Baden-Baden, pp. 576–594.

5 *Müller-Graff* 2005 (footnote 3).

an level.<sup>6</sup> However, whether or not regional ministers are actually allowed to sit on the Council depends on domestic constitutional arrangements, with the result that most regions do not have any access to the Council. Moreover, whichever minister sits in the Council has to be able “to commit the government of that member state” (Art. 203 EC). As only the national position may be represented and as the national vote cannot be split into regional elements, the regional representative in the Council has only a limited margin of manoeuvre. Due to the need to coordinate the national position internally before presenting it externally, participation in the Council is de facto an intra-state mechanism.<sup>7</sup>

Thus, all things considered, it is unsurprising that these initial steps towards a multi-level political system were perceived as unsatisfactory by strong legislative regions. Lobbying for more influence resumed in the mid- to late-1990s, but major changes only occurred in the context of the Draft Constitutional Treaty and the Treaty of Lisbon.

### 1.1 *The Treaty of Nice and the Struggle to Push Regional Concerns onto the Agenda*

As noted by Jeffery, the limited influence that the Treaty of Maastricht conferred on regions soon led to disappointment among strong legislative regions.<sup>8</sup> The German *Länder* and Belgian regions, for example, demanded already in the mid-1990s a clearer division of competences between the EU, member states and regions.<sup>9</sup> The rationale was that if regions could not defend their interests effectively in EU policy-making, then at least the creeping expansion of EU competences into areas of regional competence should be stopped. However, the mid-1990s were still marked by intra-regional divisions<sup>10</sup>, which prevented regional concerns from playing a role during the negotiations of the Treaty of Amsterdam. Yet, regional lobbying gained momentum in the run-up to the signing of the Treaty of Nice. Some authors like Hrbek and Große Hüttmann or Kiefer see the negotiations leading to the Treaty of Nice and the Laeken Declaration on the future discussions of European integration as a success for the strong legislative regions.<sup>11</sup> In their

6 Bullmann, Udo 1997: Introductory Perspectives – The Politics of the Third Level, in: Jeffery, Charlie (ed.): *The Regional Dimension of the European Union – Towards a Third Level in Europe?* London, pp. 3–19.

7 Kovziridze, Tamara 2002: Europeanization of Federal Institutional Relationships: Hierarchical and Interdependent Institutional Relationship Structures in Belgium, Germany and Austria, in: *Regional and Federal Studies* 12 (3), pp. 128–155.

8 Jeffery 2007 (footnote 1).

9 Pahl Marc-Oliver 2003: Die Rolle der Regionen mit Gesetzgebungskompetenzen im Konventsprozess, in: *Europäisches Zentrum für Föderalismus-Forschung Tübingen (eds.): Jahrbuch des Föderalismus 2003. Föderalismus, Subsidiarität und Regionen in Europa*, Baden-Baden, pp. 462–479.

10 Hrbek, Rudolf/Große Hüttmann, Martin 2002: Von Nizza über Laeken zum Reform-Konvent: Die Rolle der Länder und Regionen in der Debatte zur Zukunft der Europäischen Union, in: *Europäisches Zentrum für Föderalismus-Forschung Tübingen (eds.): Jahrbuch des Föderalismus 2002. Föderalismus, Subsidiarität und Regionen in Europa*, Baden-Baden, pp. 577–594.

11 Ibid. Kiefer, Andreas 2004: Informelle effektive interregionale Regierungszusammenarbeit: REG LEG – die Konferenz der Präsidenten von Regionen mit Gesetzgebungsbefugnissen und ihre Beiträge zur europäischen Verfassungsdiskussion 2000 bis 2003, in: *Europäisches Zentrum für Föderalismus-Forschung Tübingen (eds.): Jahrbuch des Föderalismus 2004. Föderalismus, Subsidiarität und Regionen in Europa*, Baden-Baden, pp. 398–412.

view, the German *Länder* and their partners (e.g. the Belgian regions) managed to shape the European agenda and to define the problems to be resolved.

Thus, the German *Länder* adopted common goals in early 2000 in advance of the Intergovernmental Conference (IGC) discussing the future Nice Treaty. The goals included the right of strong legislative regions to bring cases on subsidiarity and competence disputes before the European Court of Justice (ECJ), less EU interference with certain core services that regions and local authorities provide for citizens (e.g. transport, culture etc.) and a clear definition of EU competences to prevent the EU from slowly pushing the borders of its competences between treaty reforms.<sup>12</sup> In sum, while the Treaty of Nice did not harm the interests of the regions much, it also did not contain significant changes that would have improved their influence in the EU. One of the few concrete changes was that the CoR members would be elected representatives of a region or local authority in the future.<sup>13</sup> These reforms somewhat strengthened the democratic legitimacy of the CoR.

In fact, the main “success” of the regions was that the French Presidency prepared the negotiations of the Treaty of Nice poorly. As a result, the Treaty failed to tackle many of the institutional challenges posed by the impending enlargement to a Union of 24 member states, which meant that a future revised treaty would have to fix the shortcomings (left-overs) of the newly agreed Treaty of Nice. The member states agreed as part of the Laeken Declaration of 2001, for example, to put the regional concerns on the list of topics to be discussed in the context of the new negotiations, i.e. in the context of the Convention which was tasked to prepare the Draft Constitutional Treaty. Thus, the somewhat dubious success of the early 2000s consists in the failure of the regions to have their concerns included in this Treaty, but with a promise to discuss them in the context of the next one.

## 1.2 *New Reforms in the Draft Constitutional Treaty and Treaty of Lisbon*

The preparation of the draft Constitutional Treaty by the Convention was perceived to be fast-paced by the regions. This made it difficult for them to engage in the discussions as a group, as there was relatively little time to process new information, adopt a position and coordinate that position with other regions. Some of the coordination had to be done through written procedures due to the lack of time, and some of the German *Länder*, for example, gradually withdrew from the process due to being overwhelmed.<sup>14</sup> Nevertheless, through the *Bundesrat*, there were joint *Länder* positions.<sup>15</sup>

12 *Hrbek/Große Hüttmann* 2002 (footnote 10).

13 *Eppler, Annegret* 2004: Der Ausschuss der Regionen im Jahr 2003 – zwischen politischer Stabilisierung und internen Unregelmäßigkeiten, in: *Europäisches Zentrum für Föderalismus-Forschung Tübingen (eds.): Jahrbuch des Föderalismus 2004. Föderalismus, Subsidiarität und Regionen in Europa*, Baden-Baden, pp. 421–436.

14 *Große Hüttmann, Martin* 2003: Der Konvent und die Neuordnung der Europäischen Union: Eine Bilanz verschiedener Verfassungsvorschläge aus Sicht der Länder und Regionen, in: *Europäisches Zen-*

The regions did prepare collective positions also on the European level. The CoR, for instance, participated in the Convention with six representatives and focused its attention on the status of regional and local authorities and on the strengthening of the principle of subsidiarity. According to Eppler, it demanded

- a clearer division of competences;
- a clearer definition of the principle of subsidiarity and that it would mention the regional level explicitly;
- the respect of regional and local identities and the principle of local self-government;
- the recognition of legislative regions and their involvement in the decision-making process in those cases where their competences are affected, or the European legal act is likely to affect the regional level;
- for itself its recognition as an organ of the EU, the right to bring cases before the ECJ, a widening of the topics for which consultation of the CoR would be mandatory and a temporary veto.<sup>16</sup>

Finally, the right to ask questions to the European Commission was also on the list.

The demands of the CoR were thus – unsurprisingly – about the improvement of the status and role of this body. The most ambitious demands included a right of veto over issues on which it has currently to be consulted and an extension of the areas of mandatory consultation as well as the right to bring cases before the ECJ to review the legality of a European act. The right to review the legality of legally binding acts adopted by the European institutions “on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers” was hitherto reserved to the Member States, the Commission, the Council and the European Parliament (Art. 230 EC Treaty). In addition, the European Central Bank and the Court of Auditors could invoke it to protect their prerogatives. All other natural or legal persons could only bring an action before the ECJ to review the legality of an act, if that act directly and individually affected them (Art. 230 EC Treaty). In the absence of this right for either the CoR or the regions themselves, it was difficult for the CoR to defend its right to be consulted or for regional actors to challenge an act as breaching the principles of subsidiarity and proportionality. In addition, the CoR demanded a special role in overseeing the principle of subsidiarity and the right to ask written and oral questions of the Commission.

In parallel, in late 2000, the strong legislative regions started to meet and cooperate separately from the CoR. In 2001, they formed a new network: REGLEG. Temporarily this threatened to even marginalize the CoR. They felt that the CoR did not represent

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*trum für Föderalismus-Forschung Tübingen (eds.): Jahrbuch des Föderalismus 2003. Föderalismus, Subsidiarität und Regionen in Europa, Baden-Baden, pp. 432–443.*

15 *Bauer, Michael W.* 2006: The German Länder and the European Constitutional Treaty: Heading for a Differentiated Theory of Regional Elite Preferences for European Integration, in: *Regional and Federal Studies* 16 (1), pp. 21–41.

16 Cf. *Eppler* 2004 (footnote 13).

them well, and they did indeed often find themselves in a minority in the CoR.<sup>17</sup> Consequently, the legislative regions demanded to be represented in their own right in the Convention preparing the Draft Constitutional Treaty and pushed for special recognition and the right to bring cases before the ECJ on subsidiarity and on the division of competences. They also wanted the right of strong legislative regions to be represented on the Council of the European Union to be set out more clearly on the European level. Finally, a certain number of demands aimed to prevent further entanglement by maintaining the status quo of European competencies. These include the exclusion of the Open Method of Coordination from the Treaty, the rejection of ‘passerelle’ clauses, which would allow the Council to agree unanimously on the use of qualified majority voting in certain areas, and opposing further European competences in the areas of tourism and services of general interest.<sup>18</sup> Several of these demands were shared by other legislative regions and defended collectively through the CoR or the Conference of Regional Legislative Assemblies in Europe (CALRE; <https://www.calrenet.eu/>). CALRE represented all of the German, Belgian, Austrian, Italian and Spanish regions and Scotland, Northern Ireland and Wales. It also demanded a special status for constitutional regions in the EU treaties, a clearer division of legislative powers between the European, national and regional level and a right of appeal for the Committee of Regions.<sup>19</sup>

The member states, however, chose to strengthen the CoR over the legislative regions: the legislative regions could only participate in the Convention as part of the CoR delegation, and the Constitutional Treaty and later Treaty of Lisbon did not confer a special status on strong legislative regions except for the participation in the EWS (Early Warning System). Instead, the CoR was strengthened. This encouraged REGLEG to cooperate with the CoR on subsidiarity and facilitated a rapprochement.<sup>20</sup>

In the end, regional mobilization did result in several changes being included in the Draft Constitutional Treaty and – after the rejection of that Treaty – in the Lisbon Treaty. However, this arguably represents more a strengthening of the non-legislative regions and the CoR in general than a victory for the legislative regions.

The main changes included in the Draft Constitutional Treaty were:

- a clearer definition of the EU’s competences.
- a definition of subsidiarity that includes the regional and local level.
- a strengthening of the proportionality principle: measures should not go beyond the goals of the Treaties either formally or substantively.
- the EU can only act based on the Treaties.
- regional and local right to self-government should be respected.
- a new EWS for the monitoring of subsidiarity was created and the parliaments of legislative regions could participate (see discussion below).

17 *Kiefer* 2004 (footnote 11).

18 *Bauer* 2006 (footnote 15).

19 *Lynch, Peter* 2004: Regions and the Convention on the Future of Europe: A Dialogue with the Deaf?, in: *European Urban and Regional Studies* 11 (2), pp. 170–177.

20 *Eppler* 2004 (footnote 13).

- subsidiarity evaluations by the Commission are mandatory and have to take into account the situation on the national and the regional level.

In fact, many of the victories were mainly symbolic and are unlikely to result in substantive change.<sup>21</sup> For example, the impact of the new definition of the EU's competences or the effect of the CoR being able to bring cases before the ECJ on grounds of subsidiarity depend on the willingness of the (fairly pro-integration) ECJ to take a tough stance. In addition, while the CoR was strengthened in concrete terms by giving it the right to bring cases before the ECJ on grounds of subsidiarity, the strong legislative regions failed to secure this right on an individual basis.<sup>22</sup> Finally, the right of regional parliaments to participate in the EWS was initially interpreted as a concrete victory, but the details are left to the member states to define and the EWS has some flaws (see contribution by Kindermann).

### 3 The EWS – a Victory with Many Flaws

The introduction of the EWS clearly provided regional parliaments with new opportunities to engage with EU legislative proposals.<sup>23</sup> It was tested since 2007 before officially coming into force with the Treaty of Lisbon in late 2009.

#### 3.1 *The EWS Procedure*

The EWS allowed national parliaments to review legislative proposals for their compliance within an eight-week timeframe. If they felt that the principle of subsidiarity had been violated, and that a policy should be regulated at the national or regional level rather than the EU level, parliaments could issue 'reasoned opinions'. A reasoned opinion from a unicameral parliament would count as two votes, whereas each chamber in a bicameral parliament would have one vote. If at least 1/3 of votes indicated a breach of subsidiarity, a so-called 'yellow card' would be issued and the Commission would have to review its proposal and revise, withdraw and maintain it, giving reasons for its decisions. In addition, Protocol No. 2 of the Lisbon Treaty stipulated that national parliaments should consult the regional parliaments in their member state, if they had legislative powers.<sup>24</sup>

21 Högenauer, Anna-Lena 2008: The Impact of the Lisbon Reform Treaty on Regional Engagement in EU Policy-Making – Continuity or Change?, in: *European Journal of Law Reform* 10 (4), pp. 535–555.

22 Bauer, Michael W. 2004: Der europäische Verfassungsprozess und der Konventsentwurf aus Sicht der deutschen Länder, in: *Europäisches Zentrum für Föderalismus-Forschung Tübingen (eds.): Jahrbuch des Föderalismus 2004. Föderalismus, Subsidiarität und Regionen in Europa*, Baden-Baden, pp. 453–475.

23 Borońska-Hryniewiecka, Karolina 2017: Regional Parliamentary Empowerment in EU affairs. Building an Analytical Framework, in: *Journal of Legislative Studies* 23 (2), pp. 144–161.

24 Högenauer, Anna-Lena 2019: Regions and the parliamentarisation of EU governance: is the Early Warning System the solution?, in: *Abels, Gabriele/Battke, Jan (eds.): Regional Governance in the EU: Regions and the Future of Europe*, Aldershot, pp. 194–210.

Studies on the EWS have pointed out that the mobilization of regional parliaments is uneven.<sup>25</sup> In addition, the role of regional parliaments is rather limited. Firstly, the role of regional parliaments is left for each member states to define. Secondly, the eight-week deadline to participate in the EWS is already very short for national parliaments. But as regional parliaments have to send their reasoned opinions to their national parliaments before the deadline, they de facto have between four and six weeks.<sup>26</sup> Thirdly, regional parliaments tend to have fewer resources at their disposal. In particular, they have much lower administrative support, but also smaller committees that meet less frequently than those of national parliaments.<sup>27</sup> Fourthly, the EWS formally involves a mere subsidiarity check. On the one hand, it can be seen as ‘a defence against the EU grabbing competences and power’.<sup>28</sup> On the other hand, it is ultimately consultative in nature and cannot prevent the European Commission from insisting on a legislative proposal in an unamended form. Finally, despite the definition of ‘subsidiarity’ contained in Art. 5 of the Lisbon Treaty, it is in practice relatively unclear what exactly the principle means and what can constitute a breach of it.<sup>29</sup>

However, the primarily symbolic victories were not the only problem of the strong legislative regions. In addition, they also failed to obtain certain concessions and some developments went counter to their interests. Firstly, there was no right to appeal to the ECJ for individual regions. Instead, they had to rely on the CoR, which does not always represent their specific interests. Secondly, the definition of the competences of the European Union and the legal instruments includes the Open Method of Coordination (OMC; Arts. 1-6 TFEU). More importantly, Art. 31 of the new TEU allows the Council to decide with unanimity to move to qualified majority voting in all areas that do not have military or defence implication. In practice, the extension of qualified majority voting (QMV) reduces the effectiveness of domestic channels of interest representation, as the influence of regions over their own national government might simply result in their government being outvoted in the Council. The same is true for the flexibility clause. The extension of the OMC blurred the definition of competences that the Ger-

25 E.g. *de Castro Ruano, José Luis* 2012: El Sistema de Alerta Temprana para el control de la subsidiariedad: su aplicación por el Parlamento vasco, in: *Revista CIDOB d’afers internacionals* 99, pp. 93–111; *Fleischer, Julia* 2015: The Partisan Nature of Subsidiarity. Explaining Subsidiarity Scrutiny at the Subnational Level. Workshop on Regional Parliaments: Effective Actors in EU Policy-Making?, Luxembourg 22–23 October 2015; *Vara Arribas, Gracia/Högenauer, Anna-Lena* 2015: Legislative Regions after Lisbon: A New Role for Regional Assemblies?, in: *Heffler, Claudia/Neuhold, Christine/Rozenberg, Olivier/Smith J. (eds.): The Palgrave Handbook of National Parliaments and the European Union*, Basingstoke, pp. 133–149.

26 *De Castro* 2012 (footnote 25). *Vara Arribas/Högenauer* 2015 (footnote 25).

27 *Högenauer Anna-Lena/Neuhold, Christine/Christiansen, Thomas* 2016: *Parliamentary Administrations in the European Union*, Basingstoke.

28 *Pernice, Ingolf* 2015: Multilevel Constitutionalism and the Crisis of Democracy in Europe, in: *European Constitutional Law Review* 11, pp. 541–562 (543).

29 *Kiiver, Philipp* 2012: The conduct of subsidiarity checks of EU legislative proposals by national parliaments: analysis, observations and practical recommendations, *ERA Forum* 12, pp. 535–547.

man *Länder* had fought so hard to obtain.<sup>30</sup> In addition, the internal market clause, which was frequently used by the EU to harmonize rules, remained in place.

On the whole, Bauer thus comes to the pessimistic conclusion that the most ambitious regions – like the German *Länder* – were in fact completely isolated with some of their core demands.<sup>31</sup> For example, despite the fact that the results fell short of the CoR's demands, it's decision to move towards the defence of the Draft Constitutional Treaty after the failure of the IGC of February 2004 marked the end of its engagement for further reforms.<sup>32</sup> The strong legislative regions ultimately failed to be recognized as key actors in EU policy-making – in part because not all regions are united, and in part because it is arguably politically impossible. For instance, the right of strong legislative regions to be consulted by the European Commission would result in a formal mechanism that only includes regions from a small number of member states. Those member states would thus have an additional channel of influence that the majority of more centralized member states is lacking. We already know from the example of the informal Eurogroup meetings (on the level of ministers) that the non-Eurozone member states feel excluded and at a disadvantage. This played a role in the negotiations with the United Kingdom before Brexit, for example. It is thus extremely unlikely that the majority of more centralized member states would agree to the formal creation of a mechanism based on the Treaties that officially completely bypasses them and that only gives a voice to seven 'old' member states. Indeed, Bauer shows that the new member states from Central and Eastern Europe due to join the European Union in 2004 rejected almost all regional demands except for the creation of the Early Warning System for national parliaments.<sup>33</sup> They are unitary and highly centralized states.

### 3.2 *Disenchantment with the EWS*

As the EWS is one of the few substantive reforms that created a new channel of interest representation for strong legislative regions, its uptake merits further analysis in order to be able to assess the effect of the Lisbon changes. Högenauer analysed all reasoned opinions that were uploaded on REGPEX by the regional parliaments of Germany, Austria, Belgium and the UK since its beginning to the end of 2016.<sup>34</sup> It should be noted that the data is not complete, as neither the European Commission nor REGPEX have a

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30 *Große Hüttmann, Martin* 2004: Die Offene Methode der Koordinierung in der Europäischen Union: Chancen und Risiken eines neuen Steuerungsinstruments aus Sicht der deutschen Länder, in: *Europäisches Zentrum für Föderalismus-Forschung Tübingen (eds.): Jahrbuch des Föderalismus 2004. Föderalismus, Subsidiarität und Regionen in Europa*, Baden-Baden, pp. 476–488.

31 *Bauer* 2004 (footnote 22).

32 *Eppler, Annegret* 2005: Der Ausschuss der Regionen im Jahr 2004 – zukünftiger Mittelpunkt eines „Netzwerks“ zwischen EU-Institutionen und Regionen?, in: *Europäisches Zentrum für Föderalismus-Forschung Tübingen (eds.): Jahrbuch des Föderalismus 2005 Föderalismus. Subsidiarität und Regionen in Europa*, Baden-Baden, pp. 620–631.

33 *Bauer* 2004 (footnote 22).

34 *Högenauer* 2019 (footnote 24).

complete list of reasoned opinions.<sup>35</sup> Not all regions participate in REGPEX, and not all national parliaments send all regional opinions to the European Commission.

Firstly, Högenauer found that the situation of regional parliaments differs greatly from member state to member state.<sup>36</sup> The German regional parliaments are among the weaker regional parliaments<sup>37</sup>, as their powers under the EWS are not enshrined in the constitution or in national law. They cannot directly adopt reasoned opinions, but rather adopt requests to their regional government to push for a reasoned opinion in the Upper House.<sup>38</sup> The Belgian regional and community parliaments are in the strongest position under the EWS, as their powers are protected both by the Belgian constitution and under Declaration 51 attached to the European Treaties. According to the Belgian constitutional principle of *in foro interno in foro externo*, they are responsible for the subsidiarity tests in those policy areas that fall under their competence domestically. Based on a cooperation agreement, the *Ontwerp van samenwerkingsakkoord* 7 and 9 July 2008, if one competent parliament has subsidiarity concerns, this automatically results in the casting of one Belgian vote. If two subnational parliaments from different linguistic regimes raise concerns in an area of exclusive regional competence, or if a competence is shared between the federal and the subnational level and at least one federal chamber and one regional parliament raise concerns, both votes are cast.<sup>39</sup> While the cooperation agreement has not been ratified, it is treated as a “gentlemen’s agreement” and is followed.<sup>40</sup> A positive side effect of these formal rights is that the regional parliaments are forwarded all documents by the Belgium Senate, and are thus more systematically informed than their foreign counterparts.

Secondly, there are also considerable differences in the level of mobilization of regional parliaments. As table 1 shows, the proportion of regional parliaments per country that are members of REGPEX varies from two thirds in the case of Austria and the UK to 80 percent in Belgium. However, this statistic hides the fact that only half of these parliaments actively participate in REGPEX. Thus, the second point worth noting is that in each country, between 2007–2017, exactly half of the regional parliaments that theoretically participate uploaded at least one reasoned opinion (as defined as a document that has been officially adopted) in practice.

35 Fleischer 2015 (footnote 25). Tilindyte, Laura 2016: Regional Participation in EU Decision-Making: Role in the Legislature and Subsidiarity Monitoring, European Parliamentary Research Service, doi:10.2861/175972.

36 Högenauer 2019 (footnote 24).

37 Vara Arribas, G./Bourdin, Delphine 2011: The role of regional parliaments in the process of subsidiarity monitoring within the Early Warning System of the Lisbon Treaty. Committee of the Regions. <https://op.europa.eu/en/publication-detail/-/publication/12c6af71-ecbb-4120-b606-ced0703e08ed/language-en> (24.07.2021).

38 Borońska-Hryniewiecka 2017 (footnote 23).

39 Högenauer et al. 2016 (footnote 27); Interview with two clerks of the Flemish parliament, 2/04/2014.

40 Interview with two clerks of the Flemish parliament, 2/04/2014.

Table 1: Regional participation in REGPEX

	% of regional parliaments that are REGPEX members	% of regional parliaments that have submitted opinions to REGPEX
Germany	75	37,5
Austria	66,7	33,3
UK	66,7	33,3
Belgium	80	40

Source: Högenauer 2019.

Furthermore, Table 2 shows that many parliaments are actually relatively inactive. Wallonia, Flanders and Wales have only adopted two reasoned opinions each between 2007 and 2017. The activity of the Austrian regions is marginally higher, with four reasoned opinions from Carinthia, five from Upper Austria and six from Vorarlberg. On the other end of the spectrum, Thuringia with 41 reasoned opinions single-handedly accounts for around 40 percent of all reasoned opinions uploaded by the regional parliaments of the four member states. If Bavaria's 26 reasoned opinions are added to this, the two German *Länder* account for around 64 percent of all reasoned opinions. This is consistent with the findings of de Castro Ruano and Martín Núñez, who also find great differences in the mobilization of the Spanish regions.<sup>41</sup>

What is potentially problematic is that half of the regional parliaments that submitted reasoned opinions only did so in one single year in the eleven-year period. It is impossible to know if these parliaments will ever relaunch their participation. In 2017, only four regional parliaments from the four case study states uploaded reasoned opinions – Upper Austria (Austria) and Baden-Württemberg, Bavaria and Thuringia (Germany).

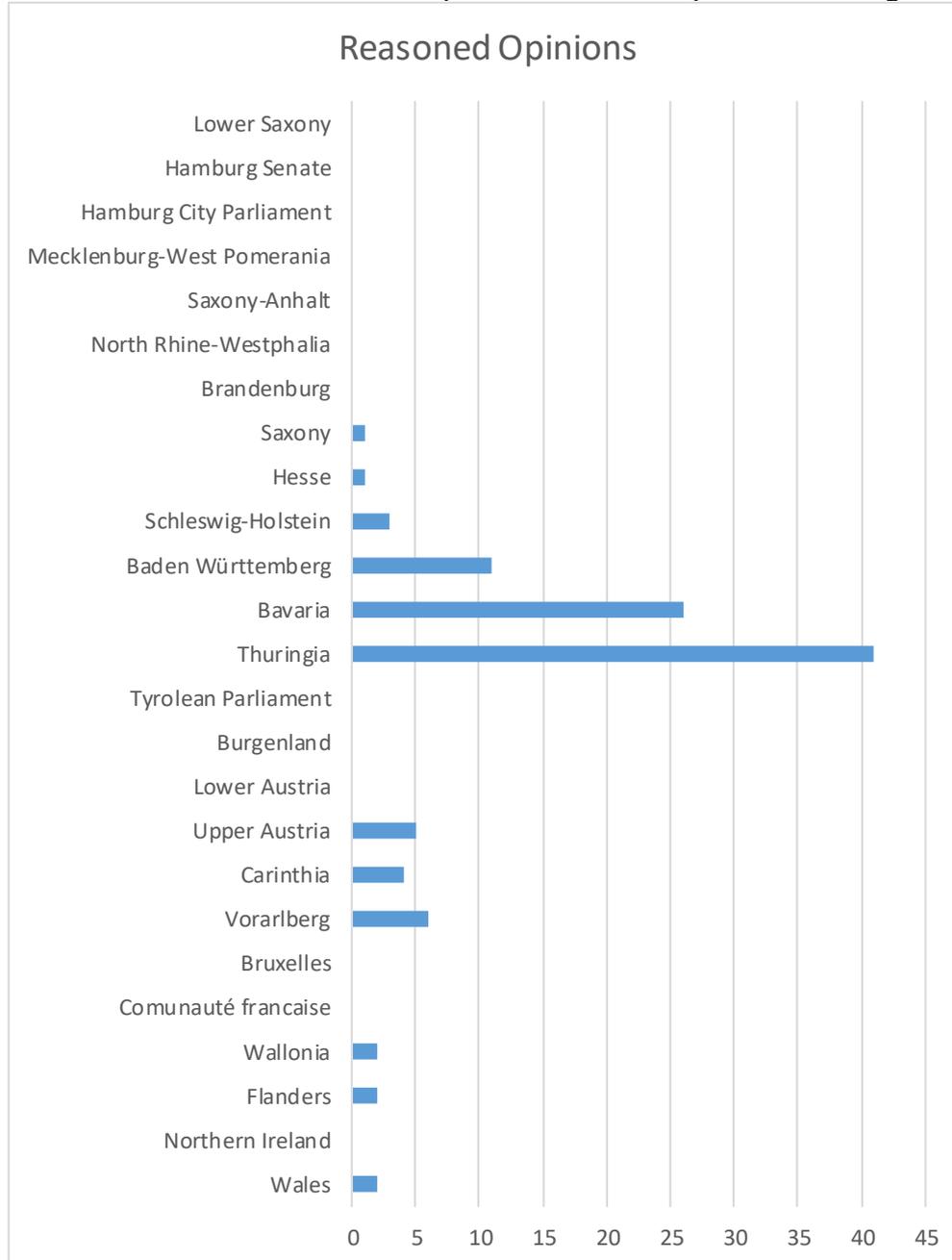
Thus, the regional parliaments from the four case study countries were fairly inactive in the first decade of the EWS, with only 33–40 percent of them showing sporadic signs of life. Overall, the unenthusiastic uptake of the EWS by strong legislative regions is somewhat reminiscent of their lacklustre participation in the CoR after the Treaty of Maastricht. In both cases, it is clear that the regions do not perceive the mechanisms as an effective way to defend their interests. In addition, Bauer already noted that – in the past – most German regional parliaments had not fully exploited their possibilities in EU affairs.<sup>42</sup> This had resulted in a situation where the regional parliaments (voluntarily) lost influence due to European integration and due to the loyalty of the majority parties towards their governments. The numerous reforms undertaken in the aftermath of

41 De Castro Ruano 2012 (footnote 25). Martín Núñez, Esther 2013: The scrutiny of the principle of subsidiarity by autonomous regional parliaments with particular reference to the participation of the Parliament of Catalonia in the early warning system, *Perspectives on Federalism* 5 (2), pp. 51-73.

42 Bauer, Michael W. 2005: Europaausschüsse – Herzstück landesparlamentarischer Beteiligung in Anlässen der Europäischen Union?, in: *Europäisches Zentrum für Föderalismus-Forschung (eds.): Jahrbuch des Föderalismus 2005. Föderalismus, Subsidiarität und Regionen in Europa*, Baden-Baden, pp. 632–647.

the Lisbon Treaty have not fundamentally changed this situation.<sup>43</sup> Thus, there is a triple problem of a not overly promising opportunity, party loyalty and low capacity.

Table 2: The number of reasoned opinions in REGPEX per REGPEX region: 2007–2017



Source: Högenauer 2019.

43 Abels, Gabriele 2013: Adapting to Lisbon: Reforming the role of German Landesparlamente in EU Affairs, in: German Politics 22 (4), pp. 353–378.

#### 4 Outlook

On the whole, the situation of regions has improved with the Treaty of Lisbon. The status of the CoR improved in that it can now bring cases before the ECJ and defend its institutional rights in court. Regional parliaments have also started to gain recognition.

Nevertheless, there is still a gap between the demands and expectations of strong legislative regions and the academic rhetoric of a multilevel EU on the one hand and the sober reality on the other. Ultimately, the core challenge today is the same as during the negotiations of the Maastricht Treaty: how to create a channel of interest representation for regions without (a) increasing the complexity of the already complex EU political system, and (b) a channel that reflects the status of strong legislative regions on the one hand and local authorities and weak administrative regions on the other. The existing channels are either perceived as inadequate by strong legislative regions, because they are in a minority (e.g. the CoR) and they feel that their constitutional status is not fully reflected. Thus, while the literature generally finds that the CoR has become a more efficient and effective actor that now produces fewer opinions but of better quality<sup>44</sup>, the strongest legislative regions still doubt the usefulness of this body. Or the functioning of channels depends on member state governments/parliaments in practice (e.g. the EWS, regional representation in the Council) and the specific voice of regions still tends to be drowned out by the need to represent a member state as a whole. In addition to the lack of attractiveness of some of the channels like the EWS, a more general problem is that some regions simply lack the capacity to mobilize constantly to scrutinize EU legislation.

Thus, for strong legislative regions, the key challenge of finding institutional recognition remains. Regions are united in demanding more influence, a Europe that is closer to the citizens etc. But what this would, should or could mean in practice is not always clear. Obtaining the right to be consulted is relatively easy, but does consultation equal influence in an EU that consults widely (CoR, EESC, national parliaments, stakeholder meetings, public consultations ...)? From a cynical point of view, one could argue that it is precisely because the EU is so open to "consultative" input, that its core institutions are not obliged to listen to anyone in particular – including the CoR and individual regions. At the same time, it is unlikely that the EU will ever create a special status with rights just for strong legislative regions, as the majority of states have no interest in creating a channel that purely serves the needs of other states but weakens their own voice. It is therefore questionable whether a long-term weakening of strong legislative regions can really be avoided in the context of European integration.

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44 E.g. *Domorenok, Ekaterina* 2009: The Committee of the Regions: in Search of Identity, in: *Regional & Federal Studies* 19 (1), pp. 143–163.



# The Committee of the Regions and the Conference on the Future of Europe<sup>1</sup>

*Gabriele Abels/Martin Große Hüttmann/Sarah Meyer/Simon Lenhardt*

## 1 Introduction

After a one-year delay, caused by the Covid-19 pandemic and inter-institutional quarrels over the objective and the structure, the Conference on the Future of Europe (CoFoE) finally started on 24 March 2021 with the constitutive meeting of the Executive Board. Two weeks before a joint declaration on the conference was signed by the presidents of the three EU key institutions: the Council of the EU, the European Commission and the European Parliament (EP). The trilateral Executive Board is endowed with the task to “oversee the work, process and organisation of the Conference.”<sup>2</sup> Representatives of the Committee of the Regions (CoR) – as well as further representatives for EU consultative organs and from social partners – “were also invited *as observers* to this meeting”.<sup>3</sup> This setting is already quite telling with regard to the official role of regions in general and the CoR in particular in the CoFoE: marginal. But beyond the official position, there is the question of a more informal role of and for the regions in general and the CoR in particular in the Future Conference.

Since 2019, the CoR has indeed been highly active preparing the Conference, setting up internal structures for discussion, exchanging positions with other EU institutions (especially the European Parliament) and developing ideas for how to strengthen the role of regions in the process and in the future of the EU. In addition to claims for its own involvement in the CoFoE, the CoR has argued for a stronger role for regional authorities, such as regional parliaments, to play an active role in the future debate, and has started to provide support structures for regional action. The focus of our study is to describe and analyse the CoR discussion and its multi-faceted activism in relation to the CoFoE.

In this paper we, firstly, introduce the idea of opportunity structures and institutional activism as fruitful concepts to frame the role of the CoR in the CoFoE (section 2). Secondly, we elaborate on the background of the Conference as it developed since 2019 (section 3). Thirdly, we analyse the positions of the EU institutions with regard to the role of regions and the CoR involvement, and also outline and discuss the debate within the CoR itself (section 4). Finally, we discuss some key findings in the light of our conceptual framework and draw some (still preliminary) conclusions (section 5). Given the timing (the CoFoE was officially launched on 9 May 2021), it goes without saying that

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- 1 We are grateful to Thomas Klöckner for his valuable support in collecting and evaluating the documents.
  - 2 *European Parliament* 2021: Work begins on the Conference on the Future of Europe, press release 24 March 2021. <https://www.europarl.europa.eu/news/en/press-room/20210324IPR00701/work-begins-on-the-conference-on-the-future-of-europe> (30.03.2021).
  - 3 *Ibid.*, emphasis added.

our analysis covers the stage from the early days in 2019 to the end of July 2021. Hence, our interpretations are still tentative and more in-depth work is required after the end of the CoFoE and its follow-up in 2022.

## 2 Theoretical Background: Institutional Activism and Opportunity Structures in the EU

Regions and other sub-national actors see the EU's multi-level governance structure as a starting point for a wide range of "sub-national mobilization".<sup>4</sup> The role of sub-national authorities is discussed in European integration studies since the 1990s. The political *Leitbild* of "Europe of the Regions" or "Europe with the Regions" refers to European politics 'beyond the nation-state' and to regional governance in the EU.<sup>5</sup> The theory of multi-level governance (MLG) "refashioned conceptions in political science of EU politics and policy-making, giving due weight for the first time to the importance of sub-national actors".<sup>6</sup> Drawing on the MLG concept, as pioneered by Gary Marks, Lisbet Hooghe and Kermit Blank,<sup>7</sup> we follow a 'bottom-up'-approach of EU politics, on regional initiatives and lobbying of regional activities through or beyond the nation-state. The EU's political multi-level system opens many opportunities for sub-national activities, for access to and political impact in European politics. We can see this regional and institutional activism in the daily business in Brussels and also in constitutional debates concerning the future of the European Union in the last decades.<sup>8</sup>

Institutional activism can be defined as "a particularly energetic effort on the part of an entity to fulfil an expansively defined understanding of its officially prescribed powers and goals and / or an effort, explicitly or implicitly, to expand these powers and goals".<sup>9</sup> In studies of institutional activism of supranational institutions in the EU, both formal

4 Hooghe, Liesbet 1995: Subnational Mobilization in the European Union, *West European Politics* 18 (3), pp. 175–198; Jeffery, Charlie 2000: Sub-National Mobilization and European Integration: Does it Make Any Difference?, in: *Journal of Common Market Studies* 38 (1), pp. 1–23.

5 Abels, Gabriele/Batke, Jan (eds.) 2019: *Regional Governance in the EU: Regions and the Future of Europe*, Cheltenham; Hooghe 1995 (footnote 4).

6 Jeffery 2020 (footnote. 4), pp. 1.

7 Marks, Gary/Hooghe, Liesbet/Blank, Kermit 1996: European Integration since the 1980s: State-Centric vs. Multi-Level Governance, in: *Journal of Common Market Studies* 34 (3), pp. 341–378.

8 Große Hüttmann, Martin 2003: Der Konvent und die Neuordnung der Europäischen Union: Eine Bilanz verschiedener Verfassungsvorschläge aus Sicht der Länder und Regionen, in: *Europäisches Zentrum für Föderalismus-Forschung Tübingen (ed.): Jahrbuch des Föderalismus 2003. Föderalismus, Subsidiarität und Regionen in Europa*, Baden-Baden, pp. 432–443. Hrbek, Rudolf/Große Hüttmann, Martin 2002: Von Nizza über Laeken zum Reform-Konvent: Die Rolle der Länder und Regionen in der Debatte zur Zukunft der European Union, in: *Europäisches Zentrum für Föderalismus-Forschung Tübingen (ed.): Jahrbuch des Föderalismus 2002. Föderalismus, Subsidiarität und Regionen in Europa*, Baden-Baden, pp. 577–594. Pahl, Marc-Oliver 2003: Die Rolle der Regionen mit Gesetzgebungskompetenzen im Konvents-Prozess, in: *Europäisches Zentrum für Föderalismus-Forschung Tübingen (ed.): Jahrbuch des Föderalismus 2003. Föderalismus, Subsidiarität und Regionen in Europa*, Baden-Baden, pp. 462–479.

9 Howarth, David/Roos, Mechthild 2017: Pushing the Boundaries New Research on the Activism of EU Supranational Institutions, in: *Journal of Contemporary European Research* 13 (1), pp. 1007–1024 (1010).

and informal activities can be considered. The concept of institutional activism must be distinguished from the concept of supranational entrepreneurship. Entrepreneurship aims to manage and weigh entrepreneurial risks. Elements such as foresight and innovation are necessary for a successful entrepreneurial venture. In terms of the political context, actors seek to enforce a policy by mobilizing resources.<sup>10</sup> A broader understanding of political entrepreneurship focuses on agenda-setting by political actors, the formation of political alliances, and public support for a policy.<sup>11</sup> The understanding of institutional activism goes beyond this because “institutions can be ‘activist’ – in the sense of energetically fulfilling an expansively defined understanding of officially prescribed powers and goals without operating as entrepreneurs, either formally or informally, explicitly or implicitly”.<sup>12</sup> Actors in the EU system can draw on various instruments when it comes to expanding their own autonomy. Political issues can be framed, the agendas of political actors can be influenced or even set, and various opportunity structures in the EU system can be used to get involved in decision-making processes.<sup>13</sup> At this point, it is worth taking a look at the CoR and CoFoE.

Seen from this perspective of institutional activism, the CoR was able to slowly strengthen its position in the EU (see also the contribution by Högenauer). Before the CoR’s actions could become institutionalized, the CoR was in the process of a “search of identity”.<sup>14</sup> The multi-level governance approach is a core concept of the CoR and a political strategy claiming to narrow the gap between the European citizens and the EU. The CoR sees its role as a consultative and deliberative body to give the sub-national actors, which are perceived as being very close to the citizens, a say in EU politics. The newly established instrument of subsidiarity control gives the CoR and regional parliaments a direct access as a watchdog of the legislative process in the European Union. The results and the impact of the mobilization of regional parliaments and the CoR as a watchdog of subsidiarity, however, are mixed.<sup>15</sup>

While it started off as a weak institution in its formative years, the CoR has had to defend its role as a representative body at the subnational level through activities that go beyond the limited formal role envisioned in the European treaties. However, although the formal influence is less marked, it can be emphasized that the strengths of the CoR

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10 *Kingdon, John* 1984: *Agendas, Alternatives, and Public Policies*, Glenview, IL.

11 *Roberts, Nancy C.* 1992: Public entrepreneurship and innovation, *Policy Studies Review* 11 (1), pp. 55–74.

12 *Howarth/Ross* 2017 (footnote 9), p. 1013.

13 *Schönlau, Justus* 2017: ‘Beyond mere ‘consultation’: Expanding the European Committee of the Regions’ role’, in: *Journal of Contemporary European Research* 13 (2), pp. 1166–1184.

14 *Domorenok, Ekaterina* 2008: The Committee of the Regions: in Search of Identity, in: *Regional & Federal Studies* 19 (1), pp. 143–163. See also *Abels, Gabriele* 2021, *The European Economic and Social Committee and the Committee of the Regions: consultative institutions in a multichannel democracy*, in: *Hodson, D., Saurugger, S.,/Puetter, U. (eds.): Institutions of the European Union*, 5th revised edition, Oxford (forthcoming).

15 *Högenauer, Anna-Lena* 2019: Regions and the parliamentarisation of EU governance: is the Early Warning System the solution?, in: *Abels, Gabriele/Battke, Jan (eds.): Regional Governance in the EU. Regions and the Future of Europe*, Cheltenham, pp. 194–210.

are less visible, but present.<sup>16</sup> Based on technical expertise and territorial representation, the CoR's methods

“are subtler and are aimed at orienting the debate, framing the issues, suggesting policy solutions and supporting the creation of consensus in other institutions – in a word – exercising the voice – thus facilitating decision-making through the force of good arguments and the activation of territorial and political alliances”.<sup>17</sup>

In particular, by pursuing additional, “extracurricular engagement”,<sup>18</sup> the CoR was able to strengthen its informal powers as well as its role as the voice of regions and municipalities in the EU multi-level system.<sup>19</sup> Thus, it can be observed that the CoR's multifaceted engagement has gone far beyond its formal role as an advisory EU body. On the basis of technical expertise and its claim to be the representative body of subnational actors, it makes a central contribution to shaping policy in the EU from grassroots-level.<sup>20</sup> With its function of raising the regional voice and its role as “facilitator” in the EU decision-making process, it is not surprising that the CoR would like to see the CoFoE as an opportunity for institutional change in the EU.<sup>21</sup>

The theory of “political opportunity structures” goes back to Michael Lipsky<sup>22</sup>, Peter K. Eisinger<sup>23</sup> and Charles Tilly<sup>24</sup>. The concept raised questions about the openness of liberal political systems to new demands of protest or social movements in the 1970s and 1980s.<sup>25</sup> Sidney Tarrow<sup>26</sup> defines a political opportunity structure as “consistent – but not necessarily formal or permanent – dimension of the political environment that provide incentives for collective action by affecting peoples' expectations for success or failure”. If we read “regional actors” instead of “peoples” then we have a perfect starting point for discussing the access and possible impact of sub-national actors in the debates in the Conference on the Future of Europe.

16 *Piattoni, Simona/Schönlau, Justus* 2015: Shaping EU policy from below: EU Democracy and the Committee of the Regions, Cheltenham.

17 *Ibid.*, p. 2.

18 *Hönnige, Christoph/Panke, Diana* 2016: Is anybody listening? The Committee of the Regions and the European Economic and Social Committee and their quest for awareness?, in: *Journal of European Public Policy* 23 (4), pp. 624–642.

19 *Abels* 2021 (footnote 14); *Howarth/Roos* 2017 (footnote 9).

20 *Piattoni/Schönlau* 2015 (footnote 16); *Piattoni, Simona* 2019: The contribution of regions to EU democracy, in: *Abels, Gabriele/Battke, Jan (eds.): Regional Governance in the EU: Regions and the Future of Europe*, Cheltenham, pp. 16–32.

21 *Abels* 2021 (footnote 14).

22 *Lipsky, Michael* 1968: Protest as a Political Resource, in: *American Political Science Review* 62 (4), pp. 1144–1158.

23 *Eisinger, Peter K.* 1973: The Conditions of Protest Behavior in American Cities, in: *American Political Science Review* 67 (1), pp. 11–28.

24 *Tilly, Charles* 1978: *From Mobilization to Revolution*. Reading, MA.

25 There is short but concise overview on the opportunity structure theory in *Stickler, Armin* 2005: *Nicht-regierungsorganisationen, soziale Bewegungen und Global Governance*, Bielefeld, (chapter 3.3.3).

26 *Tarrow, Sidney* 2000: *Beyond Globalization. Why Creating Transnational Social Movements is so Hard and when is it Most Likely to Happen*. <http://www.antenna.nl/~waterman/tarrow.html> (30.04.2021), p. 13.

There are four different indicators to understand and assess the impact and the chances of sub-national mobilization in the debate on national and European level:<sup>27</sup>

- 1) How open are the political structures of the CoFoE for the demands and preferences of regional actors at the member state or the EU level?
- 2) How stable and strong are the (transnational) relationship and the bonds of regional actors? Are there ‘mini-lateral’ groups of like-minded sub-national actors lobbying on the national and EU level for regional demands?
- 3) Are there powerful allies for regional actors, e.g. significant EU member states, who are backing the regional agenda?
- 4) Do the dominant EU actors have a clear idea about the future of the European Union? If not, there is an opportunity for regional actors and the CoR to occupy the role as a “teacher of norms”.<sup>28</sup>

In this paper we particularly focus on Q1, i.e. analysing how the CoR tries to utilize the opportunity structure and follows its route of institutional activism, and on Q3 in relation to the positions taken by the EU institutions on how to involve the CoR and regional authorities in general. In the next section, we outline the background of the Conference on the Future of Europe.

### 3 Background: The CoFoE Process and Key Topics

The nature of the CoFoE is not evident, but indeed a matter of discussion. According to von Nicolai Ondarza and Minna Ålander “balancing the interests of the EU institutions”<sup>29</sup> is one of the main challenges for the Conference, which tends to become something of a “trilogue”, rather than a real convention. This becomes clear when analysing the process on the CoFoE leading, finally, to the Joint Declaration on the Conference by the Presidents of the EP, the Commission, and the Council on 10 March 2021. This declaration finally paved the way for the start of what was originally announced by Commission President Ursula von der Leyen as a two-year process for “European citizens to play a leading and active part in building the future of our Union”.<sup>30</sup>

27 Adapted from: *Tarrow, Sidney* 1996: States and Opportunities. The Political Structuring of Social Movements, in: *McAdam, Doug/McCarthy, John D./Zald, Mayer N. (eds.): Comparative Perspectives on Social Movements. Political Opportunities, Mobilizing Structures, and Cultural Framing*, Cambridge, pp. 41–61.

28 The term “teacher of norms” was coined by *Finnemore, Martha* 1993: International Organizations as Teachers of Norms. The United Nations Educational, Scientific, and Cultural Organization and Science Policy, in: *International Organization* 47 (4), pp. 545–598.

29 *von Ondarza, Nicolai/Ålander, Minna* 2021: Die Konferenz zur Zukunft Europas, SWP-aktuell. [https://www.swp-berlin.org/fileadmin/contents/products/aktuell/2021A20\\_Konferenz\\_Zukunft\\_Europas.pdf](https://www.swp-berlin.org/fileadmin/contents/products/aktuell/2021A20_Konferenz_Zukunft_Europas.pdf) (30.04.2021), p. 3.

30 *von der Leyen, Ursula* 2019a: Opening Statement in the European Parliament Plenary Session. As delivered, Strasbourg, 16 July 2019. [https://ec.europa.eu/commission/presscorner/detail/en/speech\\_19\\_4230](https://ec.europa.eu/commission/presscorner/detail/en/speech_19_4230) (30.04.2021).

The EP was not only the first among the three EU institutions to lay out its position on the Conference in a resolution in January 2020, it was also clearly the most ambitious institution regarding the CoFoE as a “European Convention 2.0”.<sup>31</sup> The ambitions pertain to the scope of the process, involvement of citizens, and commitment to a proper political follow-up of Conference outcomes.<sup>32</sup> It “embraced the idea of the Conference with great enthusiasm [...] as an opportunity, on the one hand, to strengthen input legitimacy through citizen participation and, on the other, to deepen integration, including an expansion of EU competences and greater powers for the EP.”<sup>33</sup> Unsurprisingly, it claimed that the EP should have the leadership of the executive board.

Contrariwise, it took the Council until June 2020 to come up with its position on the planned Conference due to intense conflict among governments about the structure and aim. Many governments had strong reservations and feared too much of a federalist spirit sneaking into the Conference (similar to what happened in the Constitutional Convention). Not only the long timeframe, but also the substance of the Council position immediately lowered expectations on the Conference among political commentators and experts. It was evident that “the Council preferred the Conference to follow the Strategic Agenda of the European Council”.<sup>34</sup> Whereas the EP included democratic and institutional aspects of the EU among the potential policy priorities to be discussed at the Conference, the Council wanted to adopt a “policy first” approach, excluding institutional questions from the outset, and explicitly highlighted its position that the Conference would not fall within the scope of Article 48 TEU (i.e. EU Treaty revision procedures). The main Conference outcome, in view of the Council, would be a report to the European Council.<sup>35</sup> In this line, the Council “explicitly distinguishes the Conference from a convention”<sup>36</sup> as a more inclusive and comprehensive approach.

The role of the European Commission in the run-up to the Conference is ambivalent. Set on the agenda by von der Leyen (at that time candidate for the post of European Commission president), she expressed her openness to treaty change. In her “Political Guidelines” for the next European Commission she even declared support for the idea of a

31 *Plotka, Julian* 2021: Making the Conference on the Future of Europe a Success, Friedrich-Ebert-Stiftung. <http://library.fes.de/pdf-files/bueros/bruessel/17584.pdf> (30.04.2021), p. 1. For a short overview of positions by the EU institutions see *Emmanouilidis, Janis A./Greubel, Johannes* 2021: Conference on the Future of Europe (CoFoE) positions of EU institutions – comprehensive summary of key elements, EPC European Policy Centre, Brussels, February/March 2021. [https://wms.flexious.be/editor/plugins/imagemanager/content/2140/PDF/2021/Overview\\_CoFoE\\_positions\\_3-2021\\_.pdf](https://wms.flexious.be/editor/plugins/imagemanager/content/2140/PDF/2021/Overview_CoFoE_positions_3-2021_.pdf) (30.04.2021).

32 See *European Parliament* 2020a: Resolution of 15 January 2020 on the European Parliament’s position on the Conference on the Future of Europe (2019/2990(RSP)), 15.01.2020, [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0010\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0010_EN.pdf) (30.04.2021).

33 *von Ondarza/Ålander* 2021 (footnote 29), pp. 3-4.

34 *von Ondarza/Ålander* 2021 (footnote 29), p. 4.

35 See *Council of the European Union* 2020: Conference on the Future of Europe: Council Position, 24 June 2020. <https://www.consilium.europa.eu/media/44679/st09102-en20.pdf> (30.04.2021).

36 *von Ondarza/Ålander* 2021 (footnote 29), p. 4.

Member of the European Parliament (MEP) chairing the Conference.<sup>37</sup> Subsequently, the Commission reframed its role towards acting as “facilitator and honest broker between the European Parliament and the Council” on institutional matters. Treaty changes are indeed not even mentioned in the Commission’s Communication from 22 January 2020.<sup>38</sup> Later on in April 2020, Commission Vice-President Dubravka Šuica, who is tasked with managing the Conference for the Commission, highlighted in an interview that treaty change may turn out to become an important Conference issue with a view to health competences,<sup>39</sup> whereas the *Spitzenkandidaten* (lead candidate system), which was explicitly mentioned in the Commission Communication, would not be of interest to anyone.

After the Council – being the last of the three EU institutions – adopted its position, it took another nine months to resolve conflicts in inter-institutional negotiations to arrive at a joint approach, as outlined in the Joint Declaration mentioned above. Among the most conflictual issues was the decision on the Conference Chair. The EP had suggested an Executive Coordination Board under EP leadership; it had advocated for MEP Guy Verhofstadt, a dedicated federalist, to chair the Conference. In the end an agreement was reached for a trilateral, joint presidency of the Commission, the Council and the EP – represented by their respective presidents. The Executive Board is co-chaired by the three institutions; it will “report on a regular basis to the Joint Presidency”.<sup>40</sup> The Declaration, however, remains rather vague on a number of other issues, for which decisions will have to be taken by the Executive Board, operating by consensus. Moreover, the modalities for reporting on Conference outcomes and activities are left to the “structures of the Conference”.<sup>41</sup> As the Conference is invited “to reach conclusions by Spring 2022” and given that was officially launched not until 9 May 2021, on Europe Day, this new one-year only time frame is quite strict.

#### 4 Regions and the CoR in the CoFoE

Having described the principal positions of the three EU institutions on the Conference and the final compromise, in this part we will focus on (1) the role foreseen by the Commission, EP and Council in their position papers and in the Joint Declaration with

37 *von der Leyen, Ursula* 2019b: A Union That Strives for More. My Agenda for Europe. Political Guidelines for the Next European Commission 2019–2024. [https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission_en_0.pdf) (30.04.2021).

38 *European Commission* 2020: Communication from the Commission to the European Parliament and the Council. Shaping the Conference on the Future of Europe, COM(2020) 27 final, 22 January.2020. [https://ec.europa.eu/info/sites/default/files/communication-conference-future-of-europe-january-2020\\_en.pdf](https://ec.europa.eu/info/sites/default/files/communication-conference-future-of-europe-january-2020_en.pdf) (30.04,2021).

39 Currently this idea gets support from German Chancellor Angela Merkel; see *Gutschker, Thomas* 2021: Bundeskanzlerin Merkel: Mehr EU-Kompetenzen im Kampf gegen die Pandemie, in: Frankfurter Allgemeine Zeitung, 21 April 2021. <https://www.faz.net/aktuell/politik/ausland/merkel-fordert-mehr-eu-kompetenzen-fuer-pandemiebekaeempfung-17305432.html> (30.04.2021).

40 *European Parliament* 2021 (footnote 2), p. 4. See also section 4.5.

41 Ibid.

regard to the role of the CoR and regional authorities in the CoFoE, and (2) the positions and activities of the CoR – as the representative of European regions at supranational level – in relation to the Conference from 2019 up until July 2021.

#### 4.1 *Commission’s Perspective on CoR and Regions*

The ideas of the Commission are laid out in its Communication on the CoFoE<sup>42</sup> as of 22 January 2020; here the Commission declared the Conference as a “pan-European democratic exercise”. Regarding participants, the Commission states that

“it [the CoFoE] will be open to civil society, the European institutions and other European bodies, including the *Committee of the Regions*, the European Economic and Social Committee, as well as national, *regional and local authorities*, parliaments and other stakeholders – *all contributing as equal partners*. Ultimately, it is about strengthening the link between Europeans and the institutions that serve them”.<sup>43</sup>

Furthermore, it stresses that “National and *regional parliaments and actors* have an important role to play in the Conference and should be encouraged to hold Conference-related events”.<sup>44</sup>

The Communication does refer to previous experiences:

“The Conference should also build on the useful experience of the EU’s institutions and Member States from their active engagement with European citizens. For example, many Members of the European Parliament have engaged in citizens’ dialogues and other debates in recent years. The European Economic and Social Committee and the *Committee of the Regions* have also launched major outreach initiatives [...] In this spirit, national parliaments, as well as social partners, *regional and local authorities* and civil society *must play a fundamental role throughout the Conference*”.<sup>45</sup>

With regard to the tools for citizen participation the Commission states: “In addition to the town-hall-style citizens’ dialogue format, a wide range of other *Conference-related events should be organised by local, regional and national partners*”.<sup>46</sup>

Finally, a role for regions is also envisaged in relation to the outreach:

“*The success of the Conference will largely depend on how effectively and widely it is communicated to Europeans*. The European Parliament, the Council and the European Commission should join forces with other EU institutions and bodies, as well as with local, regional and national political representatives, institutions and stakeholders, and share the responsibility of promoting the Conference, ensuring that their actions complement and reinforce each other.”

This is necessary to “increase visibility and impact at national, regional and local level”<sup>47</sup>; and for “stimulating equal, inclusive and fair participation, coordinating the activities carried out at national *and regional level*”.<sup>48</sup> Existing “EU Networks present *in the regions*,

42 *European Commission* 2020 (footnote 35).

43 *Ibid.*, p. 1; emphasis added.

44 *Ibid.*, p. 2; emphasis added.

45 *Ibid.*, p. 3; emphasis added.

46 *Ibid.*, p. 4; emphasis added.

47 *Ibid.*, p. 5.

48 *Ibid.*

and in particular Europe Direct networks, can help in stimulating and organising *regional conversations*".<sup>49</sup>

#### 4.2 *European Parliament's Perspective on CoR and Regions*

The EP clearly showed most ambition on the CoFoE with a view to the Conference's objectives and scope, the involvement of citizens, and in relation to a strong determination for a political follow-up of recommendations and conclusions – including possible treaty changes. Striving for substantive reforms of the Union, it repeatedly stressed the importance of the Conference in its resolutions and other parliamentary documents and pressured the other EU institutions (particularly the Council) to get started with preparatory work.<sup>50</sup>

According to the EP, the Conference process should be "open and transparent", taking an "inclusive, participatory and well-balanced approach to citizens and stakeholders" and highlighting that the involvement of "citizens, organised civil society and a range of stakeholders at European, national, regional and local level should be the key element of this innovative and original process".<sup>51</sup> The EP adopted its second resolution on the Conference "having regard to the resolution of the Committee of the Regions of 12 February 2020 on the Conference on the Future of Europe".<sup>52</sup> However, the EP did not make any further reference specifying the involvement of regions, local and regional level representatives or the CoR in the Conference structures and events. Nor did it mention them with a view to necessary communication and outreach activities (as for instance the Commission did). Compared to the other two institutions, therefore, the EP put littlest emphasis on the exact role it envisaged for regional actors and bodies in the Conference. Still, regional stakeholders' involvement is included in Parliament's explicit claim for an inclusive approach guaranteeing the involvement of a diversity of actors and stakeholders.

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49 Ibid.

50 *European Parliament* 2020a (footnote 28). *European Parliament* 2020b: Resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences (2020/2616(RSP)), 17 April 2020. [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0054\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0054_EN.pdf) (30.04.2021). *European Parliament* 2020c: Working Document on the 70th Anniversary of the Schuman Declaration. Committee on Constitutional Affairs, 05 May 2020. [https://www.europarl.europa.eu/cmsdata/208891/W D-70th%20anniversary%20Schuman%20Declaration\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/208891/W D-70th%20anniversary%20Schuman%20Declaration_EN.pdf) (30.04.2021). *European Parliament* 2020d: Resolution of 18 June 2020 on the European Parliament's position on the Conference on the Future of Europe (2020/2657(RSP)), 18 June 2020. [https://www.europarl.europa.eu/doceo/document/TA-9-20200153\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-20200153_EN.pdf) (30.04.2021). *European Parliament* 2020e: Resolution of 26 November 2020 on stocktaking of European elections (2020/2088(INI)), 26.11.2020. [https://www.europarl.europa.eu/RegData/sance\\_pleniere/textes\\_adoptes/provisoire/2020/11-26/0327/P9\\_TA-PROV\(2020\)0327\\_EN.pdf](https://www.europarl.europa.eu/RegData/sance_pleniere/textes_adoptes/provisoire/2020/11-26/0327/P9_TA-PROV(2020)0327_EN.pdf) (30.04.2021).

51 *European Parliament* 2020a (footnote 32), p. 3; emphasis added.

52 *European Parliament* 2020d (footnote 50), p. 2.

### 4.3 Council's Perspective on CoR and Regions

In its position from 24 June 2020, the Council sketched member states' understanding of the Conference's aim and scope, its guiding principles and organization as well as outcomes. Regional actors are addressed either through reference to the CoR or to "regions"/"the regional level" in more abstract terms. Unlike national governments and parliaments, regional governments or parliaments are not explicitly mentioned.

Regarding the organization and functioning of the Conference, the Council stated, very generally, that participation "should include MEPs, Member States' and Commission representatives, national parliaments, *as well as the Committee of the Regions (CoR) and the European Economic and Social Committee (EESC)*".<sup>53</sup> The steering group, to be composed of representatives from the three institutions plus the current and incoming COSAC rotating presidencies, may invite "where appropriate" as observers "[r]epresentatives of other bodies or groups participating in the Conference (*notably CoR/EESC*)".<sup>54</sup>

According to the Council, the Conference should "ensure effective involvement of citizens and stakeholders through debates, including at national and *regional level*", building on previous citizens' dialogues and consultations and "with the assistance in particular of the Commission, *the CoR and EESC as well as national parliaments*".<sup>55</sup>

The Council also mentions regions in the context of the organization of Conference events. In addition to the main conference events suggested by the Council (to be held in Brussels/Strasbourg and in the successive Council Presidencies' countries), there may also be "specific thematic conferences/events in Member States, *to be organised together with the host Member State or region*". Finally, participation in all events should be open, according to the Council, "to representatives of all Member States, national parliaments, the EP and the Commission, as well as *representatives of the CoR and EESC, aiming for a balance in representation*".<sup>56</sup>

### 4.4 Position of the CoR on the Conference

The previous sections illustrate that the EU institutions referred to regions' involvement in the Conference in general and to the CoR engagement in particular. The EP was clearly welcoming regions and the CoR, given that the EP aimed for an open and transparent, inclusive process. Indeed, the CoR, especially the CIVEX Commission (Commission for Citizenship, Governance, Institutional and External Affairs), has reacted to first ideas for a CoFoE at an early stage. On 12 February 2020, the CoR adopted its official resolution. In addition, the CoR has debated about the Conference many times; it has developed ideas and instruments on how to support regional actors in this process.

<sup>53</sup> *Council of the EU* 2020 (footnote 35), p. 5; emphasis added.

<sup>54</sup> *Ibid.*; emphasis added.

<sup>55</sup> *Ibid.*, p. 6; emphasis added.

<sup>56</sup> *Ibid.*; emphasis added.

In the following we outline how the CoR responded to the developments in preparation for the CoFoE and how it subsequently positioned itself between 2019 and mid-2021.

CoR members debated the CoFoE for the first time on 9 December 2019. In accordance with their principles, the members called for the active involvement of citizens and a “permanent mechanism of dialogue”.<sup>57</sup> They also called for subnational political actors to be involved in the Conference. MEP Daniel Freund, CoFoE coordinator of the Greens/EFA Group in the EP’s Committee on Constitutional Affairs (AFCO), also supported this idea. Since then, the CoR has discussed the CoFoE topic several times. The CoR’s CIVEX Commission became important for the preparation of the CoR’s position. The CIVEX Commission worked on a draft opinion on “Local and Regional Authorities in the permanent dialogue with citizens”, which was scheduled for adaptation at the CoR May 2020 plenary.

On 12 February 2020, the CoR adopted its resolution on the “Conference on the Future of Europe”. The following elements of the Draft Resolution VII/003<sup>58</sup> should be emphasized: The need for regional and local representatives to give the CoFoE greater visibility among citizens. The CoR offers support for regional and local activities related to the conference “the CoR will provide support for its members in organising local events focusing on the Conference’s themes and will develop tools to collect and communicate the results and suggestions from these debates to the Conference”.<sup>59</sup> Furthermore, the CoR calls for a bottom-up debate equipped with deliberative tools. Reference is made here to the CoR’s experience in citizen dialogues in numerous regions “input from existing participatory democracy tools at local and regional level” – such as “citizens’ dialogues and forums that have proven successful in a number of regions”.<sup>60</sup> Moreover, the CoR demands full participation rights for at least eight CoR members. The CoR also makes strong claims regarding the themes to be discussed; it calls for “changes of the EU’s policies, processes, institutions and resources, including the role of local and regional democracy and self-government, which are necessary to enable the EU to respond to citizens’ needs and expectations on these issues”.<sup>61</sup> Obviously, the CoR wanted a strong voice for itself in the Conference (eight full members) plus for the regions, and it wanted to put the issue of multi-level democracy on the agenda.

Interestingly, the resolution was adopted in the CoR in the presence of European Commission Vice-President Dubravka Šuica. In her introductory remarks, Šuica stated that the conference needed the CoR as a partner, highlighting that “we can only do this with the help of the CoR”. Šuica announced that the “Joint Declaration” to be agreed on

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57 *CoR 2019b*: Regions and cities will be involved in the Conference on the Future of Europe, press release 10 December 2019. <https://cor.europa.eu/en/news/Pages/regions-and-cities-will-be-involved-in-the-conference-on-the-future-of-europe.aspx> (30.04.2021).

58 *CoR 2020a*: Resolution on the Conference on the Future of Europe, 11-12 February, RESOL VII/003. <https://mempportal.cor.europa.eu/Handlers/ViewDoc.ashx?pdf=true&doc=COR-2020-00192-00-00-RES-TRA-EN.docx> (30.04.2021).

59 *Ibid.*, amendment 4.

60 *Ibid.*, amendment 7.

61 *Ibid.*, amendment 10.

by EP, Council and Commission in March or April 2020 would guide the Conference and build on the principles of “inclusiveness, openness, interactivity and a structured approach”. In response, the at that time newly elected CoR President, Apostolos Tzitsikostas (EPP), Governor of the Greek Region of Central Macedonia, emphasized the importance of the regions:

“The Conference on the Future of Europe must be the opportunity to have a genuine discussion with citizens and change the European Union. If it is not to be another disappointment, it must be open and inclusive. If it is top-down, centralised, Brussels-driven and does not actively involve its local and regional leaders, the Conference will fail. Only by coming together, being ambitious and open to change, can we restore trust and build an EU that puts citizens first.”<sup>62</sup>

He added that “without the voice of the 1 million local and regional elected politicians the Conference will not succeed”.<sup>63</sup>

Since February 2020, the CoR has always emphasized the opportunity that the institution must seize in the context of the Conference, considering the latter a project which requires a bottom-up approach to become successful. The CoR referred to the continuing crisis discourse and called for significant institutional change to make the EU crisis-resistant and to regain trust among citizens. Only through the active participation of the CoR, or the regional and local politicians represented by the CoR could the CoFoE project be a success for the EU.

Interestingly, the metaphor of “1 million” representatives on the political basis of over 300 regions and over 90,000 cities/municipalities is introduced. This metaphor has been taken up in many statements and press releases since February 2020. The CoR refers to political representatives at subnational level not simply as representatives or politicians, but as “leaders”. Not only are the prime ministers or ministers from the member states leaders in the EU when they meet and negotiate in the Council of the EU or the European Council, but also politicians at subnational level are leaders. We assume that the CoR wants to emphasize its strength and especially democratic legitimacy with such leadership metaphor, considering that the number of representatives of the 27 member states in the Council of the EU, the European Council and the 27 Commissioner as well as the 751 MEPs looks small in direct comparison to the multitude of regional and local politicians across the EU. The CoR’s message is that the key EU players – the Commission, Council and EP – should not disregard the CoR, as it represents the broad base of democratically legitimized representatives and defends the claim of being closer to the citizens than the other EU actors.

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62 *CoR 2020c*: Local leaders: Conference on the Future of Europe is an opportunity for citizens to change the European Union, press release 12 February 2020. <https://cor.europa.eu/en/news/Pages/Conference-on-the-Future-of-Europe-is-opportunity-to-change-EU.aspx> (30.04.2021).

63 *Ibid.*

On 26 February 2020, members of the CIVEX Commission held a debate on European values, citizenship and democracy in the framework of the preparation for the CoFoE. Various speakers and guests emphasized that the democratic foundations of the EU should be at the centre of discussions with citizens.<sup>64</sup>

In the meantime, the COVID-19 pandemic disrupted plans for the CoFoE. The start of the conference on 9 May 2020 was postponed. On May 7, 2020, the CoR adopted the opinion “Local and regional authorities in the permanent dialogue with citizens”<sup>65</sup> and called for the Conference to be convened as soon as possible once the pandemic is brought under control. Members of the CoR debated together with MEP Gabriele Bischoff, Vice-President of the EP’s Committee on Constitutional Affairs (AFCO). Here, MEP Bischoff stressed the historic moment in which the EU finds itself, emphasizing that crises were opportunities for structural reforms. She mentioned that in the COVID-19 crisis it was paramount to become more effective, more democratic and closer to the citizens: “Europe is at crossroads. It can go back to the ‘old normal’ or it can use the opportunity to embark on a full recovery and relaunch of this fantastic European project. It is time for a new courageous ‘Schuman-moment’”<sup>66</sup> – referring to the visionary founding father of European integration.

At the CoR’s 140th plenary meeting, the focus was on the EU Annual Regional and Local Barometer that includes an opinion poll about the impact of the COVID-19 pandemic on subnational authorities across the EU.<sup>67</sup> The CoR assessed the survey results as giving legitimacy to subnational political actors to play a key role in EU decision-making and, in addition, in the upcoming CoFoE. Furthermore, the opinion “Local and regional authorities in the permanent dialogue with citizens” proposes to develop a tool called CitizEN – Citizen Engagement in the EU Network to involve citizens in policy-making. The objectives of this tool are<sup>68</sup>

- “to strengthen interaction between European institutions and citizens, through direct methods for engagement at local and regional level”,
- “to provide examples of participation methods that can be used both formally and informally”,

64 *CoR* 2020d: Conference on the Future of Europe: Union’s democratic foundations should be at the core of discussions with citizens, press release 27 February 2020, <https://cor.europa.eu/en/news/Pages/Conference-Future-Europe-CIVEX-debate.aspx> (30.04.2021).

65 *CoR* 2020b: Opinion on local and regional authorities in the permanent dialogue with citizens, 14 October 2020, CDR 4989/2019. <https://cor.europa.eu/DE/our-work/Pages/OpinionTimeline.aspx?opId=CDR-4989-2019> (30.04.2021).

66 *CoR* 2020e: COVID-19 crisis has made the need for the Conference on the Future of Europe even more pressing, press release 25 June 2020. <https://cor.europa.eu/en/news/Pages/COVID-19-crisis-has-made-the-need-for-the-Conference-on-the-Future-of-Europe-even-more-pressing.aspx> (30.04.2021).

67 See EU Annual Regional and Local Barometer. <https://cor.europa.eu/en/our-work/Pages/EURegionalBarometer-2020.aspx> (30.04.2021).

68 *CoR* 2020f: Local and regional leaders propose a tool for citizens’ voice to be heard in the EU decision-making process, press release 14 October 2020. <https://cor.europa.eu/de/news/Pages/mc-donnell.aspx> (30.04.2021).

- “to act as a repository of information and exchange of best practices of national, regional and local participation initiatives from across the European Union”.

In addition to its proposals and in search for its role, the CoR then introduced another instrument in December 2020. It announced the establishment of a “High-Level Group on Democracy” to be chaired by Herman van Rompuy, the first President of the European Council and former Prime Minister of Belgium. Composed of seven European “wise men and women”<sup>69</sup>, the High-Level Group had its inaugural meeting on 17 March 2021. The mandate of this group is to support CoR activities in relation to the CoFoE. It aims to strengthen the impact and influence of subnational local authorities in the European policy-making process and to stimulate discussion on European democracy. The High-Level Group works closely with CoR members, notably the CoR’s Conference of Presidents, the Bureau, its thematic commissions and the members of the CoR delegation to the CoFoE.<sup>70</sup> The CoR’s President Tzitzikostas highlighted the importance of this advisory body to the CoR. When launching the group, CoR President Tzitzikostas remarked: “We have a unique democratic system in the EU. I like to see it as the ‘European House of Democracy’. Our house has strong walls – the Member states – and a protective roof – the European Union. Local and regional authorities are its foundations and its safety net.”<sup>71</sup> From the CoR’s point of view, this European House of Democracy with all its components needs to be strengthened at and through the CoFoE.

The CIVEX Commission continued its discussion on the Conference, looking at specific topics. On 16 February 2021, it had an exchange on whether and how the CoR can play its role as the voice of subnational authorities in the EU institutional system and how it exercises its position in the trio of Commission, Council and EP at the CoFoE. The importance of deliberative elements was also the topic of another CIVEX meeting on 30 March 2021. CoR members discussed with representatives of the EP, the European Commission and the Bertelsmann Foundation how regional and local politicians can support citizen participation in the CoFoE.<sup>72</sup> Another meeting on 11 May 2021 discussed the potential role of regional parliaments. Finally, there is ongoing cooperation

69 Actually, more wise women (4) than men (3). Besides Van Rompuy the group is composed of Joaquin Almunia, former European Commissioner for Competition and for Economic and Financial Affairs; Tomasz Grzegorz Grosse, Professor of the University of Warsaw; Rebecca Harms, former Member of the European Parliament (MEP); Silja Markkula, President of the European Youth Forum; Maria João Rodrigues, former Minister for Qualification and Education of Portugal and MEP; Androulla Vassiliou, former Commissioner for Health and for Education, Culture, Multilingualism and Youth.

70 For an overview of the CoR’s internal structure see *Abels* 2021 (footnote 14).

71 *CoR* 2020g: Herman Van Rompuy to chair CoR High-Level group on European democracy to reinforce the regional and local dimension of the Conference on the future of Europe, press release 10 December 2020. <https://cor.europa.eu/en/news/Pages/Future-of-Europe-group.aspx> (30.04.2021).

72 *CoR* 2021a: Local and regional leaders connect with European Parliament, European Commission and Bertelsmann Foundation to take forward actions on the Conference on the Future of Europe, press release 30 March 2021. <https://cor.europa.eu/en/news/Pages/actions-on-the-Conference-on-the-Future-of-Europe.aspx> (30.04.2021).

with the CALRE, the Conference of European Regional Legislative Assemblies, which is a lobbyist of regional parliaments.<sup>73</sup>

In line with its understanding as facilitator, the CoR is currently setting up an internet-based forum and providing support for regions wishing to set up citizen panels – whether individually or whether jointly with other regions. After a stage of training, citizens’ panels in the regions are scheduled for autumn 2021.<sup>74</sup> In addition, by the end of June a group of 31 frontrunner regions (plus several regional associations) has formed an “Alliance of Regions for European Democracy”.<sup>75</sup> This alliance, whose “long-term political objective is to enhance the regions’ political impact at the European level on matters with direct relevance to the work of local and regional authorities“, is not exclusive but open for further regions to join:

“This Alliance should gradually include all of the European Union’s regions and equivalent territorial units and should work closely with their representative bodies, with the purpose of increasing their legitimate impact on EU decision-making, reflecting their competences and common interests.”<sup>76</sup>

Having taken a look at the official CoR’s position vis-à-vis other EU institutions, it is also interesting to account to CoR internal party differences. The different political groups have offered slightly different ideas and arguments to the CoFoE. However, for all of them the legitimacy crisis of the EU seems to be a common starting point for their engagement in spring 2021. The European People’s Party (EPP) Group endorses the *Leitbild* of a “stronger European house of democracy” – as the remarks by the CoR President from the EPP illustrates. The EPP Group sees the cities and regions as playing a “pivotal role in the relationship between the European Union and its citizens”. Also, the Secretary of State for Federal, European and International Affairs of North Rhine-

73 For instance, as early as November 2019, the CoR and CALRE launched a joint pilot project “Input from political debates in regional parliaments” during the 9th Subsidiarity Conference in Rome. The aim was to strengthen the involvement of regional parliaments with legislative competences in the EU legislative process. The CoR’s task is to “oversee the project, collating input, thereby ensuring the implementation of the principle of subsidiarity and that decisions are taken as close to citizens, with the EU only acting when it is viewed as being more effective than at the national, regional or local level.”, see *CoR* 2019a: Changing the way the EU works: Regional parliaments launch initiative to strengthen their role in EU law-making, press release 22 November 2019, <https://cor.europa.eu/en/news/Pages/changing-the-way-the-eu-works.aspx> (30.04.2021).

74 In cooperation with the Bertelsmann Foundation, the CoR conducts these citizen panels on subnational level. After an evaluation, 22 local, cross-border or transnational projects will be part of this cooperation. The 22 partners and partnerships will include 36 regions and 11 cities from 15 EU member states and two candidate countries. Most partners are from Germany (10), followed by France (6) and Czech Republic, Poland and Spain (4 each). Moreover, 6 projects are from one region/city, while 16 involve two or more regions and cities. Approximately 50 citizens’ panels are planned to be held between September and December 2021. Regarding the format, 50% of the dialogues are planned to be held digitally and the other half in hybrid format. <https://cor.europa.eu/de/engage/pages/cor-bertelsmann-stiftung-project.aspx>.

75 *CoR* 2021b: The place of regions in the European Union architecture in the context of the Conference on the Future of Europe. Brussels, 29 June 2021. <https://cor.europa.eu/en/events/Documents/Declaration%20-%20The%20place%20of%20regions%20in%20the%20EU%20architecture%20-%202029-06-2021.pdf> (08.07.2021).

76 Ibid.

Westphalia and Chair of the CIVEX commission, Mark Speich, stated that “with the Conference on the Future of Europe, we have the opportunity to convey the concrete ideas of the citizens of a [sic] EU of the future towards Brussels”.<sup>77</sup>

The socialist and social democratic PES Group, in contrast, sees cities and the regions also as a “part of the Future of Europe”. The statement as of March 2020 places the issue into the broader context of European challenges: “Cities and regions are crucial political, social and economic entities that have to have a say on the fundamental issues for the future not just of Europe, but of all of us, such as climate change, social justice, the digital transition, European values, migration and the sustainability of the way we live”.<sup>78</sup> Christophe Rouillon, the President of the PES Group in the CoR, Mayor of the French town Coullaine and also Vice-President of the association of French Mayors, is calling for more European cooperation in public health issues. The Covid-19 crisis and “the lack of coordination between states” is in his view an opportunity for an “open debate” to discuss “all levels of governance” in the EU with an eye to regional and local politics: “Every re-nationalisation of policies is also a re-centralization which deprives regional and local authorities of European room for manoeuvre.”<sup>79</sup>

François Decoster, President of the CoR’s Renew Europe Group, has promoted the idea of an “active subsidiarity” to Vázquez Lázara from the Spanish Ciudadanos Party and chair of the JURI Committee of the European Parliament.<sup>80</sup> This idea was highlighted by the Task Force of Subsidiarity and Proportionality on “Doing Less More Efficiently”.<sup>81</sup> Former CoR President Karl-Heinz Lambertz and his colleagues promoted a new subsidiarity approach based on a new “culture” of subsidiarity.

The European Alliance Group<sup>82</sup> also stresses the pivotal role of regions and cities in the current model of multi-level governance and as well as for the future of the European Union. Kieran McCarthy, President of the European Alliance Group, sees the regions and cities as fully engaged partners in the recovery process in the Covid-19 crisis.<sup>83</sup>

77 *EPP-CoR 2021: Cities and Regions Have Pivotal Role in the Relationship Between the European Union and its Citizens*, press release 30 March 2021. <https://www.eppcor.eu/press-releases/cities-and-regions-have-pivotal-role-in-the-relationship-between-the-european-union-and-itscitizens/?fbclid=IwAR2fH-vILPZU58nf9Ia8zvmzkgVidsR0TG0H8mIQK4C-Ie222YKo9IOuQGM> (30.04.2021), p. 1.

78 *PES Group 2020a: Cities and Regions must be Part of the Future of Europe*, press release 27 March 2020. <https://pes.cor.europa.eu/cities-and-regions-must-be-part-future-europe> (30.03.2021).

79 *PES Group 2020b: The Conference on the Future of Europe has to draw lessons from the COVID-19 crisis*, press release 09 April 2020. <https://www.pescor.eu/conference-future-europe-has-draw-lessons-covid-19-crisis> (30.04.2021).

80 *Renew Europe 2020: Connecting Citizens and Local Authorities with the Conference on the Future of Europe*, press release 22 September 2020. <https://reneweurope-cor.eu/conferencefutureofeurope/> (30.04.2021).

81 The Task Force was established in 2017 by the then President of the European Commission Jean-Claude Juncker.

82 This political group is unique to the CoR. It is composed of regionalist party members from Spain (Catalonia, Navarra) or Belgium (Flanders), for instance, along with independents.

83 *European Alliance 2021: McCarthy Calls on the Conference on the Future of Europe to Reflect the Needs of Citizens, Simplify the Narrative and Show how the EU is Delivering*, press release 17 March 2021. <https://web.cor.europa.eu/ea/News/Pages/McCarthy-Conference-Future-Europe-citizens-simplify-narrative-EU-delivering.aspx> (30.04.2021).

The ECR Group is encouraging even the “local dimension” of European politics, especially in the pandemic crisis: “Mayors, ministers, and local councilors have been key allies on the frontline in this struggle”. Their *Leitbild* of the future of Europe is “localism” and the strengthening of national sovereignty.<sup>84</sup>

The youngest CoR Group, the Green Party, has so far contributed no detailed ideas to the current future of Europe debate. Yet, there are many proposals concerning different political, social and economic issues, which are part of their EU agenda. For example, the Green Group is criticising that the central governments of EU member states are reluctant to involve local and regional governments into the consultation processes for developing the national recovery plans.

This very brief survey of issues highlighted and raised by the different party groups in the CoR indicates a common ground to streamline the regional and local lobby activities towards the Future Conference. However, it is unclear whether the common ground will reach a critical mass to deliver an ambitious regional agenda on the table of the Conference. All political groups will now be presented in the CoR delegation to the CoFoE plenary.<sup>85</sup>

#### 4.5 CoR and Regions in the Joint Declaration

The already mentioned Joint Declaration by the Council, Commission, and EP is entitled *ENGAGING WITH CITIZENS FOR DEMOCRACY– Building a more resilient Europe*. It was signed on 10 March 2021 by EP President David Sassoli, António Costa, Prime Minister of Portugal, which holds the Council Presidency in the first half of 2021, and Commission President Ursula von der Leyen. It defines the conference as “a citizens-focused, bottom-up exercise for Europeans to have their say on what they expect from the European Union” by giving “citizens a greater role in shaping the Union’s future policies and ambitions, improving its resilience”.<sup>86</sup> The declaration lays down the structures and general modes of decision-making. The innovative building blocks are

- 1) the CoFoE’s governance structure, including the Executive Board, a Common Secretariat, and the Conference Plenary,
- 2) various conference events of different scope to be conducted at different levels, including transnational European Citizens’ Panels as well as regional panels, and
- 3) an interactive multilingual digital platform, which was launched in April 2021.

84 *ECR Group in the CoR 2020: Europe Day 2020 – a new Milestone*, press release 20 September 2020. [https://web.cor.europa.eu/ecr/news/Pages/Europe-Day-2020--a-new-milestone-.aspx?fbclid=IwAR2F-5dwID3b06w6Csy80\\_t9-DHEWbKox0VnJwOcZr\\_zXIsfKT-8--J4F4](https://web.cor.europa.eu/ecr/news/Pages/Europe-Day-2020--a-new-milestone-.aspx?fbclid=IwAR2F-5dwID3b06w6Csy80_t9-DHEWbKox0VnJwOcZr_zXIsfKT-8--J4F4) (30.04.2021).

85 *CoR 2021c: CoR delegation ready to represent 1 million regional and local elected politicians at the Plenary of the Conference on the Future of Europe*, press release 16 June 2021. <https://cor.europa.eu/en/news/Pages/CoFoE-plenary-19-June.aspx> (08.07.2021).

86 *European Parliament, Council and European Commission 2021: Joint Declaration on the Conference on the Future of Europe*, 05 March 2021. [https://ec.europa.eu/info/sites/default/files/en\\_-\\_joint\\_declaration\\_on\\_the\\_conference\\_on\\_the\\_future\\_of\\_europe.pdf](https://ec.europa.eu/info/sites/default/files/en_-_joint_declaration_on_the_conference_on_the_future_of_europe.pdf) (30.04.2021), p. 2; emphasis in original.

In contrast to what the EP has demanded and closer to the Council's position, the declaration is rather vague with a view to outcomes and political follow-up: While the final outcome of the Conference "will be presented in a report to the Joint Presidency", it is left to the three institutions to examine "how to follow up effectively to this report, each within their own sphere of competences and in accordance with the Treaties".<sup>87</sup> It is up to the conference structures to agree on the concrete modalities for reporting.<sup>88</sup>

As a joint undertaking of the EP, the Council and the European Commission, "acting as equal partners together with the Member States",<sup>89</sup> initially the conference seemed to leave little room for institutionalized involvement of the CoR or regions: The CoR shall be represented in the Conference Plenary.<sup>90</sup> In addition, it "may also be invited" as one out of four *observers* to the Executive Board – together with the "presidential Troika of COSAC", "the Economic and Social Committee [...] as well as representatives of other EU bodies and social partners where appropriate".<sup>91</sup> Yet, the rules of procedures are still under discussion in the Executive Board and amendments are on the table for including regional voices. In fact, recently the Executive Board at its meeting as of 19 July 2021 decided to amend its rules of procedure "by adding to the Conference Plenary six elected representatives from regional and six from local authorities" and, thereby, finalized the "design phase" of the Conference.<sup>92</sup>

How did the CoR respond to this Conference outline and structure? The Joint Declaration was welcomed by CoR's President Tzitzikostas right after its signature, i.e. before agreement was reached in the Executive Board on further details, including the number of delegates representing the CoR in the Conference Plenary. Tzitzikostas highlighted the reference to the involvement of the regional parliaments and local authorities, as well as the involvement of the CoR in the overall process. The CoR called on its members, all regional and local political actors in the EU and relevant stakeholders from business and civil society sector to participate in the CoFoE. The CoR's President said:

"Today's signature is an important step in our shared effort to bridge the gap between the European Union and our people living in regions, cities and villages. The European Committee of the Regions stands ready to sign the Joint Declaration on behalf of all 1 million locally and regionally elected leaders and to join forces with all EU institutions, with the national, regional and local authorities across Europe, and with relevant stakeholders from the business sector and the civil society".<sup>93</sup>

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87 *Ibid.*, p. 3.

88 *Ibid.*

89 *Ibid.*, p. 1.

90 *Ibid.*, p. 3.

91 *Ibid.*

92 *European Commission* 2021: Conference on the Future of Europe: greater say for regions and social partners, Statement, 19 July 2021. [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_21\\_3786](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_21_3786) (10.08.2021).

93 *CoR* 2021d: President Tzitzikostas: Statement on the Joint Declaration on the Conference on the Future of Europe, press release 10 March 2021. <https://cor.europa.eu/en/news/Pages/Statement-Joint-Declaration-Conference-Future-of-Europe.aspx> (30.04.2021).

The CoR President repeated the term “House of European Democracy”, which was already used in connection with the founding of the High-level Group in December 2020:

“We must reinforce our common House of European Democracy by empowering our people with the right tools to strengthen its roof – the EU – its walls – our Member States – and its foundations – regions, cities and villages. We must seize this opportunity to respond to the real needs of the people” (ibid.).

He repeated this assessment at the first meeting of the CoFoE Executive Board held on 24 March 2021.<sup>94</sup> In addition, the President reiterated the CoR’s key requirements for the CoFoE and the need for building and strengthening the “House of European Democracy”.<sup>95</sup>

While the CoR has now an observer status to the Executive Board, it is represented in the Plenary with the 18 full members – representing different regions, municipalities and political groups – as originally agreed by the Board in May 2021.<sup>96</sup> Furthermore, the CoR is also entitled to choose the additional 12 members representing subnational territorial authorities (six from regional, six from local authorities) that the Executive Board agreed in July 2021 to additionally include in Plenary. This subsequent extension of the delegation representing regions/local authorities from 18 to 30 can indeed be viewed as a success regarding CoR participation in the conference structures.

A more decisive role for the regional level and the CoR in particular can be expected in the organization of conference events. Apart from the European Citizens’ Panels<sup>97</sup> organized by the three institutions, further events will be organized “in partnership with civil society and stakeholders at European, national, *regional and local level*, with national and *regional Parliaments, the Committee of the Regions, the Economic and Social Committee, social partners and academia*”, whose involvement will “ensure that the Conference goes far beyond Europe’s capital cities and reaches every corner of the Union”.<sup>98</sup> Given the CoR’s previous efforts and experience in directly engaging with citizens in the framework of its *Reflecting on Europe* campaign,<sup>99</sup> it is quite likely that the CoR will take an active part in organizing events or rather facilitating the organization of such events at the local and regional level in a transnational spirit. First activities go in this direction (see above).

94 *CoR 2021e*: President Tzitzikostas statement at the first meeting of the Executive Board of the Conference on the future of Europe, press release 24 March 2021. <https://cor.europa.eu/en/news/Pages/President-Tzitzikostas-statement-first-meeting-Conference-future-Europe-.aspx> (30.04.2021).

95 Ibid.

96 See *CoR 2021c* (footnote 85).

97 Four European Citizens’ Panels will be conducted with 200 citizens each, randomly selected, representative of the EU sociodemographic structure, degressive-proportional according to national population. The group of young people between 16 and 25 years will be overrepresented with 1/3 of 200 citizens. [https://ec.europa.eu/commission/presscorner/detail/en/FS\\_21\\_3032](https://ec.europa.eu/commission/presscorner/detail/en/FS_21_3032) (08.07.2021).

98 *European Alliance 2021* (footnote 86), p. 2; emphasis added.

99 Cf. *Lambertz, Karl-Heinz 2018*: Die Arbeit des Europäischen Ausschusses der Regionen seit Juli 2017. Rückblick und Vorausschau, in: *Europäisches Zentrum für Föderalismus-Forschung Tübingen (ed.)*: Jahrbuch des Föderalismus 2018. Föderalismus, Subsidiarität und Regionen in Europa, Baden-Baden, pp. 420–434.

## 5 Discussion and Conclusions

Analysing the CoFoE with regard to the CoR and the role of regions is obviously a moving target. The process is still in its infancy. Ideas are still floating around and the procedural rules are anything but definite, even if some actors declare the “design phase” to be now concluded.<sup>100</sup> The good news is that this allows for leeway for different actors, including the CoR. We can learn from the experience of the Constitutional Convention.<sup>101</sup> In that Convention process a dynamic evolved which, in the end, created more ambitious outcomes than many national governments had wished for. As Anna-Lena Högenauer illustrates in her contribution, the CoR has tried to make use of formal treaty reforms and future debate already in the past to exploit them as opportunities to lobby for its own empowerment as well as on the behalf of regions. In this sense, the CoFoE follows a longer trend of CoR activism.

While on the one hand the situation today is more difficult given increasing polarization and contestation over European integration and a reluctance among national governments to include treaty changes on the agenda, on the other hand the dynamic in relation to citizens’ participation and public and media attention is not yet clear. This can actually play into the hand of the regions, who will be important in terms of setting up citizens’ panels. There is wide recognition that merely a hand-full of centralized European Citizens’ Panels organized by the Executive Board<sup>102</sup> itself is certainly not sufficient to fulfil the promise of citizens having a voice. An inclusive process requires citizens’ panels and events at regional level. What’s more: the discussions in the de-centralized regional panels shall feed into the centralized ECPs.

Clearly, in relation to regional citizens’ panels the CoR could play a key role as facilitator. As illustrated, the CoR has been active in the discussion about the CoFoE from the very beginning – just as it was in the reform debates in the past. It seems to perceive it as a window of opportunity for its claims to give a voice to regions, which are supposed to be closer to the citizens. It has advocated strong citizens’ involvement in the conference – plus a stronger role for regions and for itself. This is in line with the general CoR self-image as partner and facilitator of regions and their citizens at European level. This corresponds to the regions’ classical “let-us-in” strategy<sup>103</sup> in relation to European politics. The recent changes of the rules of procedure – the expansion of the number of regional and local representatives in the Plenary – illustrate the success of this strategy.<sup>104</sup>

100 As Guy Verhofstadt, MEP, did at the Executive Board meeting on 19 July 2021; see footnote 92.

101 On this point see also *Wuermeling, Joachim* 2021: Auf ein Neues? Erfolgsfaktoren für die Konferenz zur Zukunft Europas, in: *Integration* 44 (2), pp. 150–158.

102 Available at [https://ec.europa.eu/commission/presscorner/detail/en/FS\\_21\\_3032](https://ec.europa.eu/commission/presscorner/detail/en/FS_21_3032) (08.07.2021).

103 *Jeffery, Charlie* 2003: The German Länder and Europe: From Milieu-Shaping to Territorial Politics, in: *Dyson, Kenneth/Goetz, Klaus H. (eds.): Germany and Europe: A Europeanized Germany?*, Oxford, pp. 97–108.

104 See *European Commission* 2021 (footnote 92).

The downside of this is that there are differences to regions relating to their formal and informal strength at national and European level. These differences between stronger and weaker regions may also play out in relation to the CoFoE. Moreover, resources for regions – also for the wealthier ones – to take on new initiatives are scarce.

The CoR's engagement in the framework of the CoFoE also needs to be assessed against its previous activities and its practices of "institutional activism", but which comes in different shades. By and large, the CoR repeatedly issued quite concrete claims for a strengthening of its institutional rights via formal treaty reforms or informal practices since its establishment in 1994.<sup>105</sup> This was also the case during the Constitutional Convention.<sup>106</sup> More recently, the CoR's self-image as advocate for EU democracy and direct citizens' involvement was reflected in outreach activities and current political priorities. For instance, in 2016 the CoR launched its *Reflecting on Europe campaign* and subsequently stressed the importance of creating a permanent citizens' dialogue at EU level.<sup>107</sup> In the current period (2020–2025) working programme one of the main priorities is to "bring Europe closer to its people, and reinforce European democracy at all levels of government".<sup>108</sup> Referring to survey data, the CoR repeatedly stressed citizens' higher satisfaction with democracy at regional level as opposed to the national and European level. Not surprisingly, this diagnosis is shared by regional representatives, as indicated by a recent survey (conducted by the REGIOPARL project<sup>109</sup>) among members of the German *Landtage*. In the same survey, regional MPs were also asked about the likeliness of various scenarios for the EU in the upcoming years – and almost 40 percent of the respondents think that regions will indeed have a stronger say in Europe in the future.

Unsurprisingly CoR representatives at several occasions explicitly called for EU institutional reform and for a strengthening of the CoR as an ambitious, yet not very likely, objective for the conference. However, the CoR's official resolution on the CoFoE does not include any such reference! Hence, this might indicate that institutional activism nowadays seems to focus on the general aim of getting a foot in the door of the CoFoE and to act as advocate for an EU closer to its citizens by strengthening regions. Of course, the CoR still claims to be the voice of regional (and local) authorities and calls for their empowerment at EU level, including in the framework of the CoFoE. What can be observed is that the CoR aims to contribute to the CoFoE in a strategic and

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105 Abels 2021 (footnote 14).

106 Cf. Eppler, Annegret 2005: Der Ausschuss der Regionen im Jahr 2004 – zukünftiger Mittelpunkt eines „Netzwerks“ zwischen EU-Institutionen und Regionen?, in: *Europäisches Zentrum für Föderalismus-Forschung Tübingen* (ed.): Jahrbuch des Föderalismus 2005. Föderalismus, Subsidiarität und Regionen in Europa, Baden-Baden, pp. 620–631.

107 CoR 2018: Opinion of the European Committee of the Regions on Reflecting on Europe: the voice of local and regional authorities to rebuild trust in the European Union (2018/C 461/02), in: Official Journal of the European Union C 461/2, 21 December 2018.

108 See <https://cor.europa.eu/en> (30.04.2021).

109 See <https://www.regioparl.com/> (30.04.2021).

structured way with a broad spectrum of instruments related to political work, outreach activities and alliance building and based on a set of political priorities.<sup>110</sup>

It is certainly too early to either draw final conclusions or to develop scenarios for the CoFoE's outcomes. But the CoR and those regions interested in becoming involved seem to be dedicated to turn the conference into a deliberative experiment and experience. Potentially, this could have an effect on identity-building and develop a dynamic that might lead to more ambitious outcomes than what some (national) actors currently allow for. A definite assessment will have to wait for a more in-depth study once the CoFoE will be finalized in 2022 and when the intended and unintended consequences unfold.

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<sup>110</sup> *CoR* 2021f: The European Committee of the Regions at the Conference on the Future of Europe. <https://cor.europa.eu/en/engage/Documents/CoR%20delegation%20at%20the%20CoFoE%2016%20June%202021.pdf> (08.07.2021).

## Assessing the Role of Regional Parliaments in the EU: Parliamentary Functions and Problems of Democratic Legitimacy

*Paul Kindermann*

### 1 Introduction

Among the many impacts that European integration had on EU member states, the formation of a multilevel EU political system<sup>1</sup> and the constitutionalisation of the Union<sup>2</sup> brought major changes to national polities: Europeanization “has disrupted the institutional patterns” of national political systems and with it “the traditional workings of national democracy”.<sup>3</sup> One important aspect of this Europeanisation of national polities is its impact on the legislative role and institutional procedures of member state parliaments. As integration transferred significant parts of legislative competences from the national to the European level, domestic parliamentary sovereignty over legislation declined. At the same time, European decision-making and the political dynamics of the multilevel polity provide for a framework that national legislatures must take into account in performing their parliamentary functions.<sup>4</sup> EU affairs have become a cross-cutting issue in parliamentary work and domestic executive-legislative relations have been altered through the evolution of institutional positions of the different actors in the multilevel system.<sup>5</sup>

In contrast to the development of national parliaments, far less scholarly and political attention has been given to the role of sub-national, regional parliaments in the EU. Focusing on nation states as “masters of the treaties” as well as constitutive units of the multilevel EU polity and its dual system of democratic representation,<sup>6</sup> it is easy to ignore that such regional institutions are a salient part of the “traditional workings of national democracy”: regional parliaments with own legislative competences are an important trademark of federal states and a number of regionalised member states have devolved legislative competences to all or part of their regions.<sup>7</sup> Seven EU member states

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1 *Hix, Simon* 2007: The EU as a new political system, in: *Caramani, Daniele (ed.): Comparative Politics*, Oxford, pp. 573–601.

2 *Avbelj, Matej* 2011: Theory of European Union, in: *European Law Review* 36 (6), pp. 818–836; *Grimm, Dieter* 2017: The constitution of European democracy, Oxford, pp. 89 f.

3 *Schmidt, Vivien A.* 2005: Democracy in Europe: The impact of European Integration, *Perspectives on Politics* 3 (4), pp. 761–779 (761).

4 *Auel, Katrin/Benz, Arthur* 2005: The politics of adaptation: The Europeanisation of national parliamentary systems, in: *The Journal of Legislative Studies* 11 (3-4), pp. 372–393.

5 *Auel, Katrin* 2015: Europeanisation of National Parliaments, in: *Magone, José M. (ed.): The Routledge Handbook of European Politics*, Abingdon, pp. 366–385.

6 *Hobolt, Sara* 2020: Representation in the European Union, in: *Rohrschneider, Robert/Thomassen, Jacques (eds.): The Oxford Handbook of Political Representation in Liberal Democracies*, Oxford, pp. 621–636 (623).

7 For an overview see *Loughlin, John/Hendriks, Frank/Lidström, Anders* 2011: *The Oxford Handbook of Local and Regional Democracy*, Oxford. *Abels* 2015a suggests the term “subnational parliaments”

host about 70 of such meso-level regional parliaments with some autonomous authority over respective legislation.<sup>8</sup> As such, and with a direct electoral mandate, the above mentioned impacts of European integration pertain to the role of regional parliaments with legislative competences as well: the shifting of (new) competences to the EU also curbed their legislative scope and they need to deal with the complexity and political dynamics of the multilevel EU system.

With the introduction of the so-called Early Warning System (EWS) in the Treaty of Lisbon, regional parliaments were for the first time mentioned in the EU's constitutional architecture: applying the EWS as a novel tool of subsidiarity control,<sup>9</sup> national parliaments or chambers of EU member states were now expected to "consult, where appropriate, regional parliaments with legislative powers" (Protocol no. 2, Art. 6. TEU). Notwithstanding the impact of the EWS on the *actual* engagement of these regional legislators in EU affairs so far, scholars find that the new treaty provision opened a "window of opportunity" for regional parliaments by facilitating "a norm favouring pro-active parliamentary behaviour";<sup>10</sup> the EWS is seen to "have the ability to empower regional parliaments politically, administratively, institutionally, and in terms of policy influence and the information they could receive".<sup>11</sup> These developments brought renewed attention to the role of regional parliaments with legislative powers in the EU. They prompted scholarly contributions on their institutional adoptions, parliamentary activities, and potential to play a more prominent role in the EU multilevel political system.<sup>12</sup>

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to distinguish regional parliaments from the local, national, and supranational levels' because the term of a region is ambiguous – e.g. since some regions with legislative assemblies like Catalonia or Scotland consider themselves to be nations; see *Abels, Gabriele* 2015a: Subnational parliaments as "latecomers" in the EU multi-level parliamentary system, in: *Abels, Gabriele/Eppler, Annegret (eds.): Subnational parliaments in the EU multi-level parliamentary system: taking stock of the post-Lisbon era*, Innsbruck, pp. 27–36 (23). However, since many contributions, the Treaties, as well as important organisations like CALRE adhere to the notion of *regional* assemblies or parliaments, I will speak of regional parliaments in the following.

- 8 The number varies in different studies/assessments, depending i.a. on whether Italy accounts for 20 or 22 regional parliaments – compare e.g. *CoR (Committee of the Regions) 2013: The Subsidiarity Early Warning System of the Lisbon Treaty – the role of regional parliaments with legislative powers and other subnational authorities (Report)*, Brussels: European Union, p. 9. With Brexit, the regional assemblies of Wales, Northern Ireland, and Scotland dropped out of the count.
- 9 The EWS is spelled out in Protocol no. 2, article 4 of the TEU, which elaborates the Treaties' general clause on subsidiarity: that the EU shall refrain from pursuing public policy objectives that can be 'sufficiently achieved by the Member States, either at central level or at regional and local level' (Article 5.3 TEU).
- 10 *Abels* 2015a (footnote 7), p. 23.
- 11 *Högenauer, Anna-Lena* 2019: Regions and the parliamentarisation of EU governance: is the Early Warning System the solution?, in: *Abels, Gabriele/Battke, Jan (eds.): Regional governance in the EU*, Cheltenham/Northampton, pp. 194–210 (195). Also *Borońska-Hryniewiecka, Karolina* 2017a: Differential Europeanization? Explaining the impact of the early warning system on subnational parliaments in Europe, in: *European Political Science Review* 9 (2), pp. 255–278.
- 12 See the contributions in *Abels, Gabriele/Eppler, Annegret (eds.) 2015: Subnational parliaments in the EU multi-level parliamentary system: taking stock of the post-Lisbon era*, Innsbruck; *Abels, Gabriele/Högenauer, Anna-Lena* 2018: Regional parliaments: effective actors in EU policy-making?, London; New York; *Cornell, Anna Jonsson/Goldoni, Marco* 2017: National and regional parliaments in the EU-legislative procedure post-Lisbon, Oxford/Portland.

These recent contributions have provided new empirical material and theoretical explanations of regional parliamentary activities in EU affairs. What is lacking from this growing body of scholarship so far is a more explicit, normative picture of the role of regional parliaments in the EU. Sure enough, we do find many normative claims, making up a rather broad narrative on the importance of their involvement and empowerment in the EU for normative reasons of democratic legitimacy – in both academic and political discourse. But we lack systematic, normative analyses that would provide a coherent treatment of these reasons with a view to the underlying, general issue of what the “role for sub-national parliaments in EU democracy” *should* be.<sup>13</sup> This shortcoming makes for an imbalance between bold and broad normative claims on the importance of regional parliaments for EU democracy on the one hand and the lack of adequate analyses of the *normative grammar* of these claims on the other.

My paper seeks to counteract this shortcoming by sketching an approach to the normative analysis of regional parliaments in EU democracy. This analytical approach should provide the grounds for assessing the (potential) democratic role of regional parliaments in a comprehensive way while eschewing from descending into fundamental debates on EU integration or democratic theory. It should thus be applicable to various regional parliamentary functions and institutions in the context of EU affairs. As such, it seeks to provide an analytical default position for putting the normative claims of political and scholarly discourse into perspective. The main point of the approach is to start from certain normative *problems* EU democracy and ask: which regional parliamentary functions can theoretically contribute to *solving* these problems of democratic legitimacy in the EU. I will explain the analytical merits of such an approach in more detail below. The paper is structured in the following way.

The first section (1) introduces the normative dimension of the topic in more detail: the democratic role of parliaments in European integration and EU public policy making. The following part (2) goes on to analyse the specific case of regional parliaments with own legislative competences in the EU: reviewing recent contributions on the topic, I argue that the arguments put forward in the literature are inadequate in terms of analysing the normative claims about the democratic added-value of regional parliamentary involvement in the EU. Going beyond these contributions, the next section (3) introduces my approach to normative analysis, based on the democratic deficit literature. I then outline the approach, (4) discussing the different parliamentary functions of regional parliaments in the European multi-level system and connecting them to potential improvements of specific problems of EU democracy. The final part of the paper (5) presents an exemplary application of the approach, which should demonstrate the importance of making explicit the underlying normative claims of “empowering regional parliaments” that figure in political and academic discourse: by contrasting those regional parliamentary functions that theoretically facilitate democratic accountability and

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13 Bursens, Peter/Högenauer, Anna-Lena 2017: Regional parliaments in the EU multilevel parliamentary system, *The Journal of Legislative Studies* 23 (2), pp. 127–143 (129).

those functions that theoretically facilitate policy influence, I illustrate the different underlying normative rationales and added-value respectively.

## 2 Regional Parliaments and the EU's Democratic Legitimacy

The EU grounds the legitimacy of its political authority on the principle of representative democracy. Article 10 TEU asserts “the functioning of the Union shall be founded on representative democracy” and goes on to explain the channels of representation as well as the role of parties as political linkages between citizens and elected representatives. Given its supranational standing, the relatively swift development of EU democracy over the past decades amounts to the “forging of a representative democratic system on top of already existing representative democracies”.<sup>14</sup> Two types of parliaments bear the EU's dual system of democratic representation:<sup>15</sup> the supranational European Parliament (EP) and national parliaments who control their governments' legislative actions in the Council. The European Commission (COM) has a less clear position in terms of representative democracy, with its “particular role as institutional broker geared to the realisation of the common European interest”.<sup>16</sup> The picture is further complicated by various forms of non-electoral representation via the participation of interest groups and civil society organisations at EU level.<sup>17</sup> Thus, in the European multi-level political system, parliaments from different levels are involved in a complex form of compounded representation.<sup>18</sup> Scholars describe this constellation as an “emerging multilevel parliamentary system, which comes down to a balancing act between direct representation of citizens (through the EP) and indirect representation of its constitutive units”.<sup>19</sup>

From a normative perspective of representative democracy, the impact of European integration on national parliaments bears on two aspects of democratic legitimacy: the disempowerment of national legislatures and, on the other hand, the relative weakness of parliamentary actors in the EU multilevel system more generally. Legislative competences that member state legislatures lost in the wake of European integration, so the argument goes, have not been sufficiently compensated for in terms of supranational parliamentary control: notwithstanding the European Parliament's remarkable consoli-

14 *Fossum, John E./Crum, Ben* 2012: The EU polity and its pattern of representation – the multilevel parliamentary field, in: *Eriksen, Erik Oddvar/Fossum, John E. (eds.): Rethinking democracy and the European Union*, Oxon, pp. 74-92 (88).

15 *Hobolt* 2020 (footnote 6), p. 623.

16 *Borragán, Nieves Perez-Solorzano/Smismans, Stijn* 2014: The European Commission and political representation: a new inter-institutional perspective, in: *Kröger, Sandra (ed.): Political representation in the European Union*, Oxon/New York, pp. 125–141 (138).

17 *Finke, Barbara* 2007: Civil society participation in EU governance, *Living Reviews in European Governance* 2 (2). <http://www.europeangovernance-livingreviews.org/Articles/lreg-2007-2/download/lreg-2007-2Color.pdf> (03.09.2021).

18 *Pollak, Johannes* 2014: Compounded representation in the EU: no country for old parliaments?, in: *Kröger, Sandra (ed.): Political Representation in the European Union*, Oxon/New York, pp. 19–35 (22 ff).

19 *Bursens/Högenauer* 2017 (footnote 13), p. 130.

dition,<sup>20</sup> the EU's executive bodies and the Council in particular are still too removed from effective, sanctioned control by directly elected assemblies:<sup>21</sup> a “double deficit” of parliamentary control emerges in the multilevel system.<sup>22</sup> The institutional reforms since Maastricht and especially in Article 12 of the Lisbon Treaty have established new participation rights and mechanisms for national parliaments. Scholars and political actors disagree as to whether these prerogatives and tools are or may be successful in taming the double deficit of parliamentary control or the democratic legitimacy deficit of the EU more generally.

(Recent) academic and political discourse on the role of *regional* parliaments also taps into the notion of democratic legitimacy, adhering to their potential for reducing the shortcomings of parliamentary involvement in the EU. These contributions connect to earlier claims on the importance of regional parliaments for the “democratic legitimacy of European politics” regarding their “closeness” to citizens’ problems and interests.<sup>23</sup> Today, scholars ask whether regional parliaments can and should play a role in the “full parliamentarisation of the EU polity”,<sup>24</sup> whether they can serve a democratic function in an emerging “multilevel parliamentarism”<sup>25</sup> or “multilevel parliamentary field”<sup>26</sup> in the EU. More specifically, with regard to the democratic legitimacy of the EU, the question is: how and to what extent can the (further) inclusion of regional parliaments into EU public policy making contribute to remedying its democratic deficit?<sup>27</sup>

From this perspective of representative democracy, the normative justification for the stronger involvement of regional parliaments might seem rather straight forward. It could be thought to add a regional layer of electoral representation to the EU: “a regional underpinning to the representative function of the political system as a whole”.<sup>28</sup> And insofar as the EU's democratic deficit bears on a “representative democratic short-

20 Hix, Simon/Høyland, Bjørn 2013: Empowerment of the European Parliament, in: *Annual Review of Political Science* 16, pp. 171–189.

21 Maurer, Andreas 2020: Das Europäische Parlament in Spannungsfeld seiner Funktionsprofile, in: Becker, Peter/Lippert, Barbara (eds.): *Handbuch Europäische Politik*, Wiesbaden, pp. 391–427 (417 f).

22 Lodge, Juliet 1996: The European Parliament, in: Andersen, Svein/Eliassen, Kjell (eds.): *The European Union: How democratic is it?*, London, pp. 187–213 (190 f); Maurer, Andreas 2012: *Parlamente in der EU*, Wien, pp. 12 f.

23 Straub, Peter/Hrbek, Rudolf (eds.) 1998: *Die europapolitische Rolle der Landes- und Regionalparlamente in der EU*, Baden-Baden, pp. 17, my translation.

24 Abels 2015a (footnote 7), pp. 24.

25 Maurer, Andreas 2011: Mehrebenenparlamentarismus – Konzeptionelle und empirische Fragen zu den Funktionen von Parlamenten nach dem Vertrag von Lissabon, in: Abels, Gabriele/Eppler, Annegret (eds.): *Auf dem Weg zum Mehrebenenparlamentarismus?*, Baden-Baden, pp. 43–64.

26 Crum, Ben/Fossum, John E. 2009: The multilevel parliamentary field: a framework for theorizing representative democracy in the EU, in: *European Political Science Review* 1 (2), pp. 249–271.

27 Högenauer, Anna-Lena/Abels, Gabriele 2017: Conclusion: regional parliaments – a distinct role in the EU?, in: *The Journal of Legislative Studies* 23 (2), pp. 260–273 (270).

28 Reutter, Werner 2015: The quandary of representation in multilevel system and German Land parliaments, in: Abels, Gabriele/Eppler, Annegret (eds.): *Subnational parliaments in the EU multi-level parliamentary system: taking stock of the post-Lisbon era*, Innsbruck, pp. 211–229 (225). Note that in his own argument Reutter strictly denies the possibility of a meaningful involvement of regional parliaments in EU policymaking in terms of democratic representation!

fall”,<sup>29</sup> involving and empowering regional parliaments as directly elected, representative assemblies from the regional level in a multilevel parliamentary system could be seen as an important part of the parliamentary “remedy to the infamous democratic deficit of the EU”.<sup>30</sup> In other words: if (re-)parliamentarisation of EU multilevel governance is supposed to counter essential democratic shortcomings of the EU,<sup>31</sup> then the regional level *should* be included as this improves or would improve the representative function of the multilevel system as a whole. This narrative is facilitated by the political work of the CoR and (other) regional actors who maintain that the “better involvement of regions and of regional parliaments in the EU decision-making process could enhance democratic control and accountability”.<sup>32</sup> From such a (political) perspective, regional parliaments should be empowered since “we need every parliamentary level we can afford” to “generate legitimacy for the people”.<sup>33</sup>

In contrast to this narrative, various scholars paint a sobering if not pessimistic picture regarding the prospective of effective regional parliamentary engagement in EU affairs. They discuss technical constraints on individual aspects of their involvement like the ineffective use of the EWS,<sup>34</sup> regional parliaments’ scant institutional capacities and resources<sup>35</sup> or the meagre salience of EU affairs in regional politics. But they also point to deeper, structural constraints resulting from the “very functional logic of a multilevel system of government”.<sup>36</sup> From this perspective, “we better accept that there is neither an effective ‘European role’ for subnational parliaments nor any chance for them to contribute to the EU’s democratic legitimacy”.<sup>37</sup>

Notwithstanding whether scholarly arguments fall into the rather affirmative or the sceptical camp, none of them has addressed the more general, theoretical question of *how* regional parliaments do or would contribute to the democratic legitimacy of the EU.

29 *Fossum/Crum* 2012 (footnote 1414), pp. 74.

30 *Högenauer/Abels* 2017 (footnote 27), pp. 270.

31 On the EU’s “double deficit” of parliamentary engagement and oversight and parliamentary “strategies of democratization” see *Maurer* 2011 (footnote 25).

32 *CoR (Committee of the Regions)* 2018: Opinion of the European Committee of the Regions on reflecting on Europe: the voice of local and regional authorities to rebuild trust in the European Union, in: Official Journal of the European Union C 461/02), Brussels: European Union, §92. See also *CoR (Committee of the Regions)* 2014: Strengthening the role of regional parliaments in EU affairs – challenges, practices, and perspectives. Proceedings, July 2014, Brussels: European Union.

33 *Fischer* in *CoR* 2014 (footnote 3232).

34 *Fromage, Diane* 2017: Regional parliaments and the Early Warning System: an assessment and some suggestions for reform, in: *Cornell, Anna Jonsson/Goldoni, Marco (eds.): National and regional parliaments in the EU-legislative procedure post-Lisbon*, Oxford; Portland: Hart, pp. 117–136 (124 ff).

35 *Arribas, Gracia Vara* 2015a: The Early Warning System in motion – comparing different practices in subnational parliaments, in: *Abels, Gabriele/Eppler, Annegret (eds.): Subnational parliaments in the EU multi-level parliamentary system: taking stock of the post-Lisbon era*, Innsbruck, pp. 127–144 (130 ff); *Miklin, Eric* 2015: Towards a more active role in EU affairs – Austrian state parliaments after Lisbon, in: *Abels, Gabriele/Eppler, Annegret (eds.): Subnational parliaments in the EU multi-level parliamentary system: taking stock of the post-Lisbon era*, Innsbruck, pp. 157–174 (164 ff).

36 *Patzelt, Werner* 2015: Changing parliamentary roles – what does this mean for subnational parliaments and European integration?, in: *Abels, Gabriele/Eppler, Annegret (eds.): Subnational parliaments in the EU multi-level parliamentary system: taking stock of the post-Lisbon era*, Innsbruck, pp. 327–343 (341).

37 *Ibid.*, p. 337.

Both perspectives have not argued for their respective normative positions on the basis of the value that figures so prominently in the political and academic narrative: a regional parliamentary contribution to EU legitimacy. Scholars have presented arguments regarding *if* and *why* regional parliaments should be involved but not analysed *how* regional parliamentary activities or functions would contribute to the EU's democratic legitimacy. To explain my point here, consider two contrasting, normative perspectives on the involvement of regional parliaments.

The first perspective pertains to the view of safeguarding the democratic constitution of domestic polities, making good for the “encroachments” of European integration.<sup>38</sup> In the case of federal Germany: “the constitutionally required balance of powers within the [German] *Länder*” would be “jeopardised by the loss of competencies on the part of the *Länder* parliaments”.<sup>39</sup> Presented as the “losers” of EU integration, regional parliaments are viewed as “fighting back” against the first aspect of the double deficit.<sup>40</sup> From this perspective, regional parliaments with legislative competences *should* be involved because they have a constitutionally guaranteed standing as legislators with a democratic mandate. Involving them is instrumental for safeguarding constitutional orders domestically, where “regional structures exist and are constitutionally secured”.<sup>41</sup>

However, this line of normative argument does not tell us much about the democratic added value of regional parliamentary involvement regarding the legitimacy of the EU multilevel political system. The issue can be illustrated by the following observation: those politics and reforms strengthening the role of regional parliaments in EU affairs might successfully reinvigorate regional parliamentary sovereignty but turn out to be undesirable from the perspective of EU legitimacy – by being detrimental to the democratic functioning of the EU multi-level system as a whole. Take the example of “a binding mandate for regional parliaments so they could monitor their governments more effectively” in EU affairs.<sup>42</sup> From the guarding-regional-democracy perspective, this proposal has a natural appeal since it promises to compensate for (some) legislative authority and regulatory autonomy that regional parliaments lost in the wake of EU inte-

38 *Johne, Roland* 2000: Die deutschen Landtage im Entscheidungsprozess der Europäischen Union. Parlamentarische Mitwirkung im Europäischen Mehrebenensystem, Baden-Baden, p. 15.

39 *Abels, Gabriele* 2015b: No longer losers – reforming the German *Länder* Parliaments in EU affairs, in: *Abels, Gabriele/Eppler, Annegret (eds.)*: Subnational parliaments in the EU multi-level parliamentary system: taking stock of the post-Lisbon era, Innsbruck, pp. 193–209 (193); *Greß, Franz* 1998: Die Rolle der deutschen Landesparlamente im Prozess der europäischen Integration, in: *Straub, Peter/Hrbek, Rudolf (eds.)*: Die europapolitische Rolle der Landes- und Regionalparlamente in der EU, Baden-Baden, pp. 161–175 (161 f).

40 For the prominent case of Germany see *Reutter, Werner* 2013: Transformation des ‘neuen Dualismus’ in Landesparlamenten: Parlamentarische Kontrolle, Gewaltengliederung und Europäische Union, in: *Eberbach-Born, Birgit/Kropp, Sabine/Stuchlik, Andrej/Zeh, Wolfgang (eds.)*: Parlamentarische Kontrolle und Europäische Union, Baden-Baden, pp. 255–283.

41 *Abels* 2015a (footnote 7), pp. 45. Abels suggests additional conditions for involving regional parliaments but also remains ambiguous about the normative relation between regional parliamentary “responsibility for integration” that is derived from the domestic constitution and regional parliamentary involvement “help[ing] to democratize the EU polity”; see *Abels* 2015a (footnote 7), p. 44.

42 *Ries* in CoR 2014 (footnote 32), p. 4.

gration. But from the perspective of EU democracy, such a reform could be running the risk of creating relationships of “strict coupling”<sup>43</sup> that hamper effective policy making in the overall system. Thus, if we want to evaluate the theoretical potential of regional parliamentary involvement to counteract the EU’s democratic deficit, we need to go beyond the (sole) perspective of safeguarding regional constitutional orders and regional parliamentary sovereignty – without losing sight of the relevant empirical phenomena discussed under this heading.

Other scholars start from the second perspective of the double democratic deficit: (the lack of) parliamentary involvement and oversight in the multilevel political system in total. Crum and Fossum have introduced the heuristic of a “multilevel parliamentary field” (MLPF)<sup>44</sup> to “reconstruct democratic legitimacy under conditions of the fragmentation of parliamentary sovereignty” in the EU multilevel polity.<sup>45</sup> In contrast to the first, domestic, perspective, the MLPF is supposed to evaluate whether normative standards of representative democracy can still be met under such conditions: the normative benchmark refers to facilitating an adequate democratic process for the multilevel polity (as a whole) – a “process of collective will formation”<sup>46</sup>, based on the democratic values of political equality and autonomy.<sup>47</sup> The multiple parliaments, on different administrative levels of the field, fulfill different functions to that extent. For Crum, the normative question whether regional parliaments should be included more directly in addition to national parliaments into the MLPF hinges on the following issue: does the normatively salient democratic process take place at the national level or is “the regional process of collective will formation effectively detached from that at the national level?”<sup>48</sup> Suggesting a respective “demos test”, Crum comes to a skeptical conclusion and suggests that there is normative ground only for the direct involvement of the Belgian regional parliaments into the policy cycle and EU decision making.<sup>49</sup> Only here would the direct inclusion of regional parliaments be warranted on the basis of “making up for the imperfect accommodation of regional interests in the national democratic process” (ibid.). Again, notwithstanding the details of this line of argument, the normative ramifications of it only reach so far as to assess whether regional parliaments should be involved and/or empowered in the first place. Far from adding “a regional underpinning to the representative function of the political system as a whole”, regional parliaments are assessed in their capacity to function as national parliaments, as a substitute for na-

43 Benz, Arthur 2003: Compounded representation in EU multilevel governance, in: Kohler-Koch, Beate (ed.): Linking EU and National Governance, Oxford, pp. 82–111 (90).

44 Crum/Fossum 2009 (footnote 26).

45 Crum, Ben 2015: The emergence of an EU “multilevel parliamentary field” – is there a role for subnational parliaments?, in: Abels, Gabriele/Eppler, Annegret (eds.): Subnational parliaments in the EU multi-level parliamentary system: taking stock of the post-Lisbon era, Innsbruck, pp. 63–89 (67).

46 Ibid., p. 71.

47 Ibid., p. 65.

48 Ibid., p. 71.

49 Ibid., pp. 74 f.

tional democratic processes, which are taken to be “qualitatively different from subnational democracy”.<sup>50</sup>

In conclusion, both perspectives do not pertain to the (theoretical) added value of a genuinely *regional* parliamentary involvement in terms of the democratic legitimacy of EU policymaking and European integration. The first perspective establishes why regional parliamentary involvement is a solution to the encroachment of domestic constitutional orders. The second perspective assesses why regional parliamentary involvement could be a solution to imperfect national democratic processes in the EU multi-level system – and thus, a substitute for the contribution of national parliaments to EU democracy. In contrast, if we want to assess the normative grammar of a genuinely regional parliamentary contribution to EU legitimacy, I suggest grounding the normative analysis of the democratic role of regional parliaments in specific aspects of the EU’s democratic deficit. This alternative perspective starts from particular normative problems of democratic legitimacy in the EU and asks in which ways regional parliamentary involvement could be (part of) a solution to these current problems – thus clarifying the theoretical potential of regional parliaments to curb them. The next section outlines this approach in some more detail.

### 3 Analytical Approach: Regional Parliamentary Functions and Problems of EU Legitimacy

First of all, what are we referring to when we discuss and assess the *role* of regional parliaments in the context of the multilevel political system of the EU? Most studies – both on individual cases and comparative perspectives on regional parliaments – take their cue from the literature on national parliaments in the EU when they employ the concept of parliamentary roles. Such roles describe stable patterns of parliamentary activities, “structured as such by rule-guided behaviour”,<sup>51</sup> and they portray regional parliaments, for example, as scrutinisers, gatekeepers, or networkers.<sup>52</sup> Like individual parliamentary activities, which can simultaneously serve different parliamentary functions, parliamentary roles (can) pertain to different parliamentary functions as well. As scrutinisers, for example, regional parliaments perform functions of government control or legislation insofar as they “attempt to control how their national and regional governments act in EU policy-making” or “try to influence the policymaking activities of EU institutions” directly.<sup>53</sup>

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50 Ibid., pp. 64 f.

51 Patzelt 2015 (footnote 36), p. 328.

52 Raunio, Tapio 2011: The gatekeepers of European integration? The functions of national parliaments in the EU political system, in: *Journal of European Integration* 33(3), pp. 303–321; Kinski, Lucy 2020: What role for national parliaments in EU governance? A view by members of parliament, in: *Journal of European Integration*. doi:10.1080/07036337.2020.1817000.

53 Bursens/Högenauer 2017 (footnote 13), p. 132.

Whereas empirical analyses attend to the explanatory significance of these roles and functions, normative analyses attend to their normative significance. Ideally speaking, normative analyses would not examine why, how, and to which effects parliaments fulfil certain functions but if and how the fulfilment of these functions (would) serve a democratic purpose – i.e. are of democratic value. In this sense, any normative argument about the role of regional parliaments in EU democracy requires assessing their parliamentary functions as *functions of democracy*: from a normative perspective (on democracy), parliamentary functions like networking or government control are conducive to the value or quality of democracy insofar as they further the extent or scope to which appropriate democratic principles regulate the political system in question, here: the EU – and the same holds true for parliamentary activities and roles.<sup>54</sup>

Now, my approach to ground the normative analysis of the democratic role of regional parliaments in particular problems of democratic legitimacy takes its cues from the literature on national parliaments and on the EU's democratic deficit. Presenting her conception of the transformed roles of national parliaments in the EU, Sprungk structures her analysis by distinguishing “facets” of the EU's democratic deficit.<sup>55</sup> Dividing the debate broadly into proponents of an institutional and proponents of a sociological deficit, she matches the “new roles for national parliaments” to these facets. The latter then appear as (normative) problems to which the (further) involvement of national parliaments represent a solution: “considering the various facets of the democratic deficit debate, the strengthening of national parliaments in the EU can be considered as providing a ‘double solution’: it might bring about more legitimacy to EU policies, and it might further democratise institutional mechanisms and procedures at the EU level”.<sup>56</sup>

The advantage of such problems of democratic legitimacy is that they focus the analysis on a sufficiently specific aspect of EU democracy while resting on rather broad normative assumptions that can be shared by a variety of theories. This approach evokes Føllesdal and Hix who make their case for the EU's democratic deficit against Majone and Moravcsik on the basis of a conception of democracy that “is robust in the sense that many theorists would agree to many of its components, though specifying them differently”.<sup>57</sup> In this spirit, I assume that the problems (of democratic legitimacy) that I suggest would be shared by many scholars and commentators although they would maintain different causes as well as remedies to tackle them.<sup>58</sup>

54 On the analytical conception of normative principles applying to a particular practice or domain to the extent that they regulate that practice or domain via the respective principle see *Erman, Eva/Möller, Niklas* 2019: The place of feasibility in political theory, in: *Res Publica* 26, pp. 1–23.

55 *Sprungk, Carina* 2013: A New Type of Representative Democracy? Reconsidering the Role of National Parliaments in the European Union, in: *Journal of European Integration* 35 (5), pp. 547–563.

56 *Ibid.*, p. 550.

57 *Føllesdal, Andreas/Hix, Simon* 2006: Why there is a democratic deficit in the EU: a response to Majone and Moravcsik, in: *Journal of Common Market Studies* 44 (3), pp. 533–562 (547).

58 It is important to stress the analytical meaning of these *problems*: empirically, they have various common causes and the larger policy and polity choices that might contribute to their remedy also overlap.

I want to suggest the following three problems to capture the normative grammar of regional parliaments in EU affairs: (a) the problem of executive dominance, (b) the problem of indirect responsiveness, and (c) the problem of political disaffection. If the construction of these problems of EU democracy is convincing and if the accompanying pattern of regional parliamentary functions is complete, then the approach should be suitable to ground the normative analysis of the democratic role of regional parliaments in the EU. The normative grammar of regional parliamentary involvement could be analysed by asking which regional parliamentary functions may serve which democratic purpose that would curb which problem of democratic legitimacy in the EU.

For the sake of clarity, we can anticipate the regional parliamentary functions whose normative significance for EU democracy will result from discussing the different problems of democratic legitimacy respectively. Comparative parliamentarism has worked with a variety of “catalogues of functions” and ways to categorise them.<sup>59</sup> Because regional parliaments are domestic parliaments, their basic functional pattern in the (democratic) EU polity resembles the pattern of national parliaments. Theoretically that is, of course, since they vary substantially regarding the empirical scope, effectiveness, and normative significance of the individual functions.<sup>60</sup> From the usual functions that characterize empirical studies, “elective” functions as well as functions of “institutional reproduction” can be dropped since they are not of particular relevance for our context of normative analysis.<sup>61</sup> Furthermore, we should choose notions that are normatively dependent in order to not pre-empt their (possible) contributions to EU democracy.<sup>62</sup> For the current purpose of normative analysis in the context of the multilevel system, we can further distinguish between parliamentary functions that are oriented towards the constituency and those that are oriented towards other institutions. The former category includes the aggregation, informing (or: teaching) and publicity functions. The latter include the mandating, scrutiny, policy shaping, expression, and networking functions. Building on the contributions of different scholars,<sup>63</sup> I would thus suggest adapting the following set of regional parliamentary functions to structure the normative analysis of the (theoretical) role of regional parliaments in EU democracy.

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59 Loewenberg, Gerhard/Patterson, Samuel 1979: Comparing legislatures, Boston; Marschall, Stefan 2018: Parlamentarismus, 3rd edition, Baden-Baden, pp. 96 ff.

60 See Höpcke, Franziska 2014: Funktionsmuster und -profile: Subnationalstaatliche Parlamente im Vergleich, Baden-Baden.

61 Sure enough, regional parliaments do perform elective functions but not in relation to any actor *directly* involved in EU policymaking. National parliaments, to the contrary, elect, for example, ministers and often also heads of states who are engaged in the Council and European Council respectively.

62 Which regards mainly the issue of conceptualising *representation* as a distinct parliamentary function – instead of assigning functions like expression or aggregation as constitutive stages of the democratic process of representation (compare Marschall, Stefan 2018: Parlamentarismus, 3rd ed., Baden-Baden, pp. 104–143).

63 See Höpcke 2013 (footnote 60); Marschall 2018 (footnote 59); Raunio 2011 (footnote 52), and Patzelt, Werner 2003: Parlamente und ihre Funktionen, Wiesbaden.

Table 1: Regional parliamentary functions in EU affairs

Functional category	Functions
Control	<b>Mandating</b> and sanctioning executive actors <b>Scrutiny</b> – ex-ante & ex-post <b>Policy shaping</b>
Communication	<b>Expression</b> of constituency preferences <b>Aggregation</b> of information & interests <b>Informing</b> the constituency/citizens <b>Publicity</b> for politics and policy making <b>Networking</b>

Source: compiled by the author.

#### 4 Regional Parliamentary Remedies to Three Problems of Democratic Legitimacy in the EU

I will now sketch the three problems of EU democracy and outline them as heuristic tools for analysing the normative significance of these regional parliamentary functions. I describe them as the problems of A) executive dominance, B) indirect responsiveness, and C) democratic disaffection. Issues of EU democracy, to which regional parliaments seem theoretically inapt to relate to – *as* elected (legislative) assemblies in a system of compounded representation – are not considered. For example, the role of the courts in European integration – esp. the *European Court of Justice* –<sup>64</sup> would fall into this category.

Reconstructing these problems of EU democracy, we have to consider both *normal* modes of political decision making and *constitutional politics* in the EU. This distinction, however, cannot be overdrawn if we understand constitutional politics broadly as the ways in which political action and specific processes contribute to the formation and transformation of a European constitutional order:<sup>65</sup> in many regards, “the ongoing European constitutional transformation is the cumulative result of decisions, which have not been adopted through “standard” supranational Treaty amendment processes or national constitutional reform processes, but taken off the beaten constitutional track

64 *Scharpf, Fritz* 1996: Negative and Positive Integration in the Political Economy of European Welfare States, in: *Marks, Gary et al. (eds.): Governance in the European Union*, London, pp. 15–39. *Grimm* 2017 (footnote 2), pp. 89 f.

65 Notwithstanding the controversial debate on whether the EU can or should have a constitution in a narrow sense – see *Grimm, Dieter* 1995: Does Europe need a constitution?, in: *European Law Journal* 1 (3), pp. 282–302 – , the intergovernmental treaties that have shaped the EU over the last six decades did constitutionalise a new order: they substantively “shape and curtail states’ sovereign competences” and “assume constitutional rank and force”, enjoying supremacy over nation-state law in several areas; see *Niesen, Peter* 2017: The “Mixed” Constituent Legitimacy of the European Federation, in: *Journal of Common Market Studies* 55 (2), pp. 183–192 (185).

through ordinary law-making procedures”.<sup>66</sup> Naturally, the relation between (ordinary) treaty revision procedures and ‘unconventional’ constitutional change is remarkably complex and rife in path-dependencies – some scholars maintain, for example, that because current treaty-making rules and norms would be far too rigid “national governments are increasingly tempted to channel reform via treaties outside the EU”.<sup>67</sup> But notwithstanding the (normative) complexity of constitutional politics in the EU, when it comes to the role of regional parliaments, we basically find the same normative grammar as in the *normal* modes of policy- and decision making. Which is to say that the underlying, normative rationales for involving regional parliaments further into constitutional politics do not vary substantively: in constitutional politics as well, regional parliaments may theoretically curb executive dominance, facilitate more (democratic) responsiveness, and counter democratic disaffection.

#### 4.1 *Executive Dominance*

The first problem of democratic legitimacy describes a constellation in which executive actors engage in a form of political decision-making that is removed from effective parliamentary oversight.<sup>68</sup> Such *executive dominance* in the EU involves (at least) two facets relevant for the democratic role of regional parliaments, both of which bear on the challenge of making “executive power accountable” at different levels of the EU multi-level system:<sup>69</sup> (a) executive discretion at EU-level and (b) the institutional position of subnational executive actors in EU multilevel governance. These aspects pertain to regional parliamentary functions of scrutinising executive decision-making as well their networking function, which can (theoretically) complement and support effective scrutinizing by way of pooling resources and formal or informal exchange of information.

(a) The first aspect of the problem of executive dominance concerns the supranational level and comprises two main sites: the “national channel” of representation in the EU system, with member state governments wielding decision-making power in the Councils; and the European Commission as a “distinctive executive centre at the European level, outside of the intergovernmental locus”.<sup>70</sup> Regarding the first site: while their normative assessments vary, scholars generally agree on the lasting impact of EU policy making during the Eurozone crisis on the state of governing in the EU.<sup>71</sup> In the

66 *Menéndez, Agustin Jose* 2014: Editorial: A European Union in Constitutional Mutation?, in: *European Law Journal* 20 (2), pp. 127–141 (127).

67 *Closa, Carlos* 2014: Between a rock and a hard place: the future of EU treaty revisions, in: *SIEPS European Policy Analysis* (2), p. 2.

68 On parliamentary oversight in the EU post-Lisbon see *Eberbach-Born, Birgit et al. (eds.)* 2013: *Parlamentarische Kontrolle und Europäische Union*, Baden-Baden.

69 *Crum, Ben/Curtin, Deirdre* 2015: The challenge of making European Union executive power accountable, in: *Piattoni, Simona (ed.): The European Union: democratic principles and institutional architecture in times of crisis*, Oxford, pp. 63–87 (63).

70 *Curtin, Deirdre/Egeberg, Morten* 2008: Tradition and innovation: Europe’s accumulated executive order, in: *West European Politics* 31 (4), pp. 639–661 (639).

71 *Schmidt, Vivien A.* 2020: *Europe’s crisis of legitimacy*, Oxford.

wake of the crisis, the “European Council has taken over executive powers in the area of economic policies that formerly belonged to national decision-making”.<sup>72</sup> And although the effects on (national) legislatures were obviously highly asymmetrical, “the principal measures of this period have generally been implemented at speed, with opportunities for meaningful argument in parliaments and publics significantly reduced”.<sup>73</sup> The “new Euro regime” of economic governance that emerged from these crisis measures entailed specific accountability problems<sup>74</sup> and facilitated a form of “executive dominated federalism”:<sup>75</sup> “The overall policy frameworks and the surveillance procedures” of new economic governance “remain under control of the national governments” and “operated beyond effective parliamentary scrutiny”.<sup>76</sup>

These recent developments reinforce two general aspects of executive dominance in the national channel of representation that bear on the potential role of regional parliaments: the discretion of executives in bargaining in the Councils and the general informational asymmetries between the executive branch and the legislatures.<sup>77</sup> Since the salience of EU affairs is still low in *national* election campaigns,<sup>78</sup> national executives are not exposed to strong electoral pressures when they legislate in the Council.<sup>79</sup> A corresponding lack of incentives for “active politicisation of EU issues” in the parliamentary forums of “organised public debate”<sup>80</sup> discourages normal political contestation of executive actors by the parliamentary opposition who could “force the executive to defend publicly what it has proposed”.<sup>81</sup> In addition, the bargaining processes “among

72 *De Schoutheete, Philippe/Micossi, Stefano* 2013: On political union in Europe: the changing landscape of decision-making and political accountability. (CEPS Essay, No 4), Brussels: Centre for European Policy Studies, p. 4.

73 *White, Jonathan* 2015: Authority after emergency rule, in: *Modern Law Review* 78 (4), pp. 585–610 (589).

74 *Scharpf, Fritz* 2014: After the crash: a perspective on multilevel European democracy, MPIfG Discussion Paper 14/21, Cologne: Max Planck Institute for the Study of Societies, p. 4; *Crum/Curtin* 2015 (footnote 69), pp. 82 ff.

75 *Puetter, Uwe* 2012: Europe’s deliberative intergovernmentalism: the role of the Council and European Council in EU economic governance, in: *Journal of European Public Policy* 19 (2), pp. 161–178.

76 *Crum, Ben* 2013: Saving the euro at the cost of democracy?, in: *Journal of Common Market Studies* 51 (4), pp. 614–630 (622).

77 *Raunio* 2011 (footnote 52), p. 304.

78 *Hobolt* 2020 (footnote 6), pp. 626.

79 See, however, *Hobolt, Sara/Wratil, Christopher* 2020: Contestation and responsiveness in EU Council deliberations, in: *Journal of European Public Policy* 27 (3), pp. 362–381 (363) for the claim ‘that the Council now pays more attention to issues that the public considers salient and that public opinion also influences how many and which policies are agreed at the EU level’. Governments negotiations in the Council are said to grow more responsive to the ‘public mood’; *Wratil, Christopher* 2018: Territorial representation and the opinion-policy linkage: evidence from the European Union, in: *American Journal of Political Science* 63 (1), pp. 197–211.

80 *Auel, K.* 2013: De-Parliamentarisation Re-Considered: ‘Representation Without Corresponding Communication’ in *EU Affairs*. 13th Biennial Conference of the European Union Studies Association, 9–11 May 2013, Baltimore.

81 *Mezey, M.* 1998: Executive-legislative relations, in: *Kurian, George Thomas (ed.): World encyclopaedia of parliaments and legislatures*, Washington D.D.: Congressional Quarterly, pp. 780–786 (784).

representatives of the executive power of the Member States”<sup>82</sup> in the Councils hamper parliamentary oversight insofar as its consolidated working method(s) and executive secrecy make it harder for (national) parliaments to gather information that enable effective scrutiny.<sup>83</sup> Understood in this way, executive dominance appears as a problem of institutional *throughput* legitimacy:<sup>84</sup> from a normative perspective, it infringes upon the procedural quality of EU policy making insofar as it hampers accountability as one of its democratic qualities.

Regarding the second site, executive discretion is exercised by the European Commission insofar as the latter “is able to act relatively independently of national governments and thus constitutes an executive force in its own right”:<sup>85</sup> although the Commission’s competences are enshrined in the Treaties, which are in turn approved by national parliaments, scholars have examined its agenda-setting powers with a view to the Commission acting as “a “motor of integration” in ways that go beyond the original intentions of the member states”.<sup>86</sup> Thus, although “most of the actual EU implementation capacity resides with the member states, or even at lower (regional and local) governmental levels”,<sup>87</sup> such *agency drift* also points to problems of popular control.

(b) The second aspect of the problem of executive dominance concerns the discretion of subnational executive actors in EU multilevel governance. The “dominance of executive actors” can be found “at each of [the EU’s] governmental layers”, including the regional one.<sup>88</sup> In the context of regionalisation and European integration, regional authorities developed different ways of “circumventing the nation state” and established new, direct channels of *territorial* representation in EU institutions.<sup>89</sup> And in the context of domestic EU policy coordination, regional participation and interest representation is often dominated by regional governments, as the case of Austrian state parlia-

82 Curtin, Deirdre 2013: Challenging Executive Dominance in European Democracy, Amsterdam Centre for European Law and Governance Working Paper Series 2013/09, University of Amsterdam, p. 18.

83 Ibid., pp. 21 ff.

84 Schmidt, Vivien A. 2013: Democracy and legitimacy in the European Union revisited: input, output and ‘throughput’, in: *Political Studies* 61, pp. 2–22 (6 ff).

85 Curtin/Egeberg 2008 (footnote 7070), p. 640.

86 Hobolt 2020 (footnote 6), p. 624. Compare also Crum and Oleart arguing that “the Commission is not exclusively under the control of the member states. For one, the Commission’s mandate transcends – as it is – the will of the member states as it is supposed to serve the general interest of the Union (Article 17 TEU). For another, the member states are not the only principal of the Commission, it also has to heed the will of the European Parliament. For both reasons, the position that the Commission adopts may well escape the will of the member governments”; see Crum, Ben/Oleart, Alvaro et al. 2020: Accountability and transparency in a multilevel polity: European commissioners in national parliaments. RECONNECT, Deliverable 3, Amsterdam, p. 9.

87 Crum/Oleart 2020 (footnote 86), pp. 8.

88 Bursens, Peter 2019: The EU’s multilevel parliamentary system: escaping from the trilemma of market integration, national democracy and national sovereignty, in: *Abels, Gabriele/Battke, Jan (eds.): Regional governance in the EU*, Cheltenham/Northampton, pp. 177–193 (178).

89 *Abels, Gabriele/Battke, Jan* 2019: Regional governance in the EU or: what happened to the “Europe of the regions”? in: *Abels, Gabriele/Battke, Jan (eds.): Regional governance in the EU*, Cheltenham/Northampton, pp. 1–14 (1 ff); *Hooghe, Liesbet/Marks, Gary* 1996: “Europe with the regions”: channels of regional representation in the European Union, in: *Publius: The Journal of Federalism* 26 (1), pp. 73–91.

ments illustrates, where “EU affairs are clearly dominated by the respective state governor or – at most – by the regional government, while parliamentary influence depends largely on the “goodwill” of the government”.<sup>90</sup>

Now, regarding our analytical approach: regional parliamentary functions could be conducive to the curtailment of these two aspects of the problem of executive dominance insofar as they add or strengthen parliamentary accountability of executive actors. Theoretically, they can exercise their scrutiny function of EU policy making more or less directly at four distinct sites at EU level; or they can scrutinize national and regional governments in the context of domestic EU policy coordination.

First, regional parliaments can theoretically fulfil a scrutiny function at EU level via their (heterogenous) representation in the CoR: although the CoR has no formal sanctioning or decision-making powers, its opinions and own-initiative reports as well as informal lobbying at EU level may serve to “voice dissent” on the ground of subsidiarity control – and thereby transpose the parliamentary scrutiny function. Second, the Maastricht Treaty established the option for regional governments to represent their national country in Council of Ministers meetings. In some countries, there also exist special institutional mechanisms for sub-state participation in Commission and Council working groups.<sup>91</sup> In both cases, regional parliaments are confronted with additional channels via which their regional government participates in the EU policy cycle for which they can and should hold the government to account. Furthermore, regional parliaments can perform and/or enhance their scrutiny function via representatives in forums of transnational, parliamentary cooperation like CALRE: interparliamentary cooperation are thought to “extend” the functions of parliaments as “arenas of public deliberation”<sup>92</sup> and further the effective realisation of oversight insofar as cooperating parliaments “share information to facilitate bilateral and multilateral scrutiny of their governments”.<sup>93</sup>

Finally, regional parliamentary participation in the EWS may theoretically give them control over agenda-setting in the EU policy-cycle, with varying degrees of sanctioning power depending on the domestic institutionalisation of the EWS.<sup>94</sup> Note, however, that in terms of normative analysis the *reasoned opinions*, which regional parliaments may contribute in the EWS framework, oscillate between fulfilling a scrutiny function and fulfilling a policy-shaping function. Some scholars argue that “in its design” the EWS is “largely a deliberative forum”, where the “Commission must respond to the objections with further justification of its proposed action”, making the EWS (theoretically) a gen-

90 Miklin 2015 (footnote 35), p. 164; Aigner, Dagmar 2006: Die Landtage, in: Dachs, Herbert et al. (eds.): Politik in Österreich. Das Handbuch, Vienna, pp. 959–973.

91 Tatham, Michaël 2011: Devolution and EU policy-shaping: bridging the gap between multi-level governance and liberal intergovernmentalism, in: European Political Science Review 3, pp. 53–81 (58 f).

92 Benz, Arthur 2017: Patterns of multilevel parliamentary relations. Varieties and dynamics in the EU and other federations, in: Journal of European Public Policy 24 (4), pp. 499–519 (515).

93 Eppler, Annegret/Maurer, Andreas 2017: Parliamentary scrutiny as a function of interparliamentary cooperation among subnational parliaments, in: The Journal of Legislative Studies 23 (2), pp. 238–259 (242).

94 Compare Arribas, Gracia Vara 2015b: Europeanization of national parliaments, in: J. Magone (ed.): Handbook of Comparative European Politics, London, pp. 366–385.

uine forum of public accountability.<sup>95</sup> Others doubt that such “virtual” deliberation in the EWS, far from being “seen by citizens”,<sup>96</sup> amounts to an exercise of parliamentary, public scrutiny.<sup>97</sup> Instead, the EWS may rather fulfil a policy-shaping function in that it “informs” the Commission on the prospects of policy proposals more generally,<sup>98</sup> which, in combination with the dialogue of the Commission with regional parliaments, could make the Commission more responsive to the input of the latter. I will get back to the normative tension between these two functions below.

Given the mere advisory standing of the CoR and its extremely heterogenous composition,<sup>99</sup> it would already be a stretch to claim that regional parliaments have (normatively) significant public scrutiny power via this EU level institution. When it comes to constitutional development via (ordinary) Treaty change, this parliamentary scrutiny potential is equally if not more remote: The CoR *may* be consulted in the context of preparing and negotiating Treaty change or contribute own initiative opinions and reports to the IGC or Convention respectively; in the 2002–03 Convention of the Future of Europe, (some) representatives of the CoR were involved as permanent observers.<sup>100</sup> As a forum of interparliamentary cooperation – that convenes plenaries and committees, issues declarations, contributions to the CoR and presidential opinions – CALRE theoretically offers a similarly indirect instrument for regional parliaments to scrutinize EU-level processes of treaty change.

The two other sites of scrutiny concern the ability of regional parliaments to hold their regional executives to account within domestic EU policy coordination and, on the other hand, to scrutinise national executives in EU affairs – “formally through second chambers of national parliaments or joint committees, or informally through party links”.<sup>101</sup> Few regional parliaments, such as the *Landtag* of German *Baden-Württemberg*, even have the option to hold their regional government to account in EU affairs by way of a binding mandate.<sup>102</sup> With regard to communicative functions that can support scrutiny capabilities of regional parliaments, scholars examine the emergence and performance

95 Cooper, Ian 2012: A “virtual third chamber” for the European Union? National parliaments after the Treaty of Lisbon, in: *West European Politics* 35 (3), pp. 441–465 (458); *Borońska-Hryniewiecka* 2017a (footnote 11), p. 146

96 Norton, Philip 1998: Introduction: The Institution of Parliaments, in: *Norton, Philip (ed.): Parliaments and governments in Western Europe*, London, pp. 1–15 (1).

97 De Wilde, Pieter/Raunio, Tapio 2016: Redirecting national parliaments: setting priorities for involvement in EU affairs, in: *Comparative European Politics* 16 (2), pp. 310–329.

98 Van Gruisen, Philippe/Huysmans, Martijn 2020: The Early Warning System and policymaking in the European Union, in: *European Union Politics* 23 (3), pp. 451–473.

99 Hönnige, Christoph/Panke, Diana 2020: Herausforderungen und Einflusschancen beratender Institutionen in der Europäischen Union. Der Ausschuss der Regionen und der Europäische Wirtschafts- und Sozialausschuss, in: *Becker, Peter and Lippert, Barbara (eds.): Handbuch Europäische Politik*, Wiesbaden, pp. 481–492.

100 Schönlaui, Justus 2007: The “Convention Method”, in: *Castiglione, Dario et al. (eds.): Constitutional Politics in the European Union. The Convention Moment and its Aftermath*, Basingstoke/New York, pp. 90–111 (75 f).

101 Bursens/Högenauer 2017 (footnote 13), pp. 134.

102 Abels 2015b (footnote 39), p. 202.

of regional parliamentary communication with a view to acquiring information on EU policy, which comes in the form of interparliamentary networking,<sup>103</sup> formal and informal exchange with other parliaments on policy issues, as well as formal and informal activities of obtaining information through party and other organisational links.<sup>104</sup>

The same rationales of parliamentary scrutiny and supportive communication apply to the consent stage(s) of EU Treaty revision. *National* parliaments' formal role in consenting to Treaty revision has been consolidated with the introduction of the Lisbon Treaty – while they “always had to ratify Treaty changes (unless they were subject to referendums), this veto player role has been extended to two further types of Treaty change, the simplified Treaty revision procedure as well as two *passerelles*” clauses.<sup>105</sup> In federal member states as well as in Spain, these developments translate to the prerogative of regional parliaments to contribute ex-ante control in the second chambers of national parliaments – which applies to Germany, Belgium, Austria, and Spain to rather different degrees.<sup>106</sup> Beyond formalised involvement, regional parliaments can theoretically operate bilaterally or collectively (e.g. in the context of domestic, interparliamentary conferences) to scrutinise national executives on their position in Treaty negotiations.

#### 4.2 Indirect Responsiveness

Related to executive dominance, but different regarding its normative focus, the issue of *indirect responsiveness* of EU public policy draws attention to the output dimension of EU democracy. Broadly speaking, democratic responsiveness “is what occurs when the democratic process induces the government to form and implement policies that the citizens want”.<sup>107</sup> While responsiveness is a quality of the output dimension of democracy insofar it describes the “extent to which a government’s policies mirror the preferences of its citizens”,<sup>108</sup> the political, institutionalised process is crucial for *democratic* respon-

103 *Eppler, Annegret* 2013: Zusammenarbeit von Parlamenten zur Stärkung der parlamentarischen Kontrollfunktion?, in: *Eberbach-Born, Birgit et al. (eds.): Parlamentarische Kontrolle und Europäische Union*, Baden-Baden, pp. 317–340.

104 For instance, *Schneider, Ellen/Rittberger, Berthold/Wonka, Arndt* 2013: Adapting to Europe? Regional MPs' Involvement in EU Affairs in Germany, in: *Regional and Federal Studies* 24 (4), pp. 407–427.

105 *Auel, Katrin/Neuhold, Christine* 2017: Multi-arena players in the making? Conceptualizing the role of national parliaments since the Lisbon Treaty, in: *Journal of European Public Policy* 24 (10), pp. 1547–1561 (1548).

106 In Germany, the fact that the *Bundesrat* is composed of representatives of the regional governments gives regional parliaments indirect scrutiny powers over their performance in the second chamber; in Belgium, members of the second chamber are elected by the parliaments of the federalized regions; in Austria, the second chamber is composed of representatives from the regional parliaments; in Spain, regional assemblies elect part of the senators.

107 *Powell, G. Bingham* 2004: The quality of democracy: the chain of responsiveness, in: *Journal of Democracy* 15 (4), pp. 91–105 (91).

108 *Zhelyazkova, Asya/Bølstad, Jørgen/Meijers, Maurits J.* 2019: Understanding responsiveness in European Union politics: introducing the debate, in: *Journal of European Public Policy* 26 (11), pp. 1715–1723 (1715).

siveness: we expect the chain of representation<sup>109</sup> and not “good luck or advantageous circumstances” to evoke adjustments in the policymaking behaviour of bureaucratic and political actors.<sup>110</sup> The claim that EU public policy systematically adopts policies that a majority of EU citizens actually does not support has been discussed controversially for a long time: the idea is that “governments are able to undertake policies at the European level that they cannot pursue at the domestic level, where they are constrained by parliaments, courts and corporatist interest group structures”.<sup>111</sup> What is less controversial than this claim of *policy drift* is the more general problem that EU policy making is institutionally remote from European citizens in the sense that available mechanisms of popular control are *indirect*: for a variety of reasons, especially the insulation of governments from electoral pressures in the Council,<sup>112</sup> citizens’ “preferences on issues on the EU policy agenda at best have only an indirect influence on EU policy outcomes”.<sup>113</sup>

This makes sense since European integration was designed as an elite-driven process removed from mass politics in order to enable European cooperation on issues difficult to agree upon in contexts of mass political contestation. But assessing input responsiveness in the multilevel system is a complex matter<sup>114</sup> and various accounts that establish the politicisation of EU affairs have pushed back against such an “elite centred view”.<sup>115</sup> In this sense, more recent contributions have argued that politicisation and the “expansion of domestic electoral politics to encompass European affairs” led governments who “are willing and able to represent the interests of the relevant national electorate in EU legislative negotiations’ and thus govern responsively”.<sup>116</sup>

109 Rohrschneider, Robert/Thomassen, Jacques 2020: Introduction: political representation in liberal democracies, in: Rohrschneider Robert and Thomassen, Jacques (eds.): *The Oxford Handbook of Political Representation in Liberal Democracies*, Oxford, pp. 1–15 (2).

110 Powell 2004 (footnote 107), pp. 92.

111 See Føllesdal/Hix 2006 (footnote 5757), p. 537; Scharpf, Fritz 1998: *Governing in Europe. Effective and democratic?*, Oxford; Mair, Peter 2013: *Ruling the void*, London/New York, pp. 99 ff. Yet, Føllesdal and Hix do not adopt such a claim of structural policy drift.

112 Bailer, Stefanie/Mattila, Mikko/Schneider, Gerald 2015: Money makes the EU go round: the objective foundations of conflict in the Council of Ministers, in: *Journal of Common Market Studies* 53 (3), pp. 437–456.

113 Føllesdal/Hix 2006 (footnote 57), p. 536. Note that this line of argument reflects aspects of the problem of executive dominance insofar as ‘the fear of electoral sanctioning’ is also a main prerequisite of accountability; see Hagemann, Sara/Hobolt, Sara/Wratil, Christopher 2017: Government responsiveness in the European Union: evidence from Council voting, in: *Comparative Political Studies* 50 (6), pp. 850–876 (851). Opaque policy responsibilities in a decision-making regime and a lack or disconnect of public, salient political debate in the delegating, representative institutions hamper the accountability and responsiveness of executive power. However, parliaments can fulfil their functions of aggregating and expressing citizens’ preferences, and shaping policymaking accordingly, also via other channels that may not be suitable vehicles of executive scrutiny.

114 Meijers, Maurits J./Schneider, Christina J./Zhelyazkova, Asya 2019: Dimensions of input responsiveness in the EU: actors, publics, venues, in: *Journal of European Public Policy* 26 (11), pp. 1724–1736.

115 Hooghe, Liesbet/Marks, Gary 2008. A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus, in: *British Journal of Political Science* 39, pp. 1–23 (6 f).

116 Schneider, Christina J. 2018: *The responsive Union*, Cambridge, p. 2.

Notwithstanding whether we agree with a more critical or rather positive view here, the normative rationale for the involvement of regional parliaments on the grounds of enhancing the EU's too indirect responsiveness is that they could augment the (dispersed and complex) European "chain of responsiveness" by giving "voice" to regional interests – both via formal and informal channels. The expectation of "heightened representativity"<sup>117</sup> in this regard depends on the ability of regional parliaments to aggregate regional preferences in the parliamentary institutional channels and express them vis-à-vis other actors in the multilevel system.<sup>118</sup> Again, the ability to make this "voice" heard is grounded in the potential of regional parliaments to scrutinise decision-making at national and EU levels: the indirect or lack of responsiveness can be related to problems of making EU executive power accountable since the exposure of decision making to public scrutiny – which may be facilitated by regional parliaments – is assumed to make policy makers more responsive in anticipation of public pressure and backlash. But there is another relevant type of regional parliamentary functions, which refers to their peculiar representative qualities: regional parliaments are assumed to be "closer to citizens and their problems"<sup>119</sup> and could thus theoretically play the role of a "vehicle to register" the "voice and decent of EU citizens as citizens of local and regional authorities"<sup>120</sup> – analogous to the supranational role that Piattoni ascribes to the CoR. For such parliamentary involvement to shape policymaking without public pressure and "institutionalised accountability",<sup>121</sup> regional parliaments can theoretically shape policymaking on basis of "voice" without "will" – as Piattoni puts it.<sup>122</sup> Accordingly, the potential of regional parliaments to enhance on the EU's indirect responsiveness relates to the parliamentary control function to scrutinise executive actors but also to the policy shaping function – both directly and indirectly – and to the constituency focused communicative functions.

117 *Fossum, John E.* 2015: Reflections on the role of subnational parliaments in the European Multilevel Parliamentary Field, in: *Abels, Gabriele/Eppler, Annegret (eds.): Subnational parliaments in the EU multi-level parliamentary system: taking stock of the post-Lisbon era*, Innsbruck, pp. 357–372 (368).

118 This line of thinking is related to the general expectation that differentiated, multilevel structures of political authority "promise that there would be a sufficient consideration of citizens' interests regarding European, national, regional, and local concerns"; see *Benz* 2003 (footnote 43), p. 86. It is prominent in the literature on Multilevel Governance; see also *Marks, Gary/Hooghe, Liesbet* 2004: Contrasting visions of multi-level governance, in: *Bache, Ian/Flinders, Matthew (eds.): Multi-level governance*, Oxford, pp. 15–30 (16).

119 *Abels* 2015a (footnote 7), p. 42; also *Hrbek, Rudolf* 1998: Die europapolitische Rolle der Landes- und Regionalparlamente, in: *Straub, Peter/Hrbek, Rudolf (eds.): Die europapolitische Rolle der Landes- und Regionalparlamente in der EU*, Baden-Baden, pp. 1–19 (17).

120 *Piattoni, Simona* 2019: The contribution of regions to EU democracy, in: *Abels, Gabriele/Battke, Jan (eds.): Regional governance in the EU*, Cheltenham/Northampton, pp. 16–32 (29).

121 *Rauh, Christian/de Wilde, Pieter* 2018: The opposition deficit in EU accountability: evidence from over 20 years of plenary debate in four member states, in: *European Journal of Political Research* 57, pp. 194–216 (196).

122 *Piattoni* 2019 (footnote 120).

Regarding the function of regional parliaments to shape policy and channel regional interests of their constituencies into EU policy making, we can again point to their representation in the CoR. Although the CoR lacks the power to make or veto a political decision at EU level, it has the ability to “*shape* policies by influencing the way in which they are defined implemented and evaluated”.<sup>123</sup> Regional parliaments may further exercise *soft* influence via informal ways of shaping EU policy making both at domestic and at EU level. Most activities of the “*let us in strategy*” of regional parliaments that Auel and Große Hüttmann compile may serve this parliamentary function:<sup>124</sup> from the Political Dialogue with the Commission via their national parliaments to lobbying through regional liaison offices in Brussels or separate efforts of “ad hoc lobbying” at EU level. Theoretically, such informal ways of involvement can not only convey “views on policy” but also knowledge about regional peculiarities that could make decision-makers more receptive to regional peculiarities. In terms of constitutional development, the same normative rationales of parliamentary involvement apply: the different formal and informal channels can theoretically be used to express regional interests and special concerns at relevant sites of law-making or treaty revision. A current, new mechanism in this regard is the ongoing experiment of the Conference on the Future of Europe, where regional parliaments with legislative competences are represented in the Conference plenary, as part of the CoR delegation.<sup>125</sup>

Of course, for all these (potential) policy shaping activities to add democratic responsiveness in terms of a regional *representative surplus*, one needs to substantiate the claim that regional parliaments are indeed responsive to regional interests on European policy issues, based on their closeness to citizens: “acting closer to the people”, regional parliaments are taken to be “able to better capture social demands and represent them along the EU decision-making process”.<sup>126</sup> Thus, the constituency focused parliamentary functions come into view. The basic question regarding the representative quality of regional parliaments bears on whether their composition is sociologically representative and if they provide effective venues for communication with their citizens.<sup>127</sup> But since we are concerned with the specific area of EU politics, added responsiveness hinges on the communicative ability of regional parliaments to aggregate and express the specific EU related, European policy preferences of citizens and associations. This last point leads to the next problem of democratic legitimacy that I would suggest to ground the norma-

123 Piattoni 2019 (footnote 120), pp. 22; Piattoni, Simona/Schönlau, Justus 2015: Shaping EU policy from below: EU democracy and the Committee of the Regions, Cheltenham/Northampton.

124 Auel, Katrin/Große Hüttmann, Martin 2015: A life in the shadow? Regional parliaments in the EU, in: Abels, Gabriele/Eppler, Annegret (eds.): Subnational parliaments in the EU multi-level parliamentary system: taking stock of the post-Lisbon era, Innsbruck, pp. 345–356 (348).

125 See “The European Committee of the Regions at the Conference on the Future of Europe” by the CoR: <https://bit.ly/3eXMwSX>.

126 Borońska-Hryniewiecka, Karolina 2017b: A new player in the “multi-level parliamentary field”. Cooperation and communication of regional parliaments in the post-Lisbon scenario, in: Cornell, Anna Jonsson/Goldoni, Marco (eds.): National and regional parliaments in the EU-legislative procedure post-Lisbon, Oxford/Portland, pp. 137–154 (139).

127 Reutter 2015 (footnote 28), p. 217.

tively relevant functions of regional parliaments in EU democracy. *Aggregating* policy preferences in and into representative institutions like regional parliaments is one thing. But parliaments are or rather should also be a major site for the public *formation* of these preferences: as “institutional arena[s] for public deliberation” and political mobilisation.<sup>128</sup> In this sense, regional parliaments may theoretically address what could be called the problem of *democratic disaffection* in the EU.

### 4.3 *Democratic Disaffection*

The problem of *democratic disaffection* captures at least two aspects that have been discussed extensively in EU studies: the lack of Europeanized public spheres and public opinion formation on European issues on the one hand and the one-sided politicisation of European integration and politics on the other. Democratic disaffection thus relates to how the EU and European policymaking is communicated in the public sphere and how such processes of political communication produce and shape citizens’ political engagement and preferences. From a normative perspective on representative democracy, the “lack of Europe wide policy-discourse”<sup>129</sup> is a long-standing issue of the democratic functioning of EU public policy. But many scholars agree that in the wake of and since the Eurozone crisis, we are “witnessing the emergence of Europeanized public spheres entailing transnational cross-border communication on questions of common European concern”.<sup>130</sup> It is at least no longer possible to find an outright lack of public contestation and media attention on EU politics and European issues. This Europeanisation is linked to politicisation: the politicisation of European (political) issues in various public spheres<sup>131</sup> but also, and more prominently, the politicisation of European integration itself.<sup>132</sup> In this situation, the problem of democratic disaffection captures the tension between the need of political mobilisation on EU policy issues and the risk of endangering the European project by the engendering politicisation (of EU integration itself).<sup>133</sup> According to many commentators, the overarching question is if and how the EU policy cycle can become “‘normal’ politics subject to similar debates and controversies as in the case of domestic affairs”.<sup>134</sup>

This twofold problem pertains to the EU’s national channel of representation in a particular way: where “parliamentarians lament their citizens” growing and difficult to overcome “discontent with the EU” while observing a “paradoxical apathy of citizens

128 *De Wilde/Raunio* 2016 (footnote 97), p. 313.

129 *Scharpf* 1998 (footnote 111), p. 187.

130 *Risse, Thomas* 2015: Introduction, in: *Risse, Thomas (ed.): European Public Spheres – Politics is Back*, Cambridge, pp. 1–26 (1).

131 *Risse, Thomas* 2010: A community of Europeans? Transnational identities and public spheres, Ithaca/London, pp. 128 ff.

132 *De Wilde, Pieter/Zürn, Michael* 2012: Can the politicization of European integration be reversed?, in: *Journal of Common Market Studies* 50 (S1), pp. 137–153.

133 *Hix, Simon/Bartolini, Stefano* 2006: Politics: The Right or the Wrong Sort of Medicine for the EU? Notre Europe, in: Policy Paper 19, Paris.

134 *Risse* 2015 (footnote 130), pp. 3

for EU issues as well as the lack on media interest in parliamentary EU activities”.<sup>135</sup> De Wilde and Raunio showed that the EWS does not seem to counter this problem in any significant way with “only a small niche public of already highly interested people” perceiving of EWS proceedings “without broader resonance in mass media”.<sup>136</sup> Against this background, regional parliaments could theoretically contribute to counteracting the problem of democratic disaffection in two ways respectively. By engaging with their regional constituency – performing the function of informing them on EU affairs – and by creating publicity and public debate around EU affairs in the parliamentary arena more generally. The latter aspect could (ideally) amount to a regional extension of the Europeanization of public spheres to the extent that it mobilises on EU policy issues through a regional lens. A most consequential development in this regard would be if EU policy issues would actually come to play a significant role in regional elections and regional party competition. When political “competition fosters political debate, which in turn promotes the formation of public opinion on different policy options”,<sup>137</sup> one could assume that regional political competition on EU issues has the greatest effect of normalising EU politics. The prospects of such a full-blown, downward Europeanisation of political competition and parliamentary debate – (re)connecting EU affairs with regional politics – are of course another story.

A final aspect concerns the various information and public relations campaigns that regional parliaments are and could be involved in – either as part of domestic EU policy coordination or in direct cooperation with the European Institutions. Regarding the future of EU integration and constitutional development, the Conference on the Future of Europe that is currently underway represents a novel effort to engage citizens with EU affairs. Since regional parliaments are represented in the Conference plenary and may get involved in organising regional and local events, they could contribute to creating publicity for the Conference and engage citizens into “shaping the future of the European project” – as the Conference boldly states.<sup>138</sup> The virulence of European issues in political discourse is one thing but public deliberation also requires some shared understanding of facts and political responsibilities. Tackling disinformation and informing on EU politics is a major cornerstone of the Commission’s Democracy Action Plan;<sup>139</sup> regional parliaments could fulfil an instrumental information or *teaching* function in this regard.

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135 Auel 2013 (footnote 80), p. 17; see also De Wilde, Pieter 2012: The operating logics of weak and strong publics and the communication of Europe, in: Auel, Katrin/Raunio, Tapio (eds.): National parliaments and their electorates in EU affairs, in: IHS Political Science Series 129, pp. 108–129.

136 De Wilde/Raunio 2016 (footnote 97), p. 318.

137 Føllesdal/Hix 2006 (footnote 57), p. 550.

138 Compare “What is the Conference on the Future of Europe?”: <https://futureu.europa.eu/pages/about>.

139 European Commission 2020: Communication on the European Democracy Action Plan, COM 2020/790 final, Brussels: European Union.

## 5 The Theoretical Potential of Regional Parliaments to Curb Democratic Problems of the EU

Having sketched the three issues of executive dominance, indirect responsiveness, and democratic disaffection, the contention is that these can plausibly capture those (major) sites in the EU today at which regional parliaments can theoretically play a role in countering the EU's current democratic shortcomings.<sup>140</sup> Obviously, we can imagine profoundly different constitutional orders for the EU in which national and regional parliaments play a significantly different role. And as Gabriele Abels points out:<sup>141</sup> regionalisation is a dynamic matter; devolution and the (re)establishment of regional parliaments may transform political and institutional interests and influence the future and institutional position of regional parliaments in the EU in the long run. The analytical approach that I outlined so far pertains to those problems of democratic legitimacy in the EU that would be shared by many scholars and commentators notwithstanding both these larger normative questions and long-term issues. The analysis connected the regional parliamentary functions, sites of (theoretical) involvement in EU affairs, and normative issues of the EU's democratic legitimacy in order to make those normative claims explicit that underlie the common narrative of the democratic potential of regional parliaments – that the “better involvement of regions and of regional parliaments in the EU decision-making process could enhance democratic control and accountability”.<sup>142</sup> Table 2 summarizes this analysis of the ‘normative grammar’ of regional parliamentary involvement.

Now, the table and the discussion so far could suggest that there are plenty of ways in which regional parliamentary functions can contribute to counteracting problems of democratic legitimacy in the EU. But the analytical assessment of their theoretical potential neither bears on claims about a) the feasibility and scope of the different sites of engagement nor (b) claims about their normative weight respectively. We would need to argue through these two aspects for the whole range of parliamentary functions – and the respective parliamentary activities that make up these functions. In the final section, I will thus conclude with an exemplary application, which should convey the value of the normative analysis for putting the rather bold and broad claims of political and academic discourse into perspective: drawing on arguments that have been discussed in the recent literature on regional parliaments in the EU, I want to make an observation regarding the scope and potential of regional parliaments to “meaningfully” contribute to the remedy of the first two problems of democratic legitimacy.

<sup>140</sup> Empirically, the institutions and activities of regional parliaments are in most cases *multi-purpose*, contributing to various parliamentary functions respectively. The same goes for the normative problems of democratic legitimacy since they have common underlying empirical causes as well as, most likely, common remedies in the broader sense.

<sup>141</sup> Cited in *CoR* 2014 (footnote 32), p. 3.

<sup>142</sup> *CoR* 2018 (footnote 32), §92; see also *CoR* 2014 (footnote 32).

Table 2: Regional parliamentary functions and their (theoretical) contribution to three problems of EU democracy

	<b>Regional parliamentary function and activity</b>
<b>Executive dominance</b>	<ul style="list-style-type: none"> <li>• <i>scrutinising</i> regional executives directly in parliamentary arenas</li> <li>• <i>mandating</i> regional governments on EU issues</li> <li>• <i>scrutinising</i> national executives indirectly via second chambers or joint committees</li> <li>• <i>scrutinizing</i> executive actors at EU level indirectly via forums like the CoR or CALRE</li> <li>• (direct) <i>ex-ante scrutinising</i> of COM proposals via the EWS</li> <li>• <i>networking</i> in interparliamentary cooperation to facilitate information flows on EU policy and politics</li> <li>• <i>networking</i> with EP and domestic political institutions and organisations – e.g. parties links – to maintain information on EU affairs</li> </ul>
<b>Indirect responsiveness</b>	<ul style="list-style-type: none"> <li>• <i>aggregating</i> regional preferences in the parliamentary institutional channels and <i>expressing</i> them vis-à-vis other actors in the multilevel system</li> <li>• <i>shaping policy</i> (making) at EU level indirectly – via CoR or Political Dialogue with COM – and directly – via regional representations in Brussels or ad hoc lobbying.</li> <li>• facilitating policy responsiveness of EU level executive actors (esp. Council) by contributing to public <i>scrutiny</i> indirectly</li> </ul>
<b>Democratic disaffection</b>	<ul style="list-style-type: none"> <li>• creating <i>publicity</i> and public debate around EU affairs in the parliamentary arena</li> <li>• <i>informing</i> regional constituency on EU affairs – campaigns, debates etc.</li> </ul>

Source: compiled by the author.

## 6 Putting the Democratic Potential of Regional Parliaments into Perspective

To reiterate: the advantage of analysing the normative grammar of regional parliamentary involvement with the suggested analytical framework is that we can appreciate the theoretical differences in added-value from the perspective of EU democracy. One specific observation in this regard concerns the contrast between a) regional parliaments' potential to counter executive dominance in the EU by providing genuine forms of accountability by way of effective scrutiny *versus* b) their options to shape policymaking via various (more or less informal) channels and sites in the multilevel system of governance.

The basic constellation of parliamentary systems of representative democracy in EU member states makes the government-opposition dynamic centre stage when it comes to holding executive power accountable. “Normal processes of political contestation”<sup>143</sup> – in committee work and/or public parliamentary debate – is what sustains accountable decision-making from the perspective of the parliamentary arena. The combined exercise of parliamentary functions that grounds this basic mode of accountability pertains primarily to parliaments’ capacity to scrutinise executive actors in the light of public and (ideally) electoral pressures. Apart from this accountability complex, regional (as domestic) parliaments may directly and indirectly influence EU policy making, via informal channels with executive actors at EU and at national level. In this latter scenario, however, their role is (theoretically) confined to that of a potentially well-networked actor with a good representative claim<sup>144</sup> to channel the regional concerns (i.e. information) and interests of citizens into the European multilevel system of governance – thereby potentially improving “feedback loops involving citizens attitudes towards EU policies”.<sup>145</sup> “Voice” and “judgement” beyond the “formal power to make or veto a decision”<sup>146</sup> is one thing. Parliamentary “voice” and “judgement” in the form of (informal) policy-shaping without parliamentary accountability is another and does not, for example, pertain to the curtailment of executive dominance as a form of decision-making. The contrast is one between a) regional parliamentary activities that establish accountability by means of parliamentary, public scrutiny and b) institutions and activities that establish policy influence by means of transposing regional interests and regional concerns into EU policymaking and constitutional development.

This brief observation suggests that we should precisely distinguish between the potential democratic added-value of different regional parliamentary functions in different compositions and at different sites of the multilevel parliamentary system. And it also adds to the sceptical impression that regional parliaments can contribute to the “remedy [of] the infamous democratic deficit of the EU”<sup>147</sup> only in a selective and rather minor way: as parliamentary arenas of scrutinising *regional* EU politics and as transposers of regional interests in various channels of the multilevel system of governance. This suggestion speaks to the claim of several scholars that the role of regional parliaments in the EU – and respective parliamentary functions – *should* be primarily “focusing on EU politics at their own level” of regional government.<sup>148</sup> On empirical grounds, scholars

143 Kröger, Sandra/Bellamy, Richard 2016: Beyond a constraining dissensus: The role of national parliaments in domesticating and normalising the politicization of European integration, in: *Comparative European Politics* 14 (2), pp. 131–153 (142).

144 On the concept of “representative claim making” see Saward, Michael 2006: The representative claim, in: *Contemporary Political Theory* 5, pp. 297–318.

145 Abels 2015a (footnote 7), p. 42. Many informal strategies of involvement, however, will bear on individual, political entrepreneurs and/or party groups so that it is important to clearly distinguish the level of analysis: between the aggregate institutional level of regional parliaments and the individual level of parliamentarians; see Bursens/Högenauer 2017 (footnote 13), p. 137.

146 Piattoni 2019 (footnote 120), p. 22.

147 Högenauer/Abels 2017 (footnote 27), p. 270.

148 Auel/Große Hüttmann 2015 (footnote 124), pp. 350 ff.; Patzelt 2015 (footnote 36).

have assumed that this is also the more likely prospect as regional parliaments “will focus less on influencing legislative outcomes and more on controlling the local and regional dimension of EU policies, for example implementation issues”.<sup>149</sup>

The analytical approach introduced in this paper differentiates and qualifies the generally plausible but rather generic assertion that regional parliaments can “meaningfully contribute to the EU’s legitimacy”.<sup>150</sup> My analysis of the normative grammar of regional parliaments (potential) involvement in EU democracy categorizes various ways in which they can theoretically contribute to the curtailment of democratic shortcomings of EU policy making and European integration. A brief application of the framework, however, put the normative significance of the different sites of involvement into perspective. In conclusion, my analysis and observations illustrate the need for scholars to separate more clearly the assessments of regional parliamentary functions and activities with a view to their varying normative rationales – or potential added value – in terms of EU democratic legitimacy.

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149 *Bursens/Högenauer* 2017 (footnote 13), p. 135.

150 *Auel/Große Hüttmann* 2015 (footnote 124), p. 350.



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Im 22. Band des Jahrbuchs behandeln die Beiträge wiederum aktuelle Fragen der Föderalismus-Forschung. Einleitend äußert sich Bundesgesundheitsminister Jens Spahn, mit spezifischem Blick auf die Situation in Deutschland, zum diesjährigen Schwerpunkt „Management der Corona-Pandemie in föderalen und quasiföderalen Staaten“. Daran anschließend berichten mehrere Autor:innen über das Krisenmanagement in ausgewählten Fallbeispielen.

Sodann informiert das Jahrbuch 2021 über aktuelle Themen der Föderalismus-Forschung, über neueste Entwicklungen des deutschen Föderalismus, über aktuelle Aspekte der Territorialstruktur in verschiedenen europäischen Staaten, über Aspekte regionaler und kommunaler Kooperation in Europa, sowie über die subnationale Ebene im Mehrebenensystem der EU. Sechs Rezensionen schließen den Band ab. Das Jahrbuch bietet den Leser:innen – in Politik und Verwaltung, in Wissenschaft, Forschung, Lehre und Studium – wiederum einen aktuellen, verlässlichen und zusammenfassenden Überblick über die genannten Themen. Autor:innen der Beiträge sind ausgewiesene Expert:innen aus dem In- und Ausland.

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Summary:

Since the 1990s the role of regions in the EU multi-level polity is under construction and has changed in many ways. The currently ongoing Conference on the Future of Europe (CoFoE) provides another window of opportunity for regions to shape the dynamic EU polity.

The three articles put this timely development in a historical perspective by discussing parallels to previous treaty reforms, by analyzing the manifold activities of the Committee of the Regions (CoR) in relation to the CoFoE, and by discussing the role of regional parliaments and their potential contribution to the democratic legitimacy of the EU.